

Democracy Dispossessed:
Land, Law & the Politics of Redistribution in South Africa

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Submitted in partial fulfillment of the
requirements for the degree of
Doctor of Philosophy
in the Graduate School of Arts and Sciences

COLUMBIA UNIVERSITY

2016

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ABSTRACT

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This dissertation concerns the history of land politics in South Africa and, equally, land as a vehicle for understanding the transition from apartheid to the post-apartheid order. In 2004, after a decade in power, the ANC government's failure to carry out widespread land reform began to test the country's democratic possibilities. In the lead up to that year's national election, social movements urged landless people to boycott the polls and occupy land instead as part of a "No Land! No Vote!" campaign. With this clash as its entry point for analysis, this dissertation examines historical factors that have shaped South Africa's neoliberal democracy and prospects for redistribution. It offers insights into some of the most significant questions facing the country: What is the historical relationship between land dispossession, citizenship, and politics in South Africa? And why, well into the Mbeki years, was the country unable, or unwilling, to reckon with it?

Broad in scope, this dissertation examines a number of institutions that shaped the politics of land, economic development, and citizenship in South

Africa over the last century. It is particularly focused on period of the 1940s-2004, encompassing the apartheid era and the first ten years of democracy. I begin by recasting the history of apartheid pass laws in the mid-twentieth century, widening the scope beyond their role in containing labor mobility and controlling access to cities. I show how vagrancy laws were one piece of a continuum that stretched through jails and prisons to rural plantations, supplying labor to farms and subsidizing agricultural development. Later chapters examine how, beginning in the 1970s, the World Bank and other international institutions helped shape the contours of land and housing policies and the relationship between states and citizens. My research also shows how, during the apartheid transition and through the Mandela and Mbeki administrations, private prisons and harsh criminal justice reforms became integral parts of neoliberal economic development. This dissertation weaves together the history that has shaped South Africa's 'dispossessed democracy' and concludes with a discussion of the implications for social movements and political change.

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ACKNOWLEDGEMENTS

It is a privilege to be able to thank the many people and institutions that shaped this project. My research in South Africa began nearly 12 years ago, and this dissertation would not be possible without friendships, conversations, and immense generosity spanning the Atlantic over that time.

Gregory Mann has been an extraordinary advisor, guiding my development as a researcher, writer, and historian. His brilliant insights, well-timed questions, enduring support, and practical advice have sharpened the focus of this project and sustained it. I am deeply grateful for his wisdom and patience. A year into my graduate studies Mamadou Diouf joined the Columbia faculty and took the helm of the Institute of African Studies. I am immensely thankful for his visionary leadership and his work to promote interdisciplinary and transnational approaches to African studies. I have benefitted a great deal from our conversations and from his support and that of the Institute. I am grateful to Sean Jacobs, Dan Magaziner, and Sam Roberts for serving on my dissertation committee. My thinking about South African politics and history has benefitted enormously from discussions with Sean over the years, and I am thankful for his model of engaged scholarship and provocative, deeply committed public intellectualism. My work on South African history has been

enriched by Dan Magaziner's writings and by his approach to the study of South African intellectual history and political thought. I am grateful to Sam Roberts for his powerful example of historical research that cuts across disciplinary boundaries, and for the initiatives he is driving at Columbia to foster engaged scholarship on health, incarceration, and criminal justice.

While at Columbia, I benefitted from the guidance of Marcia Wright, Eric Foner, Manning Marable, Mahmood Mamdani, Gail Gerhart, Fred Cooper, David Scott, Saidiya Hartman, Betsy Blackmar, Mark Mazower, Barbara Fields, Janet Roitman, Anupama Rao, Adam McKeown, Abosede George, Hlonipha Mokoena, Natasha Lightfoot, and Katherine Franke. I am honored to have worked with the late Manning Marable. From our first conversation about the links between Black freedom movements in South Africa and the U.S., I knew I had found an intellectual home at Columbia and an extraordinary mentor. He remains my role model for producing engaged historical scholarship and building institutions to support it. I, along with so many undergraduate and graduate students, owe much to the institutions he nurtured: the Institute for Research in African-American Studies (IRAAS), the Center for Contemporary Black History (CCBH), the Harlem Digital Archive, and *Souls* journal. I was very fortunate to develop orals fields with David Scott (Third World Intellectual

History), Saidiya Hartman (Race and Political Economic Theory), and Anupama Rao (Twentieth Century International History) that continue to inform my thinking and research. Gail Gerhart and Marcia Wright have been remarkably generous mentors; they grounded my graduate studies in South African history and politics and my own endeavors to teach and write in this field owe much to them. I am deeply grateful for conversations and feedback from Mahmood Mamdani, and am indebted to his scholarship and his approach to the study of history and politics in Africa. I am also grateful to Sharee Nash, whose support as History Ph.D. Program Administrator was invaluable.

My dissertation research in South Africa was funded through the generous support of the Social Science Research Council International Dissertation Research Fellowship, Fulbright-Hays Doctoral Dissertation Research Abroad Fellowship, and the Columbia University Graduate School of Arts and Sciences. My doctoral training was supported by a Ford Foundation Pre-Doctoral Fellowship and a Foreign Language and Area Studies Fellowship. The Ford Fellow community has been a valuable source of inspiration and support.

I am grateful to Lungisile Ntsebeza and his National Research Foundation (NRF) Chair in “Land Reform, Democracy, and Civil Society Dynamics” at the University of Cape Town, who hosted me during my dissertation research year

in 2009-10. My debt to Lungisile is profound. I am extremely fortunate to have been part of the rich intellectual community of the NRF cohort, a deeply committed group of faculty and students well aware of the stakes of research on land reform in southern Africa. This project has benefitted much from Lungisile's scholarship and insights, and I am deeply appreciative for our conversations and his support over the course of my research year.

At Yale Law School, I benefitted from conversations and feedback from John Fabian Witt and Nicholas Parrillo. I am thankful to Yale's legal history community, especially the American Legal History Research Seminar. Richard Brooks provided pivotal support, feedback, and wisdom, for which I am deeply grateful. Thanks to Vincent Brown and Emmanuel Akyeampong at Harvard for helping to spark my interest in pursuing graduate research on the history of Africa and its diaspora.

I am grateful for opportunities to present earlier versions of this work at the 2014 African Studies Association Conference, and am particularly thankful to the organizers of the "State, Violence, and Migration" panel; the Center for Immigrant Families in New York, the University of KwaZulu-Natal Centre for Civil Society; New York's Brecht Forum; the Yale Law School American Legal History Research Seminar; and the Silencing Human Rights Conference at the

University of Sussex. I am also thankful to anonymous reviewers at the *Review of African Political Economy* who gave helpful feedback on a version of chapter three.

I have learned so much from my fellow graduate students at Columbia, and am especially grateful to the members of Black Historians Matter (BHM) for insights, feedback, and support: Russell Rickford, Adrienne Clay, Horace Grant, Kellie Carter-Jackson, Elizabeth Kai Hinton, Toja Okoh, Zaheer Ali, Kevin Etienne-Cummings, and Megan French Marcelin. Thanks to Nijah Cunningham, Thomas Lax, Eckson Khambule, Pandora O'Mahoney-Adams, Matt Swagler, Mari Webel, Brandon County, Antina von Schnitzler, and Uggu Agarwal as well. Thanks to members of the New York Area African History Group.

I am grateful for conversations with Lewis Gordon, Frank Wilderson, Raj Patel, Mandisa Mbali, Franco Barchiesi, Kerry Chance, Shannon Walsh, Emily Lordi, Toussaint Losier, my colleagues at the University of KwaZulu-Natal Centre for Civil Society, members of the Yale Black Feminist Reading group, Heather Vermeulen, Christine Slaughter, Dana Asbury, Tiffany Hale.

This project and I have benefitted from the support of many friends and colleagues. Extraordinary thanks to Sofia Nelson, for your love, brilliance, patience, and support. Thanks too to Mary Ortiz and Greg Nelson. Thanks to Joseph Keckler, Sara Birkel, Katie McKay Bryson, Filiberto Nolasco Gomez,

Rachel Weinstein, Nijah Cunningham, Audrey Sasson, Marcelle Hopkins, Bongani Madondo, Hope Metcalf, Kevin Lamb, Marbre Stahly-Butts, James Johnson-Piatt, Caitlin Mitchell, Samar Al-Bulushi, Zohra Ahmed, Jocelyn Burrell. I am grateful to friends in Cape Town who filled my 2009-10 year there with fun, love, and support: Koni Benson, Alex Muller, Terna Gyuse, Obiozo Mirjam Ukpabi, Mimi Cheron N'Gok, Terry Ayugi, Victoria Collis-Buthelezi, Mbongiseni Buthelezi, Ingrid Meintjes. Thanks to Detroit friends who have supported me and cheered me on in the final months of writing: Jess Daniel, Brooke Tucker, Amy Brainer, True Tong, Marilena David-Martin, and Alessandro Martin. Thanks to Lora Lempert and members of the Inside-Out Theory Group at Macomb Prison. Thanks too to my colleagues at the University of Michigan, especially Reuben Miller, Martha Jones, Heather Ann Thompson, Alex Stern, and members of the Reproductive Justice Faculty Research Cluster.

My profound thanks to members of the Landless People's Movement whose insights and commitments made this work possible. Thanks also to members of Sikhula Sonke and Abahlali baseMjondolo.

While I owe much to many people, all errors are of course my own.

Finally, my extended and immediate family has pulled me through and provided immense love and support. Thanks to the Alexander and McKay

families. Thank you to my grandmothers, Barbara Dickson Alexander and Joyce Irish McKay Emery. I am grateful to my father, Robert Alexander, and my beloved mother, Mary McKay Alexander, for their love and encouragement. Thank you to my brother, Robert Alexander, whose brilliance and creativity inspire me everyday.

DEDICATION

For my parents

CHAPTER ONE

Introduction

In 2004 South Africa held its second national election after the transition from apartheid a decade earlier. Most adults had clear memories of casting a vote for the first time in their lives in the election that brought Nelson Mandela and the African National Congress (ANC) to power in 1994. Yet the government's failure to carry out widespread land reform had begun to test the country's democratic possibilities. Despite promises to redistribute 30 percent of agricultural land within five years, less than two percent of land had changed hands from white to black South Africans. As the 2004 election approached, a national organization called the Landless People's Movement (LPM) urged landless people to boycott the election and occupy land as part of a "No Land! No Vote!" campaign. The LPM argued that South Africa had achieved only a "ballot box democracy" since it had failed to democratize property relations, and that the "hard won right to vote" was a poor substitute for economic redistribution. The movement issued demands that it argued would give teeth to the democratic project: a moratorium on all evictions and immediate delivery of land to the landless. By boycotting the election, the LPM explicitly called into question the validity of the transition from apartheid to democracy.

Only a small fraction of the population took up the LPM's charge to occupy land rather than vote on election day. But the land question weighed on the minds of many.¹ Indeed, a 2001 study found that over two-thirds of black South Africans agreed that "land must be returned to blacks in South Africa, no matter what the consequences are for the current owners and for political stability in the country."² While pundits, election observers, and democracy 'experts' watched the election closely, seeking assurance that it was free and fair,

¹ The "land question" encompasses many sub-questions and often goes undefined. Hall and Ntsebeza offer a useful description of the land question: "Issues at the heart of the land question are how to reverse [colonial and apartheid-era dispossession] and how a large-scale redistribution of land can contribute to transforming the economy and reducing poverty." Still, as Raj Patel notes, the land question often stands in for a number of concepts: "[A] clear definition of the question seems elusive. Or, better, it seems clear that the 'land question' refers to different clusters of social, political and cultural problems, for different people, different scholars, different groups. It is an issue that invokes complex issues of history, entitlements, politics, economies, geographies, religions and social relations. ...Yet despite its original complexity, the land question invariably gets collapsed into a range of slightly more tractable, manageable, problems whether this collapse is authored by the state, the party, the coalition or the community organization." Raj Patel, "Electing Land Questions: A Methodological Discussion with Reference to Abahlali baseMjondolo, the Durban Shackdweller Movement," Paper for the CODESRIA Multinational Working Group on Land, April (2007), 4. Ruth Hall and Lungisile Ntsebeza, eds., *The Land Question in South Africa: The Challenge of Transformation and Redistribution* (Cape Town: HSRC Press, 2007).

² James Gibson, *Overcoming Historical Injustices: Land Reconciliation in South Africa* (Cambridge: Cambridge Univ. Press, 2009), 32 (citing James Gibson, "The Land Question in South Africa: Clouds on the Horizon" Institute for Justice and Reconciliation [2001]).

a majority of black South Africans still looked for deeper proof of democracy. Land must be redistributed, political stability be damned.

Why was the slow pace of land reform reason to boycott an election? Expressing disappointment over sluggish economic change is one thing, declaring the country's democracy null and void another. Why did the lack of economic redistribution bring the very premise of South Africa's new experiment in democracy into question? This dissertation confronts these questions. My research in South Africa began over a decade ago when I conducted interviews with members of the Landless People's Movement. Since then, my work has brought me to the archives of the World Bank and the South African government, into personal papers collections and newspaper archives, and across tables from interview participants. When I conducted interviews with LPM members in 2003, many of them insisted that, to understand the transition from formal apartheid and deconstruct questions of citizenship, democracy, and racialized inequality, historians and other scholars must explore land dispossession and land reform.

A brief overview of land policy under segregation and apartheid supports the movement's assertions that an inextricable link exists between land

dispossession and the denial of citizenship rights and political control.³ Beginning with the 1913 Natives' Land Act, a series of segregationist laws created a landless majority in South Africa and stripped black people of South African citizenship. Under the 1913 act, only seven percent of the country's total land surface was set aside for "Native reserves," leaving the white minority with ownership in land comprising an area ten times larger than that of the black majority. (The amount of land reserved for black Africans would be increased to 13 percent by the 1936 Native Trust and Land Act). In 1927 the Native Administration Act established the Native Affairs Department, a set of institutions intended to deal solely with black people. In 1959, the apartheid government passed the Promotion of Bantu Self-Government Act, which provided for the eventual self-government of fabricated "tribal homelands," or

³ See Colin Bundy, "The Emergence and Decline of a South African Peasantry," *African Affairs* 71 (285) October (1972); Harvey Feinberg, "The 1913 Natives Land Act in South Africa: Politics, Race, and Segregation in the Early 20th Century," *The International Journal of African Historical Studies*. 26(1) (1993): 65-109; Mahmood Mamdani, *Citizen and Subject: Contemporary African and the Legacy of Late Colonialism* (Princeton: Princeton UP, 1996); Christina Murray and Catherine O'Regan, eds., *No Place to Rest: Forced Removals and the Law in South Africa* (Oxford: Oxford University Press, 1990); Lungisile Ntsebeza, *Democracy Compromised: Chiefs and the Politics of the Land in South Africa* (Leiden: Brill Academic Publishers, 2005); Sol Plaatje, *Native Life in South Africa: Before and Since the European War and the Boer Rebellion* (Athens, Ohio: Ohio University Press, 1916/1991); Harold Wolpe, "Capitalism and Cheap Labour Power in South Africa: From Segregation to Apartheid" in *Segregation and Apartheid in Twentieth-Century South Africa*, ed. William Beinart and Saul Dubow (London: Routledge, 1995).

Bantustans. With the creation of the Bantustans, the apartheid government claimed that there were no longer any black citizens of South Africa. Black people were to become citizens of the Bantustans—or, rather, subjects of customary authority in those areas.⁴ Given this history, it is not difficult to understand why many in the dispossessed majority assumed that the advent of democracy and broadened political control could only be facilitated by a redistribution of land.

Yet, a decade after the transition from formal apartheid, only a small amount of land had changed hands. The reasons for this can be traced back to two key outcomes of the negotiations that ended apartheid: property provisions in South Africa's new Constitution and the ANC's adoption of a neoliberal approach to economic development and ultimately land redistribution. The South African Constitution, adopted in 1996, allowed for comprehensive land reform through three channels: *redistribution* to ensure equitable distribution of land ownership, *restitution* to provide land or compensation to those who were dispossessed, and *tenure reform* to formalize land rights and provide security under various forms of locally-appropriate tenure.⁵ Yet the land reform

⁴ See Mamdani, *Citizen and Subject*.

⁵ The Constitution allows for redistribution under section 25(5): "The state must take reasonable legislative and other measures, within its available resources, to foster

provisions were one half of a fiercely contested compromise. The other half was the Constitution's property clause, which provided strong protection for existing property rights acquired through colonialism and apartheid.^{6,7} Crucially, the

conditions which enable citizens to gain access to land on an equitable basis." Section 25(6) addresses tenure security: "A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress." Section 25(7) provides the basis for restitution: "A person or community dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to restitution of that property or to equitable redress." Republic of South Africa, Constitution of the Republic of South Africa (1996).

⁶ The property clause is under Section 25 of the Constitution: "(1) No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property. (2) Property may be expropriated only in terms of law of general application—(a) for a public purpose or in the public interest; and (b) subject to compensation, the amount of which and the time and manner of payment of which have either been agreed to by those affected or decided or approved by a court. (3) The amount of the compensation and the time and manner of payment must be just and equitable, reflecting an equitable balance between the public interest and the interests of those affected, having regard to all relevant circumstances, including—(a) the current use of the property; (b) the history of the acquisition and use of the property; (c) the market values of the property; (d) the extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property; and (e) the purpose of the expropriation." Republic of South Africa, Constitution.

⁷ On the property clause and constitutional negotiations regarding land, see Bernadette Atuahene, *We Want What's Ours: Learning from South Africa's Land Restitution Program* (Oxford: Oxford Univ. Press, 2014); Fred Hendricks, "Does the South African Constitution Legitimate Colonial Land Alienation?," paper presented at RAU Anthropology and Development Studies Seminar, March (2004); Lungisile Ntsebeza, "Land Redistribution in South Africa: The Property Clause Revisited," in Ntsebeza and Hall, *The Land Question in South Africa*, 107-132; Ruth Hall, "Restitution and the Politics of Land Reform: Stepping Outside the Box," Paper presented at a Conference on Ten Years of Democracy in Southern Africa, Queens University, Kingston, May 2-5 (2004); Matthew Chaskalson, "Stumbling Towards Section 28: Negotiations over the Protection

ANC also opted for a market-led approach to land redistribution, based on “willing buyer, willing seller” principles recommended by the World Bank. This approach restricts the role of the state in redistributing land—and helps avoid the politics of racialized redistribution—by transforming land redistribution into a question of market outcomes. Scholars of South African land reform have debated the relative roles that the property clause and the willing buyer-willing seller policy played in slowing, or preventing, land reform.⁸ Nonetheless, it is undisputed that these policies resulted in drastically unequal patterns of land distribution remaining virtually unchanged from the apartheid era. Ten years after the transition from apartheid, 86 percent of the country’s land was owned by 60,000 white farmers and the state.⁹

of Property Rights in the Interim Constitution,” *South African Journal on Human Rights* 11 (1995): 222-240.

⁸ See, e.g., Fred Hendricks and Lungisile Ntsebeza (2000) and Hendricks (2004), who argue that the property clause forecloses large-scale expropriation. By contrast, Hall (2004) argues that the property clause is not insurmountable and that the government has powers to expropriate land, but has failed to use them. On this debate, see Ntsebeza, “Land Redistribution in South Africa: The Property Clause Revisited;” Fred Hendricks and Lungisile Ntsebeza, “The Paradox of South Africa’s Land Reform Policy,” SARIPS Annual Colloquium, Harare, Zimbabwe (2000); Fred Hendricks, “Does the South African Constitution Legitimate Colonial Land Alienation?;” Ruth Hall, “Restitution and the Politics of Land Reform: Stepping Outside the Box.”

⁹ See “Black farmers in South Africa still struggling with land reform,” *Voice of America*, Oct. 29, 2012, <http://www.voanews.com/content/black-farmers-in-south-africa-still-struggling-with-land-reform/1535152.html>. See also, Edward Lahiff, “Q&A: Land

The link between land dispossession and loss of citizenship, combined with what appeared to be structural impediments to rectifying historical injustice, helps to explain the LPM's criticism that South Africa had not yet 'arrived' at democracy. But the critique went deeper still. For there was a second key component to the LPM's negative assessment of the ANC's land policies: the policies focused only on rural, not urban, land. The ANC government had established a rigid separation between urban *housing* policy and rural *land* policy. This separation became evident when a series of urban land occupations garnered media attention around July 2001.¹⁰ The government construed the occupations as the result of failed housing and "basic services" (e.g. water and electricity) delivery—not a lack of land reform. Indeed, President Thabo Mbeki declared that "the problem in South Africa is homelessness, not land."¹¹ Those occupying land were portrayed as homeless, not landless, actors; they were acknowledged as having land needs insofar as they needed land for building homes, but not necessarily for other purposes. Their relationship with urban land was thus mediated through a right to housing lens, but was not recognized by

Reform in South Africa," *PBS POV: Promised Land*, Jul. 6, 2010, http://www.pbs.org/pov/promisedland/land_reform.php#.UZUpWCsaf2Q.

¹⁰ For a full discussion see chapter five.

¹¹ Laurence Schlemmer, "The real housing story," *Focus* (23), Sep. 2001.

the ANC as a direct right to land. Yet squatters facing eviction from urban high-rises in Johannesburg's Hillbrow and Berea districts and others contemplating occupations of vacant state-owned land near shack settlements such as Protea South persisted in calling themselves "landless" rather than homeless or poor. As members of the LPM, these urban residents were articulating land rights claims rooted in historical land theft that did not fit easily within the government's rigid separation of urban *housing* policy and rural *land* policy.

In addition to challenging the lack of land redistribution, the LPM was also rejecting the "rural-urban divide" in South African policy and politics. A fuller account of the problem of land dispossession would need to take stock of the historical relationship between urban and rural areas under apartheid—and the institutional politics that continued to bind them. The LPM's rejection of the urban-rural divide thus raised another layer of questions. How did the urban-rural divide become so politicized and contested? And what did the ANC gain, politically, by continuing to promote that division?

* * *

My dissertation concerns the history of land politics in South Africa and, equally, land as a vehicle for understanding the transition from apartheid to democracy. The following chapters examine various historical factors that

shaped the politics of South Africa's transition from apartheid and that continued to resonate in the first decade of democracy under ANC rule. This dissertation offers insights into some of the most significant questions still facing South Africa: What is the historical—and contemporary—relationship between land dispossession, citizenship, and politics in South Africa?¹² And why has the country been unable, or unwilling, to reckon with it?

This dissertation examines the history of how the ANC came to adopt a neoliberal approach to land redistribution and economic development.¹³ More

¹² While this study is focused on South Africa, issues of land claims and political community are certainly pertinent in many parts of the globe. As James Gibson has observed, "One of the most compelling issues for worldwide socio-legal studies has to do with how to reconcile competing historical claims to land. Countries as diverse as the United States, Argentina, and the Philippines are confronted with extremely complex and divisive issues of rectifying land injustices from the past. These conflicts are intractable in part because they implicate exceedingly difficult issues of law, justice, and history." Gibson, *Overcoming Historical Injustices*, 1.

¹³ Neoliberalism is a political economic theory and policy approach characterized by privatization, market deregulation, and fiscal austerity. In David Harvey's definition, "neoliberalism is in the first instance a theory of political economic practices that proposes that human well-being can best be advanced by liberating individual entrepreneurial freedoms and skills within an institutional framework characterized by strong private property rights, free markets, and free trade. The role of the state is to create and preserve an institutional framework appropriate to such practices" David Harvey, *A Brief History of Neoliberalism* (Oxford: Oxford University Press, 2005), 2. Brenner, Peck, and Theodore have cautioned that "the widespread use of the concepts of neoliberalism and neoliberalization has been accompanied by considerable imprecision, confusion, and controversy—in effect, they have become 'rascal concepts.'" Neil Brenner, Jamie Beck, and Nik Theodore, "After Neoliberalization?" *Globalizations* 7(3) (2010): 328. I have been careful to avoid such imprecision here, and my working definition of the concept hews close to Harvey's definition throughout. My research also

than that, it analyzes the implications that a neoliberal approach carries for politics and political demands in South Africa's democratic order. In opting for a market-led approach to land redistribution, based on the World Bank's "willing buyer, willing seller" principles, the ANC government restricted the role of the state in redistributing land. But, as we have seen in the case of the Landless People's Movement, popular experiences and demands regarding land consistently overflowed the bounds of official post-apartheid policy and discourse well into the Mbeki years.¹⁴ The existence of the LPM and other movements demonstrated that demands for widespread redistribution had not disappeared, even though such demands lay outside the official political framework of a neoliberal and officially non-racial post-apartheid South Africa. (Here, political framework denotes the 'developmental' path that those in power set for the country and the accompanying types of political engagement this path

builds upon Brenner et al.'s concept of "variegated neoliberalization," which recognizes that neoliberalization processes are never pure, unified or all-encompassing. To the contrary, "neoliberalization represents an historically specific, unevenly developed, hybrid, patterned tendency of market-disciplinary regulatory restructuring." Ibid., 330. My dissertation, particularly Chapter 3's discussion of the World Bank, depicts neoliberalization as a stumbling, highly adaptable social process that manifests in different ways depending on local histories.

¹⁴ President Thabo's administration ran from 1999-2008. The Landless People's Movement was founded in 2001 and had its heyday in 2004-2005, after which its organizing activities dropped off significantly.

entailed for post-apartheid citizens.¹⁵) Drawing on historical investigation and an engagement with political theory, my dissertation examines how that political framework was created in South Africa and how it was contested. From a historical perspective, I argue that is important to understand the breadth of apartheid institutions that relied upon land dispossession and urban-rural division. This allows us to understand the popular significance of land and its relationship to citizenship and democracy. It is this popular significance, propelled by groups like the LPM, that refused to be commodified for market exchange through the “willing buyer, willing seller” program.

The Landless People’s Movement’s critique of South Africa’s democracy and its challenge to resist urban-rural dichotomies provided a starting point for my inquiries. In studies of South African land reform, the LPM is generally on

¹⁵ David Scott’s concept of a “problem-space” is useful for understanding competing political frameworks. Scott defines a problem-space as “an ensemble of questions and answers around which a horizon of identifiable stakes (conceptual as well as ideological-political stakes) hangs. That is to say, what defines this discursive context are not only the particular problems that get posed as problems as such (the problem of “race,” say) but the particular questions that seem worth asking and the kinds of answers that seem worth having. ... Problem-spaces alter historically because problems are not timeless and do not have everlasting shapes. In new historical conditions old questions may lose their salience, their bite, and so lead the range of old answers that once attached to them to appear lifeless, quaint, not so much wrong as irrelevant.” David Scott, *Conscripts of Modernity: The Tragedy of Colonial Enlightenment* (Durham: Duke University Press, 2004), 4. I argue that the ruling ANC and the Landless People’s Movement held distinct, conflicting notions of the post-apartheid problem-space. For the ANC, the LPM’s demands for redistribution and democratization were out-of-bounds, unintelligible, and irrelevant to a political framework that had “arrived” at post-apartheid democracy.

the margins. Some scholars discuss it as a fringe movement, or a short-lived effort that succumbed to institutional failures.¹⁶ It would be difficult to dispute either characterization, and I do not intend to do so here. My aim is different. As a student of history and legal theory, I see value in grappling with political critiques that come from the margins. Though its heyday was short (just a few years between roughly 2003-2005), the LPM raised important questions that shot at the heart of South Africa's democratic project and the direction of neoliberal development under President Mbeki. Even though most South Africans did not don red shirts and occupy land with them on election day, their questions and

¹⁶ Gibson, *Overcoming Historical Injustices*, 18 (“The Landless People’s Movement sought to mobilize ordinary South Africans on the land issue. However, by late 2006, the movement seemed to be in complete disarray” [citing Ntsebeza, “Land Redistribution in South Africa: The Property Clause Revisited,” 128]). On the LPM’s relationship with its host non-governmental organization, the National Land Committee, see Ntsebeza and Hall, “Introduction,” in Ntsebeza and Hall, *The Land Question in South Africa*, 13-16. See also Deborah James, *Gaining Ground: ‘Rights’ and ‘Property’ in South African Land Reform* (London: Routledge, 2007) (at 131: “The links forged by the LPM with cognate organisations in the global arena represent a tacit admission that it has failed to mobilise the landless on its own doorstep, and an attempt to substitute for this omission by bolstering its membership transnationally”). But see Rick de Satge, *A Scan of Rural Civil Society* (Cape Town: Institute for Poverty, Land, and Agrarian Studies: 2013) (“While the LPM has shrunk significantly, with its current membership largely located within selected urban informal settlements in Gauteng, in September 2011 an article appeared on the Abahlali website inviting the media to a press conference in Johannesburg, ‘where together with friendly CSOs and La Via Campesina leaders, LPM will launch the revival of the struggle for land and agrarian reform after a moment of apparent silence’” [citing Landless People’s Movement, “Revival of the Mass Struggle for Land and Agrarian Reform in South Africa,” Johannesburg: Abahlali baseMjondolo, <http://www.abahlali.org/node/8318>]).

frustrations were shared by many. And although the movement did not sustain the height of its numbers and visibility for long past 2005, its chants of “No Land! No Vote!” continue to echo. Other social movements, including the Western Cape Anti-Eviction Campaign and *Abahlali baseMjondolo* (shackdwellers’ movement), have waged similar campaigns, using “No Land! No House! No Vote!” as their rallying cry.¹⁷

Thus this dissertation originates in a desire to revisit urban-rural dichotomies in order to understand the nexus between agricultural development, urban-rural connection, and citizenship. I begin by re-examining certain apartheid institutions such as the pass laws that forbade black South Africans from entering cities without identification.¹⁸ I argue that key aspects of apartheid history that are often studied separately – for example, urban development¹⁹ and

¹⁷ See, e.g., “No Electricity, No Vote, Say Protesters,” *Mail & Guardian*, Oct. 30, 2008; Sinegugu Ndlovu and Bronwyn Fourie, “No Land! No House! No Vote!,” *IOL News*, May 19, 2011; Mdu Hlongwa, “The No Land, No House, No Vote Campaign Still on for 2009,” *ZMag*, Feb. 1, 2007; *Symphony Way Pavement Dwellers, No Land! No House! No Vote!: Voices from Symphony Way* (Cape Town: Pambazuka Press, 2011).

¹⁸ See chapter two.

¹⁹ For an overview of this literature see Paul Maylam, “Explaining the Apartheid City: 20 Years of South African Urban Historiography,” *Journal of Southern African Studies* 21(1) (1995): 19-38; Patrick Bond, *Cities of Gold, Townships of Coal: Essays on South Africa’s New Urban Crisis* (Trenton: Africa World Press, 2000); David Smith, ed., *The Apartheid City and Beyond: Urbanization and Social Change in South Africa* (London: Routledge, 1992); Martin Murray, *Taming the Disorderly City: The Spatial Landscape of Johannesburg After Apartheid*

rural livelihoods²⁰—are actually linked, with profound consequences for present-day South Africa. With this reframing, apartheid policies such as the pass laws take on a new significance beyond containing labor mobility and controlling access to cities. So focused on the indignities associated with carrying a pass, some scholars have overlooked the fates of black Africans *without* a pass, who were ordered to work on white-owned farms as punishment.²¹ A study of vagrancy laws through this lens—as one piece of a continuum that stretched through jails and prisons to rural plantations—reveals how deeply entwined economic development, criminal law, and prisons have been, and carries

(Ithaca: Cornell Univ. Press, 2008); Anthony Lemon, ed. *Homes Apart: South Africa's Segregated Cities* (London/Claremont: Paul Chapman/David Philip, 1991). More recently, see the work of the University of Cape Town's African Center for Cities. See also the literature on globalization and urban slums, e.g., Mike Davis, *Planet of Slums* (London: Verso, 2006); Robert Neuwirth, *Shadow Cities: A Billion Squatters, A New Urban World* (New York: Routledge, 2005).

²⁰ See, e.g., the body of work from the University of the Western Cape's Institute for Poverty, Land, and Agrarian Studies (PLAAS) and the University of Cape Town's NRF Research Chair in Land Reform and Democracy in South Africa; Govan Mbeki, *South Africa: The Peasant's Revolt* (London: Penguin, 1964); Martin Klein, ed., *Peasants in Africa: Historical and Contemporary Perspectives* (Beverly Hills: Sage, 1980); William Beinert and Colin Bundy, *Hidden Struggles in Rural South Africa: Politics & Popular Movements in the Transkei and Eastern Cape* (Berkeley: Univ. of California Press, 1987); Colin Bundy, *The Rise and Fall of the South African Peasantry* (Cape Town: David Philip, 1988).

²¹ As chapter two discusses at length, the historiography of pass laws has focused on their role in regulating migration and urban labor markets. See Doug Hindson, *Pass Controls and the Urban African Proletariat in South Africa* (Johannesburg: Ravan Press, 1987); Gary Baines, "A Progressive South African City? Port Elizabeth and Influx Control, ca. 1923-1953," *Journal of Urban History* 31 (2004); Deborah Posel, *The Making of Apartheid, 1948-1961: Conflict and Compromise* (Oxford: Clarendon Press, 1997).

implications for efforts to reform many institutions (such as courts, policing, prisons, and rural labor markets) inherited by present-day South Africa.

Later chapters examine the role of the World Bank and other international institutions in shaping the contours of land and housing policies and notions of “urban” and “rural,” first in other parts of Africa and Latin America during the 1970s and later in South Africa. These chapters show how the World Bank came to promote a neoliberal version of the state, restricting the government’s role to “enabling” the market to meet people’s needs. This entailed a reshaping of the relationship between government and citizens, which helps explain the clash between popular expectations for what the post-apartheid government would do to improve the majority’s economic well-being and what the government in fact intended to deliver. Essentially, these sections examine the political and economic narratives that have been constructed in order to de-legitimize government-led expropriation and redistribution processes.

Next, I revisit the thread between economic development, criminalization, and prisons that begins in the chapter on pass and vagrancy laws. Focused on the transition from apartheid and the first five years of ANC rule, this chapter examines the ANC’s adoption of private prisons and harsh criminal justice reforms. In doing so, the government declared a “war on crime” to show that the

ANC was committed to making the country safe for foreign investment and white commercial farming. South Africa's "war on crime" also involved new public-private partnerships to build super-maximum prisons, with the government careful to frame such projects as examples of black economic empowerment and service delivery. Since land dispossession, economic development, and criminal legal institutions (such as courts, jails, and parole practices) formed a powerful nexus under apartheid, it is worth continuing an examination of these forces alongside each other in the post-apartheid era.

Together, these chapters reveal much about the ongoing significance of land dispossession and its relationship to citizenship and politics in South Africa's neoliberal democracy. The dissertation's timespan is broad, covering much of the 20th century and extending to the beginning of the 21st century. Drawing on my training in international and global history, the geographic reach is also wide, stretching well beyond South Africa's borders to examine the role of international institutions and foreign political actors. Given this range, the dissertation does not comprise chapters that follow a tight chronology, but instead examines dynamics that shaped politics and prospects for redistribution over time. Together, these chapters offer insight into a range of historical forces that shape the politics of land, economic development, and citizenship in South

Africa.

I. Historiographical and theoretical literature

While each chapter engages with its own relevant historiography and theoretical literature, the dissertation as a whole draws upon and extends four main literatures: the history of economic and political development in urban and rural areas in South Africa; post-colonial transitions; neoliberal democracy; and prisons, criminology, and criminal justice. I will discuss them here in turn.

a. Urban-rural division and politics

Historians and theorists of colonialism, segregation, and apartheid in South Africa have long debated the relationship between urban and rural areas. Since the country's economy and society was engineered into a system of rural black African reserves (Bantustans), white-owned plantations, cities with tightly policed racial borders, and migrant labor, it is no wonder that historians focused on understanding the functions of these geographic institutions. Yet for many years the historiography on South Africa's urban and rural areas was divided. Beginning in the 1960s, liberal historians of South Africa began to study the economic and social impetus for apartheid in a systemic way. The prevailing view became one of South Africa as a "'dual economy' with two distinct

societies: a white urban and capitalist agrarian system on the one hand and a rural impoverished and stagnating African sector on the other.”²² Interactions between the parallel economies were perceived to be minimal. The actual dependency of the “white urban” sector upon the “rural black” sector was largely ignored, as was the reality of intermixing between the “societies.” Sub-fields of study grew up around land and agrarian studies²³ quite separate from sub-fields on “the apartheid city” and the urban proletariat.²⁴ As a result, scholars in these sub-fields tended to ask very different questions about social phenomena and the nature of historical change, and rarely engaged with each other around policies that affected both areas. At times this disciplinary divide resulted in truncated analyses that stopped at spatially defined boundaries rather than pursuing a line of thought that more accurately tracked lived experiences of

²² Richard Levin and Daniel Weiner, eds., *“No More Tears”: Struggles for Land in Mpumalanga, South Africa* (Trenton: Africa World Press, 1997), 7.

²³ See, e.g., the body of work from the University of the Western Cape’s Institute for Poverty, Land, and Agrarian Studies (PLAAS) and the University of Cape Town’s NRF Research Chair in Land Reform and Democracy in South Africa; Mbeki, *South Africa: The Peasant’s Revolt*. Martin Klein, *Peasants in Africa*; Beinert and Bundy, *Hidden Struggles in Rural South Africa*; Colin Bundy, *The Rise and Fall of the South African Peasantry*.

²⁴ For an overview of this literature see Paul Maylam, “Explaining the Apartheid City;” Bond, *Cities of Gold*; Smith, *The Apartheid City and Beyond*; Murray, *Taming the Disorderly City*; Lemon, *Homes Apart*. More recently, see the work of the University of Cape Town’s African Center for Cities. See also the literature on globalization and urban slums, e.g., Davis, *Planet of Slums*; Neuwirth, *Shadow Cities*.

movement and connection.²⁵

Historian Colin Bundy's influential work on the South African peasantry took aim at the dual economy thesis, placing blame for the "underdevelopment of the peasant sector" squarely at the door of capitalist development.²⁶ Neo-Marxist historians, most notably Harold Wolpe, extended this analysis. Wolpe's "cheap labor thesis" argued that segregation produced a supply of cheap African migrant labor that fueled South Africa's unique process of industrialization.²⁷ The cheap labor thesis was the first to acknowledge that people, namely black Africans, were regularly and systematically moving between urban and rural areas, and that South Africa did not consist of two distinct societies. Furthermore, the divide was viewed as inherently exploitative. Still, while the cheap labor thesis of the early 1970s recognized the underdevelopment of rural

²⁵ See chapter two for a discussion of how this pertains to the historiography of pass laws.

²⁶ Colin Bundy, "The Emergence and Decline of a South African Peasantry," *African Affairs* 71 (1972), 20. ("If I have adequately demonstrated that which I set out to, then the dualist model of the South African economy is a misleading one: the distance between the races in economic, cultural, and political spheres was not an original state lessened by capitalist development, but rather the outcome of that development; and explanations of the underdevelopment of the peasant sector which rest upon the inherited backwardness and inadequacy of that sector are incorrectly premised").

²⁷ Harold Wolpe, "Capitalism and Cheap Labour-Power in South Africa: From Segregation to Apartheid," *Economy & Society* 1(4) (1972).

areas as a direct product of industrialization, the scholarly divide between urban and rural research remained largely intact through the 1980s.

Mahmood Mamdani's *Citizen and Subject* (1996) constituted a methodological shift in the study of rural areas in Africa and of the relationship between urban and rural spaces. Mamdani's analysis de-emphasized the mode of livelihood and focused instead on the mode of rule in understanding distinctions between urban and rural spaces. In this view, South Africa was, as other African colonial states were, a bifurcated state, organized differently in urban areas than in rural ones.²⁸ This state "contains a duality: two forms of power under a single hegemonic authority."²⁹ The organization of the colonial state, according to Mamdani, was a response to the central dilemma of the "native question," which essentially asked, "how can a tiny and foreign minority rule over an indigenous majority?"³⁰ Both direct and indirect rule were attempted in South Africa, and they became complementary. When forced to deal with the "native question," the apartheid government chose to prop up and rule through traditional authorities, thus making blacks into subjects of tribal

²⁸ Mamdani, *Citizen and Subject*, 18.

²⁹ *Ibid.*, 18.

³⁰ *Ibid.*, 16.

authority rather than citizens of the South African nation. The ultimate move was the creation of “homelands,” which were intended to completely remove blacks from South African territory and political life. As a result, the urban and the rural became distinguishable as the sites of urban citizens of democratic states and rural subjects of customary authority.

Mamdani has been criticized for drawing too straight a line from colonial divide-and-rule tactics to the contemporary politics of sovereign post-colonial states; he has been charged with “leap-frogging” over the history that came in between.³¹ Still, Mamdani’s intervention was—and remains—valuable for its insistence that the relationship between urban and rural spaces had implications not just for the economy, but for politics and political identities. Mamdani explicitly called for political actors and scholars to challenge the political structure of the urban-rural divide. He wrote: “Any effective opposition in practice, and any theoretical analysis that would lead to one, must link the rural and the urban in ways that have not yet been done.”³²

³¹ Frederick Cooper, *Colonialism in Question: Theory, Knowledge, History* (Berkeley: University of California Press, 2005), 17-18; see also, Bill Freund, “Democracy and the Colonial Heritage in Africa: Revisiting Mamdani’s *Citizen and Subject*,” *Left History* 7.1 (2000): 101-108 (“[I] am skeptical of whether it is really possible to jump as quickly as does Mamdani from the subjects and citizens of colonial despotism to the current problems of the African countryside. I think too much water has run under the bridge.”)

³² Mamdani, *Citizen & Subject*, 297.

For the past decade, scholars, particularly anthropologists and geographers, have thought about urban-rural linkages in careful and nuanced ways. For example, Steven Robin's study of social movements and NGOs after apartheid cuts across urban and rural activist efforts to understand evolving 'rights' discourses.³³ Mark Hunter's ethnographic work on HIV, inequality, and gender traces economies of exchange through informal settlements and rural areas.³⁴ Gillian Hart's argument that we must rethink the land question in terms of a social wage is grounded in empirical research in former white towns and adjacent black townships, as well as careful attention to rural land dispossession.³⁵ These richly researched studies cutting across urban and rural areas are a welcome departure from previous scholarship that viewed urban and rural as separate areas of inquiry.

³³ Steven Robins, *From Revolution to Rights in South Africa: Social Movements, NGOs & Popular Politics after Apartheid* (Suffolk: James Curry Press, 2008).

³⁴ Mark Hunter, *Love in the Time of AIDS: Inequality, Gender, and Rights in South Africa*. (Bloomington: Indiana University Press; Pietermaritzburg, University of KwaZulu-Natal Press, 2010); Mark Hunter, "From Migrating Men to Moving Women: Trends in South Africa's Changing Political Economy and Geography of Intimacy," in Felicity Thomas, Mary Haour-Knipe, and Peter Aggleton, eds., *Mobility, Sexuality and AIDS* (London: Routledge).

³⁵ Gillian Hart, *Disabling Globalization: Places of Power in Post-Apartheid South Africa* (Berkeley: University of California Press, 2002).

My own work builds from Mamdani's insistence that we must analyze urban-rural bifurcation as a political construct with implications for political subjectivities. I elaborate on my analysis of the politics of urban-rural division at several points in the dissertation. First, by re-examining the literature on pass laws in chapter two, and next, in chapter three, by tracing the history of how the World Bank constructed "urban" as an analytical concept and target for intervention. In chapter five, I discuss the LPM's efforts to bridge the urban-rural divide through the creation of a "landless" identity that knows no urban or rural bounds. Also in chapter five, I examine how the ANC reinforces spatial and economic division through its conception of South Africa as being composed of "two economies," thereby justifying a neoliberal, trickle down relationship between the rich and poor.

b. Post-colonial transitions

To understand why land remains an underlying preoccupation in South African politics and why this fixation matters, I argue that we need histories that span the political and intellectual "break" represented by the end of apartheid in 1994. In this way, my dissertation builds upon the work of theorists who have struggled to come to terms with the "post-colony" and the rupture it is meant to

signify.³⁶ By analyzing the ways in which post-colonial spaces continue to be inhabited as colonial spaces, we might begin to understand the poverty not only of these terms but also of a historiographical language of “rupture” and “continuity.” In other words, we can better understand how the past is implicated in the present. This allows us to question clean narratives of “emancipation” or “liberation” and focus instead on the continuity and expansion of the forms of human experience that are excluded from the realm of politics.³⁷ I argue that there is merit in understanding how such political exclusions were maintained through a period portrayed as a transition away from the “dark days of colonialism.”

³⁶ See Jean Comaroff and John L. Comaroff, *Law and Disorder in the Postcolony* (Chicago: Chicago University Press, 2006); Jean Comaroff and John L. Comaroff, “Millennial Capitalism: First Thoughts on a Second Coming,” *Public Culture* 12(2) (2000): 291-343; Grant Farred, “The Not-Yet Counterpartisan: A New Politics of Oppositionality,” *The South Atlantic Quarterly* 103(4) (2004): 589-606; Joseph Massad, “The ‘Post-Colonial’ Colony: Time, Space, and Bodies in Palestine/Israel,” in Fawzia Afzal-Khan and Kalpana Seshadri-Crooks (eds.), *The Pre-Occupation of Postcolonial Studies* (Durham: Duke University Press, 2000); Achille Mbembe, *On the Postcolony* (Berkeley: University of California Press, 2001); Scott, *Conscripts of Modernity*; David Scott, *Refashioning Futures: Criticism After Postcoloniality* (Princeton: Princeton University Press, 1999); Sylvia Wynter and David Scott, “The Re-Enchantment of Humanism: An Interview with Sylvia Wynter,” *Small Axe* 8 (2000).

³⁷ For example, in the context of the 19th century United States, Saidiya Hartman examined the ongoing forms of racial subjugation that continued in notions of humanity, protection, and rights in the aftermath of slavery. Saidiya Hartman, *Scenes of Subjection: Terror, Slavery and Self-Making in Nineteenth Century America* (Oxford: Oxford Univ. Press, 1997).

Debates over whether South Africa is “neo-colonial” or whether the ANC has ushered in a form of “neo-apartheid” are beside the point. These labels tend to obscure more than they reveal. Instead, I argue that we should examine the shifts that were already afoot before South Africa’s spectacularly heightened “transition” moment of the early-mid 1990s. As chapters three and four reveal, instead of either rupture or continuity, this period saw a shift in the boundary lines for what political demands would be permitted and what claims could be made on the state. Because of neoliberal shifts that had taken place both domestically and internationally in the 1970s and 1980s, the arena for claims for economic redistribution, much less redistributive justice, were sharply curtailed. Calling this dynamic a “hold over” from the previous political era oversimplifies the workings of state power, and underestimates the adaptive qualities of both the National Party (NP) in the 1980s and the ANC in the 1990s.

I am interested in these questions not as abstractions, but rather in terms of their concrete political significance. In this vein, I am intrigued by the LPM’s refusal to validate a ‘post-apartheid’ political order which maintained apartheid’s exclusions and their rejection of the political subjectivity which that order produced for them.³⁸ The LPM recognized the post-apartheid order as

³⁸ See chapter five.

being founded upon, not the end of landlessness, but the death of the ‘landless subject’ (producing the ‘homeless’ or ‘urban poor’ in its place). More broadly I am interested in how subjectivities projected by the ‘post-colonial’ state conflict with the subjectivities which people embrace for themselves based on alternate conceptions of what decolonization must entail in order for ‘post-colonial’ to carry any meaning.

c. Neoliberalism and democracy

In addition to engaging theoretical work on the “post-colony,” my dissertation builds upon two other fields of scholarship that cut across the disciplines of history, anthropology, and economic theory: (1) theories of neoliberalism and citizenship; and (2) the political economy of race and processes of racialization. In recent years, a number of anthropologists have grappled with questions about how neoliberalism (characterized by privatization, market deregulation, and fiscal austerity³⁹) has altered the nature of citizenship and people’s abilities to make claims upon states and other sources of power and control.⁴⁰ Drawing on Foucault’s notions of governmentality and the production

³⁹ See definition and discussion in footnote 13 above.

⁴⁰ Julia Elyachar, *Markets of Dispossession: NGOs, Economic Development and the State in Cairo* (Durham: Duke University Press, 2005); James Ferguson, *Global Shadows: Africa in the Neoliberal World Order* (Durham: Duke University Press, 2006); James Ferguson,

of political subjects, many of these thinkers have rethought the categories of 'the market' and 'the state' in an attempt to understand how such categories and notions are produced, and what political and economic subjectivities are being produced alongside them.⁴¹ Julia Elyachar's work on NGOs and the state in Cairo, for example, departs from ideas of the market as a pre-existing corollary to the state, instead highlighting how 'the market' has been conceived of as an end to be created through political machinations. Here we see the state and international financial institutions such as the World Bank working to bring about the market and, in the process, advancing certain 'entrepreneurial' subjectivities to match.⁴² Julia Elyachar, James Ferguson, and Timothy Mitchell have focused on the role of experts and expert knowledge in particular in transforming political questions into technocratic questions to be 'managed'

"Seeing Like an Oil Company: Space, Security, and Global Capital in Neoliberal Africa," *American Anthropologist*, 107 (2005): 377-382; James Ferguson and Akhil Gupta, "Spatializing States: Toward an Ethnography of Neoliberal Governmentality," *American Ethnologist* 29(4) (2002): 981-1002; Aihwa Ong, *Neoliberalism as Exception: Mutations in Citizenship and Sovereignty* (Durham: Duke University Press, 2006); Janet Roitman, *Fiscal Disobedience: An Anthropology of Economic Regulation in Central Africa* (Princeton: Princeton University Press, 2005). On methodological challenges for scholars conducting empirical research on governmentality, power/resistance, and subjectivity, see Stina Hansson, Sofie Hellberg, and Maria Stern, eds., *Studying the Agency of Being Governed* (London: Routledge, 2015).

⁴¹ Michel Foucault, "Governmentality" in *The Foucault Effect*, ed. Graham Burchell et al. (Chicago: Chicago University Press, 1991).

⁴² Elyachar, *Markets of Dispossession*.

rather than resolved.⁴³ This scholarship provides a useful framework for understanding post-apartheid land reform processes, in which deeply political discussions of land and liberation have become technicist debates over urban land use management, shelter provision, service delivery, and market efficiency. My work examines the subjectivities that technocratic, market-led approaches to land reform aim to produce (chapter three), and the popular subjectivities being asserted in their place (chapter five).

In addition, given the transnational character of neoliberal market deregulation, many scholars of neoliberalism and citizenship have attempted to understand the spatial dynamics of governmentality.⁴⁴ My work builds upon

⁴³ Elyachar, *Markets of Dispossession*; James Ferguson, *The Anti-Politics Machine: "Development," Depoliticization, and Bureaucratic Power in Lesotho* (Minneapolis: University of Minnesota Press, 1994), 256 ("By uncompromisingly reducing poverty to a technical problem, and by promising technical solutions to the sufferings of powerless and oppressed people, the hegemonic problematic of 'development' is the principle means through which the question of poverty is de-politicized in the world today"); Timothy Mitchell, "The Work of Economics: How a Discipline Makes Its World," *European Journal of Sociology* 46 (2005); Timothy Mitchell, *Rule of Experts: Egypt, Techno-Politics and Modernity* (Berkeley: University of California Press, 2002). See also Donald MacKenzie, Fabian Muniesa and Lucia Siu, eds., *Do Economists Make Markets?: On the Performativity of Economics* (Princeton: Princeton University Press, 2007).

⁴⁴ Aihwa Ong, *Neoliberalism As Exception: Mutations in Citizenship and Sovereignty* (Durham: Duke Univ. Press, 2006); A. Haroon Akram-Lodhi, "Land, Markets and Neoliberal Enclosure: An Agrarian Political Economy Perspective," *Third World Quarterly* 28(8) (2007): 1437-1456; Farshad A. Araghi, "Global Depeasantization, 1945-1990," *The Sociological Quarterly* 36(2) (1995): 337-368; Jacques Depelchin, *Silences in African History: Between the Syndromes of Discovery and Abolition* (Dar es Salaam: Mkuki Na Nyota Publishers, 2004); Ferguson and Gupta, "Spatializing States"; Gillian Hart,

such spatial and geographical theories in two ways. First, since South Africa's experiments in neoliberal reform have been informed by both international and domestic agendas, South Africa is a particularly useful site for theorizing the relationship between institutions of international governmentality (such as the World Bank) and individual states. Second, since the Landless People's Movement contested the politics of space in a very concrete sense (and explicitly argued against politicized notions of urban and rural division), the movement provides insight into how spatialized concepts of governmentality were experienced and contested in the Mbeki years. In this way, the movement also provides insight into the spatiality of *resistance*, a theme which marks the history of southern Africa and the struggle against apartheid, which was waged across township boundaries and international borders.

Overall, my research shows that the development of neoliberal approaches and experiments to implement them—particularly by the World Bank and through public-private partnerships for prison construction—often

Disabling Globalization: Places of Power in Post-Apartheid South Africa (Berkeley: University of California Press, 2002a); David Harvey, *Spaces of Global Capitalism: Towards a Theory of Uneven Geographical Development* (London: Verso, 2006); Sally Engle Merry, "Spatial Governmentality and the New Urban Social Order: Controlling Gender Violence through Law," *American Anthropologist* 103(1) (2001); Ronen Palan, *The Offshore World: Sovereign Markets, Virtual Places, and Nomad Millionaires* (Ithaca: Cornell University Press, 2003); Fredrik Soderbaum, "Modes of Regional Governance in Africa: Neoliberalism, Sovereignty Boosting, and Shadow Networks," *Global Governance* 10 (2004): 419-436.

were rife with difficulties. While the imposition of the Washington Consensus is frequently billed as a slick endeavor in global economic re-ordering, the reality was much more of a stumbling process. As I explain in chapter three, the World Bank “experts” were often engaged in trial-and-error when it came to developing an approach to housing and “service delivery” in cities. Similarly, the flurry of international consultants that came to shape the transition from apartheid regularly worked at cross-purposes and without clear long-term blueprints, resulting in a patchwork of various policy trends that were not always consistent across sectors.⁴⁵ Neoliberal austerity measures came out on top, but the process was not as smooth as some would have imagined or as writers have since depicted it. Often the adoption of such measures had less to do with the ANC’s susceptibility to neoliberal ideas and more to do with certain policy areas (like criminal justice reform and prisons) being low on a dauntingly long list of priorities, or of a particularly passionate individual stepping in to fill a void in leadership.⁴⁶

⁴⁵ See Dirk van Zyl Smit and Elrena van der Spuy, “Importing Criminological Ideas in a New Democracy: Recent South African Experiences,” in *Criminal Justice and Political Cultures: National and International Dimensions of Crime Control*, ed. Tim Newburn and Richard Sparks (Portland: Willan, 2004).

⁴⁶ See, e.g., chapter four’s discussion of Siphon Mzimela, first Minister of the Department of Correctional Services.

In terms of the political economy of race, scholarship on post-apartheid South Africa was surprisingly weak, well into the Mbeki years, when it came to theorizing the ongoing articulations between race and class. Given the rise of a small black middle class in the country, some theorists writing a decade into ANC rule argued that we had seen a shift “from race to class apartheid.”⁴⁷ However, such formulations are unable to capture the reality of how neoliberalism has created, consolidated, and mobilized certain racial formations. I aim to bring insights from the aforementioned scholarship on neoliberalism together with insights from scholarship on race.⁴⁸ Some theorists have begun to examine what Jodi Melamed has called ‘neoliberal multiculturalism’ by examining how “race remains a procedure that justifies the nongeneralizability

⁴⁷ Patrick Bond, “From Racial to Class Apartheid,” *Monthly Review* 55(10) (2004); see also Jeremy Seekings and Nicoli Nattrass, “Class, Distribution and Redistribution in Post-Apartheid South Africa,” *Transformation* 50 (2002): 1-30.

⁴⁸ Achille Mbembe, “Democracy as Community Life,” Johannesburg Workshop on Theory & Criticism, 2011 http://www.jwtc.org.za/volume_4/achille_mbembe.html; Frantz Fanon, *Black Skin, White Masks* (New York: Grove Press, 1952/1967); Sneja Gunew, “Postcolonialism and Multiculturalism: Between Race and Ethnicity,” *The Yearbook of English Studies* 27 (1997): 22-39; Faye Harrison, “Expanding the Discourse on ‘Race,’” *American Anthropologist* 100(3) (1998): 609-631; Jared Sexton, *Amalgamation Schemes: Antiblackness and the Critique of Multiracialism* (Minneapolis: Minnesota University Press, 2008); Frank B. Wilderson, III, “Seven Notes on the Antagonism between Blacks and Humans,” in *Red, White, & Black: Cinema and the Structure of U.S. Antagonisms*. (Durham: Duke University Press, 2010); Frank B. Wilderson, III, “Gramsci’s Black Marx: Whither the Slave in Civil Society?” *Social Identities: Journal for the Study of Race* 9(2) (2003): 225-40.

of capitalist wealth.”⁴⁹ Achille Mbembe has argued that race in South Africa “did not simply become a crucial, pervasive dimension of colonial domination and capitalist exploitation. Turned into law, it was also used as a privileged mechanism for turning black life into *waste*—a race doomed to wretchedness, degradation, abjection and servitude.”⁵⁰ In the face of a neoliberal capitalist regime that produces both immense wealth and “entire categories of unwanted people,” Mbembe argues that the challenge ahead “is nothing less than the re-foundation of democracy as a community of life.”⁵¹ I build upon work in this vein by analyzing how neoliberal democracy in South Africa has depended upon ongoing articulations of race.

South Africa is a compelling site to engage such scholarship on post-

⁴⁹ Jodi Melamed, “The Spirit of Neoliberalism: From Racial Liberalism to Neoliberal Multiculturalism,” *Social Text* 89 (2006): 1-25. See also Michael MacDonald, *Why Race Matters in South Africa* (Cambridge: Harvard University Press, 2006); Michael MacDonald, “The Political Economy of Identity Politics,” *The South Atlantic Quarterly* 103(4) (2004): 629-656; Kamari Maxine Clarke and Deborah A. Thomas, eds., *Globalization and Race: Transformations in the Cultural Production of Blackness* (Durham: Duke University Press, 2006).

⁵⁰ Mbembe, “Democracy as Community Life,” 1-2. Expanding on his conception of “waste,” Mbembe continues: “In order to grasp the particular drama of the human in the history of South Africa, we should broaden this traditional definition of ‘waste’ and consider the human itself *as* a waste product at the interface of race and capitalism. Squandering and wasting black lives has been an intrinsic part of the logic of capitalism, especially in those contexts in which race is central to the simultaneous production of wealth and of superfluous people” (at 3).

⁵¹ *Ibid.*, 6.

colonialism, neoliberalism, and race, since many narratives of post-apartheid South Africa have relied on teleological notions of progress from the “racist” apartheid era to a “non-racial” present and future post-apartheid country.⁵² Contemporary social movements, including the Landless People’s Movement, have often questioned such narratives by arguing that there are important continuities between the apartheid and post-apartheid eras, especially around the perpetuation of racialized economic inequalities. The differences in these historical narratives are critically significant, as they help to either negate or support the basis for continued, post-apartheid struggle.

As a liberal ideology of inclusion, the ANC’s “non-racialism” has proven particularly well-suited to legitimating South Africa’s political economy and managing a neoliberal, market-based project. Rather than being an “anti-racist” ideology, “non-racialism” did not actually break with apartheid categorizations of race, but instead accepted the idea of distinct, biologically-defined “national groups.” It merely asserted the liberal desire for equality between these groups, and thus has proven useful in creating a small black middle class and simultaneously denying claims for more widespread redistribution.⁵³ Michael

⁵² Farred, “The Not-Yet Counterpartisan.”

⁵³ See MacDonald, *Why Race Matters in South Africa*; MacDonald, “The Political Economy of Identity Politics.”

MacDonald has examined the role of liberal racial ideology and racial nationalism in spurring the ANC's Black Economic Empowerment (BEE) program, ⁵⁴ while simultaneously suffocating opposition to neoliberal capitalism.⁵⁵ As MacDonald writes, the ANC "can absorb the political costs of maintaining neoliberal economic policies because it draws on racial solidarities, because it appeals to Africans as Africans."⁵⁶

In chapter four I examine parliamentary debates over prison privatization and legislation that lengthened prison sentences and made the criminal justice system more "tough on crime." Here too ANC members of parliament defended

⁵⁴ BEE policies set targets for businesses to diversify their management, investment, and procurement practices. Despite over a thousand "empowerment deals" taking place between 1995 and 2005, minority whites continued to dominate the corporate sector. In 2005, as Tangri and Southall write, "only five of the Johannesburg Securities Exchange (JSE) top 200 companies had black ownership of more than 51 per cent, only 27 companies had more than 25 per cent, and these 32 companies together accounted for less than 2 per cent of the JSE's market capitalisation. After over a decade of ANC rule and hundreds of BEE transactions, empowerment has made very little difference to the ownership and control of corporate South Africa." Roger Tangri and Roger Southall, "The Politics of Black Economic Empowerment in South Africa," *Journal of Southern African Studies* 34(3) (2008): 699-716; Stefano Ponte, Simon Roberts, and Lance Van Sittert, "'Black Economic Empowerment,' Business and the State in South Africa," *Development and Change* 38(5) (2007): 933-955; Xolela Mangcu, Gill Marcus, Khehla Shubane, and Adrian Hadland, eds., *Visions of Black Economic Empowerment* (Johannesburg: Jacana, 2007).

⁵⁵ MacDonald, "The Political Economy of Identity Politics."

⁵⁶ *Ibid.*, 634.

the process of awarding private prison contracts because such contracts would “contribute to the black empowerment,” as some of the private consortia included black partners.⁵⁷ While prisons generally epitomize a lack of freedom, the MPs suggested that prison contracts would lead to black empowerment on two fronts; they argued that black-owned consortia would be enriched and that conditions for black people, who were the majority of those crowded in the country’s prisons, would improve. This may have been a convenient talking point (deployed to defend against accusations of corruption) or an actual conception of economic development—or both. Either way, it chimes with the ANC’s overall BEE approach, which mandated black representation on private consortia bidding for government contracts, thereby increasing the number of blacks among the millionaire ranks. This is but one example of how liberal racial ideology—which sought equal representation of all “racial groups” among the highest economic ranks—has provided justification for neoliberal policies that continued to exclude the majority of South Africans from economic prosperity. By this logic, black tenders for private prison construction can be presented as evidence of inclusivity and transformation. Meanwhile, more black South Africans are serving prison terms, with longer sentences, in institutions that,

⁵⁷ See chapter four.

under apartheid and after, exemplify unfreedom.

d. Prisons, criminology, and criminal justice

My dissertation also draws upon and extends the literature on prisons and criminal justice in South Africa. Academic criminology – the study of the nature, causes, and consequences of crime and criminal behavior – is a well-established discipline in South Africa, dating back to the 1930s.⁵⁸ Dirk van Zyl Smit has traced the emergence of academic criminology alongside Afrikaner nationalism, describing early Afrikaner criminologists' preoccupations with "the poor white problem," "the black danger," and "organic differences" between "racial groups" that demanded strict territorial segregation.⁵⁹ In response to Afrikaner nationalist criminology, a diffuse field of legal reformist criminology began to emerge in the 1950s, which sought to make the criminal justice system more humane and efficient.⁶⁰ In the 1980s, critical criminology or "criminology for a new democratic South Africa" focused on examining the relationship of criminology

⁵⁸ Dirk van Zyl Smit, "Adopting and Adapting Criminological Ideas: Criminology and Afrikaner Nationalism in South Africa," *Contemporary Crises* 13 (1989): 227-251.

⁵⁹ Ibid. See also Martin Chanock, *The Making of South African Legal Culture 1902-1936: Fear, Favour and Prejudice* (Cambridge: Cambridge University Press, 2001), chapter 4; Saul Dubow, "Race, Civilization and Culture: The Elaboration of Segregationist Discourse in the Inter-War Years," in *The Politics of Race, Class and Nationalism in Twentieth Century South Africa*, ed. Shula Marks and Stanley Trapido (Essex: Longman, 1987).

⁶⁰ Dirk van Zyl Smit, "Criminological Ideas and the South African Transition," *British Journal of Criminology*, 39(2) (1999): 198-215, 200.

to the state and was committed to the abolition of apartheid.⁶¹ As van Zyl Smit has observed, these three currents map onto the tripartite conservative, liberal, and radical streams that characterize criminological thought in most societies where the discipline is established.⁶² Today the reformist and critical currents remain robust, led by research institutions including the University of Cape Town Centre of Criminology, the Centre for the Study of Violence and Reconciliation, the Institute for Security Studies, and the Wits Justice Project. Much of the research output focuses on the core areas of inquiry of modern criminology: crime rates, courts, policing, and prison conditions.⁶³

My dissertation, particularly chapter two on pass laws and prison labor, adds a historical dimension to a discussion of punishment and prisons that is often dominated by sociologists and legal theorists. In so doing, this study focuses attention on an area that has received short shrift in South African historiography and political theory: the relationship between punishment, imprisonment, and labor markets. Over the past decade, scholars in the United

⁶¹ Ibid., 200-201.

⁶² Ibid., 199.

⁶³ For more on criminology's traditional focus on police, courts, and prisons and transformations in the discipline over time, see John Braithwaite, "The New Regulatory State and the Transformation of Criminology," *British Journal of Criminology* 40 (2000): 222-238.

States have begun to focus on the economic and political causes of mass incarceration and, in some cases, the role of prisons in controlling a surplus labor force.⁶⁴ Most notably, Bruce Western has argued that “rising economic inequality in America and the failure of urban labor markets to provide good jobs for young unskilled men” precipitated mass imprisonment in the last decades of the 20th century.⁶⁵ I argue that, in apartheid South Africa in the middle of the century, the economic relationship between labor markets and incarceration was more extreme—criminalization and imprisonment were not merely a coercive way of dealing with unemployment, but were integral to the *creation* of a labor force. Criminalization and imprisonment helped bring about cheap labor markets and, later, helped manipulate them. Until the end of the 1950s, this system was baldly coercive and punitive. After a media uproar and several court cases exposed the use of prison labor on farms in 1959, the South African government attempted to change the face of the system from coercive and punitive to contractual and even

⁶⁴ Loic Wacquant, *Punishing the Poor: The Neoliberal Government of Social Insecurity* (Durham: Duke University Press, 2009); Bernard Harcourt, *The Illusion of Free Markets: Punishment and the Myth of Natural Order* (Cambridge: Harvard University Press, 2011); Heather Ann Thompson, “Why Mass Incarceration Matters: Rethinking Crisis, Decline, and Transformation in Postwar American History,” *Journal of American History* 97(3) (2010): 703-734; Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York: The New Press, 2010); Bruce Western, *Punishment and Inequality in America* (New York: R. Sage Foundation, 2006).

⁶⁵ Bruce Western, *Punishment and Inequality in America*, 53.

welfarist. Still, as chapter two shows, these cosmetic reforms did little to change the experiences of those caught in the tripwires of pass laws and sent to work on farms and for other employers.

Chapter four (on crime, prisons, and neoliberal development) focuses on the intense period of criminal justice reform in the first five years after apartheid. South African criminology studies of this period have tended to focus on prison conditions (with a heavy focus on violations of Constitutional law and human rights),⁶⁶ prison privatization,⁶⁷ or critical (most often Foucauldian) analysis of

⁶⁶ See, e.g., Jonny Steinberg, "Prison Overcrowding and the Constitutional Right to Adequate Accommodation in South Africa," Centre for Study of Violence and Reconciliation (2005); Dirk van Zyl Smit, "Swimming Against the Tide: Controlling the Size of the Prison Population in the New South Africa," in *Justice Gained? Crime and Crime Control in South Africa's Transition*, ed. Bill Dixon and Elrena van der Spuy (Cape Town: UCT Press, 2004), 227-258; Hannes Fagan, "Curb the Vengeance: Laws on Minimum Sentencing and Parole Spell Worsening Prison Conditions," *SA Crime Quarterly* 10 (2004): 1-5.

⁶⁷ See, e.g., K.C. Goyer, *Prison Privatisation in South Africa: Issues, Challenges and Opportunities*, Institute of Security Studies Monograph Series 64 (Pretoria: Institute of Security Studies, 2001); Julia Sloth-Nielsen, *Overview of Policy Developments in South African Correctional Services, 1994-2002*, Civil Society Prison Reform Initiative Research Paper No. 1 (2003); Amanda Dissel and Stephen Ellis, "Reform and Stasis: Transformation in South African Prisons," *Critique Internationale* 16 (2002); Tizina Ramagaga, *Lessons from Prisons and Public-Private Partnerships in South Africa* (2011); Andrew Coyle, *Prison Privatization in the African Context*, 35 *Review of African Political Economy* 660 (2008); Open Society Foundation for South Africa (OSF-SA), *Prison Privatization: Seminar Report* (2003); Robert Kenter and Susan Prior, "The Globalization of Private Prisons," in *Prison Privatization: The Many Facets of a Controversial Industry*, vol. 1, ed. Byron Price and John Morriss (Santa Barbara: Praeger, 2012); Julia Sloth-Nielsen, "The Business of Child Justice," in *Criminal Justice in a New Society*, ed. Jonathan Burchell and Adele Erasmus (Lansdowne: Juta and Co., 2003).

crime discourses and governance.⁶⁸ While these studies have contributed much, few studies link the broad literature on service delivery and market-driven development through austerity to prisons and criminal justice. I do so here. I contribute to the literature on private prisons, but also push further to understand the place of private prisons and harsh new criminal procedure and sentencing laws within a broader shifts toward neoliberal economic development strategies. Since the vast majority of South Africa's prisons remained under public control—only two of the country's 240 prisons were privately-run—a focus on private prisons can overshadow more systemic trends. The relationship between criminal justice reform and neoliberal development goes far beyond the small number of “public-private” partnerships with U.S. and British consortia and companies like Wackenhut and Geo Group.

I argue that “tough-on-crime” criminal justice reforms and prison expansion helped to propel a neoliberal approach to economic development in the years immediately after South Africa's democratic transition (1995-2000).

⁶⁸ See, e.g., Gail Super, “Punishment and the Body in the ‘Old’ and ‘New’ South Africa: A Story of Punitivist Humanism,” *Theoretical Criminology* 15(4) (2011): 427-443; Gail Super, *Governing through Crime in South Africa: The Politics of Race and Class in Neoliberalizing Regimes* (Burlington: Ashgate, 2013); Kelly Gillespie, *Criminal Abstractions and the Post-Apartheid Prison*, Ph.D. dissertation, University of Chicago (2007); Kelly Gillespie, “Moralizing Security: ‘Corrections’ and the Post-Apartheid Prison,” *Race/Ethnicity: Multidisciplinary Global Contexts* 2(1) (2008): 69-87.

While public safety and crime were no doubt valid concerns in this period, there are many possible solutions to these problems. South Africa adopted a particular solution, borrowing heavily, as we shall see, from carceral technology and “war on crime” rhetoric developed in the United States. Indeed, there exists no better model than the United States for expanding a national prison economy during an era of neoliberal austerity. I argue that, in South Africa, prisons and harsh criminalization were meant to spur the economy in two ways: 1) by showing that the ANC was “tough on crime” and committed to making the country safe for foreign investment and white commercial farming; and 2) by generating development through the punishment economy. That is, prison contracts were framed as a form of “service delivery,” as they were meant to create jobs in construction and corrections as well as secondary markets such as prison food vending.

As I describe in more depth in chapter four, the emergence of prisons as a vehicle for economic development in post-apartheid South Africa begs the question: what are prisons *for* in post-apartheid South Africa? Historians and social theorists from a range of disciplines have grappled with the role that mass incarceration plays within neoliberal democratic societies. While punishment and confinement are certainly part of prison’s function, historians and theorists

(particularly scholars of late 20th century United States, the most heavily incarcerated country on the planet) have sought to contextualize exploding incarceration rates within broader economic shifts – namely, the intensification of neoliberal deregulation and privatization over the past 30 years.⁶⁹ Within this focus, scholars have expanded on Foucault’s call to understand incarceration as a form of statecraft,⁷⁰ focusing on penal expansion as a political project, one that is fundamentally about the state’s continued control of poor, predominately black people. Specifically, this literature focuses on the role of prisons in: warehousing surplus labor;⁷¹ maintaining a racial caste system;⁷² and constituting a market for private interests.⁷³ In the South African context, Gail Super has made a compelling argument for understanding the ANC’s crime discourse as a way of

⁶⁹ See Loic Wacquant, *Punishing the Poor: The neoliberal government of social insecurity* (2009), at xviii. See also Harcourt, Bernard, *The Illusion of Free Markets: Punishment and the Myth of Natural Order* (2011); Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (2010); Bruce Western, *Punishment and Inequality in America* (2006); Thompson, “Why Mass Incarceration Matters.”

⁷⁰ Michel Foucault, *Discipline & Punish: The Birth of the Prison* (New York: Pantheon, 1978).

⁷¹ Wacquant, *Punishing the Poor*; Western, *Punishment and Inequality*.

⁷² Alexander, *The New Jim Crow*.

⁷³ See, e.g., The Sentencing Project, “Prison Privatization and the Use of Incarceration” (2004) at 1. See also Geoffrey Schotter. *Prisons for Profit: A Look at Prison Privatization*. American Civil Liberties Union of Ohio (2011).

consolidating power and defining “criminals” as traitors of the new nation in the years after the transition from formal apartheid.⁷⁴ My dissertation, especially chapter four, adds to this literature by examining how prisons came to be framed as a mechanism for nation-building and economic development by the ANC in the first years of its rule.

II. Sources

My research draws upon correspondence, reports, internal memoranda, newspaper articles, draft articles, interview transcriptions, labor contracts, parliamentary debates, and other records found in archives and personal paper collections in South Africa and the United States. Most of these sources were in English, but some contained passages in Afrikaans or Zulu, of which I had a working reading knowledge. Since much of my historical inquiry focuses on closed institutions, including the World Bank and the apartheid prison system, I was fortunate to find personal archives that provided some access and insight into these restricted institutions. For example, my research on the convict leasing system in South Africa is based in large part on documents found in the Benjamin Pogrand papers at Yale University. Pogrand was one of South Africa’s

⁷⁴ Super, *Governing Through Crime*.

leading liberal journalists during apartheid, and he conducted extensive research on prisons and prison conditions. My chapter on the World Bank's urban assistance programs draws on internal memoranda, mission reports, and staff reviews found in the archives of Michael Cohen, a head staffer in the World Bank's urban division from 1972-1999. When Cohen joined the faculty of the New School in 2001, he brought his personal archive of published and unpublished World Bank materials and has made them available for research purposes.

The dissertation's fifth chapter draws on interviews I conducted with 35 Landless People's Movement members and organizers between 2003 and 2006. The original set of 2003 interviews was conducted as part of my B.A. thesis research on the movement. The urban component of the interviews was conducted in Johannesburg and its surrounding townships. I conducted interviews in areas where LPM activity was particularly intense, including the townships of Protea South in Soweto, Eikenhof, and Thembelihle, and in the township of Orange Farm, where it was less robust. In inner-city Johannesburg, I interviewed LPM members in the neighborhoods of Hillbrow and Berea. For the rural component, I interviewed farm workers near the rural town of Ingogo in northern KwaZulu-Natal, located about 60 miles from Newcastle. Ingogo was

home to the LPM's national organizer at the time, Mangaliso Kubheka, and so was selected as the rural basis for the study because of the level of LPM involvement and activity surrounding Kubheka's presence. Interviewees represented a range of age groups, from members in their late teens to those in their 60s. A relatively equal gender balance was achieved in urban areas, while rural interviewees were disproportionately male. Interviews were conducted both individually and in groups of two to four. About half of the interviews were conducted in English, when the interviewee was comfortably fluent and preferred to be interviewed in English. The rest of the interviews were conducted in Zulu through an interpreter. Zulu was the first language of those interviewed in KwaZulu-Natal, and was spoken fluently by interviewees in urban areas.

III. Chapter plan

This dissertation is organized into six chapters, including this introductory chapter. Each chapter is designed to tell a full story of its own, so chapters tend to span decades. As such, while the dissertation proceeds roughly chronologically, some chapters cover overlapping time periods. The second chapter, "'The Authorities Cannot Meet Demand': Prison Labor, Pass Laws, and Agricultural Development in Apartheid South Africa" reframes the study of

apartheid pass laws. Previous studies of pass laws have primarily focused on the indignities associated with possessing a pass—having to procure it, carry it, and produce it on demand. While pass laws were certainly aimed at containing labor mobility and controlling access to cities, I focus on the underside of these regulations—that is, the equally important function of those *without* a pass, who were ordered to work on white-owned farms as punishment. Studying vagrancy laws in this way—as one piece of a continuum that stretched through jails and prisons to rural plantations—reveals how the apartheid state and white agricultural development were bolstered by a system of prison labor.

Chapter three, “‘A Disciplining Mechanism for Holding Standards Down’: The World Bank, Urban Planning, and South Africa’s Transition from Apartheid,” tells the history of the World Bank’s attempts to frame the relationship between states, markets, and citizens through its urban assistance programs during the 1970s and 1980s. Over this period, the World Bank encouraged governments to withdraw from providing public housing directly and to act instead as an ‘enabler’ of market forces, with lasting economic and political consequences. The chapter concludes with a focus on South Africa in the early 1990s, when the World Bank (after two decades of practice in promoting privatized land and housing markets) counseled the ANC on its post-apartheid

policies. In the years since, these policies have resulted in explosive confrontations with civil-society activists, including the LPM, who remain committed to alternative visions of the role of the state in housing and service provision.

Chapter four, “‘To All Who Live In It’: Crime, Prisons and Neoliberal Development,” focuses on the broad range of criminal justice and prison reforms adopted in the first five years after the end of formal apartheid. In this period, parliament passed legislation that imposed mandatory minimum sentences, made access to bail more difficult, imposed ‘truth-in-sentencing’ and limited parole, and allowed the government to enter into contracts for private prisons. I argue that “tough-on-crime” criminal justice reforms and prison expansion helped to propel a neoliberal approach to economic development. Public-private prison contracts and new super-maximum prisons were framed as a form of “service delivery,” as it was said they would create jobs in construction and corrections as well as secondary markets.

Chapter five, “Rights Beyond the Urban-Rural Divide: South Africa’s Landless People’s Movement and the Battle for Post-Apartheid Democracy,” examines the confrontation between the Landless People’s Movement and the ANC’s market-based approach to land redistribution. Specifically, this chapter

focuses on the LPM's "No Land! No Vote!" campaign in the lead up to the 2004 national elections. The LPM made it clear with this campaign that any democracy which grants the right to vote but denies rights to land (and the problem of landlessness itself) was a democracy at odds with their conception of themselves not as passive recipients of rights but as people still struggling to give weight to the demands of liberation struggle. In closing, I discuss some of the implications of these historical dynamics for South Africa's political power structure, what I deem a dispossessed democracy.

CHAPTER TWO:
“The Authorities Cannot Meet Demand”: Prison Labor, Pass Laws, and
Agricultural Development in Apartheid South Africa

Introduction

Imprisonment is the order of the day for the smallest contravention of the law and of the thousands of regulations that surround every step of the citizen, and unfortunately our natives are the greatest sufferers: a raw and unsophisticated native coming from his kraal to one of our towns, to look for work, will almost surely find himself in prison within 24 hours of his arrival for unwittingly contravening some regulation, probably a pass regulation.⁷⁵

-- Justice F. E. T. Krause, Judge-President of the Orange Free State, South Africa, 1936

In a speech at the 1936 National Conference on Social Work in Johannesburg, Justice F. E. T. Krause condemned the series of legal tripwires that awaited any black person who entered a city with pass regulations and who could not justify his or her presence with proof of employment. Krause’s observations, paternalistic as they were, highlighted how swift and pervasive pass arrests had become. Although localities had used pass controls for centuries—as early as the 1760s, enslaved people in the Cape Colony were

⁷⁵ “African Prisons: Mr. Justice Krause: Vindictive Punishment Condemned: Pass Law Abolition Called For,” *Rand Daily Mail*, October 2, 1936, in Benjamin Pogrand Papers, Manuscripts & Archives, Yale University Library (hereafter BPP) Box 4, Folder 1.

required to carry documents signed by their masters when moving between rural and urban areas⁷⁶ – pass law convictions had increased over the previous decade. Such convictions accounted for by far the largest number of criminal convictions in the Transvaal, with around 40,000 per year by the end of the 1920s.⁷⁷ While the web of laws mandating passes and curfews was aimed at preventing vagrancy or idleness – by compelling black Africans to seek employment – the laws’ underside was just as efficient in manipulating the labor market. For those who could not produce passes were often sent to jail, but they did not remain there long; most were leased out to farmers and others who relied on a steady stream of cheap prison labor to keep production costs down.

Historical accounts of pass laws have typically focused on their role in maintaining “influx control,” or ensuring that cities did not become “overcrowded” with what the government deemed “surplus people.”⁷⁸ Some accounts have also focused on the role of pass laws in creating a supply of forced

⁷⁶ Doug Hindson, *Pass Controls and the Urban African Proletariat in South Africa* (Johannesburg: Ravan Press, 1987), 15.

⁷⁷ Martin Chanock, *The Making of South African Legal Culture 1902-1936: Fear, Favour and Prejudice* (Cambridge: Cambridge University Press, 2001).

⁷⁸ See, e.g., Gary Baines, “A progressive South African city? Port Elizabeth and influx control, ca. 1923-1953,” *Journal of Urban History* 31 (2004); Hindson, *Pass Controls*; Deborah Posel, *The Making of Apartheid, 1948-1961: Conflict and Compromise* (Oxford: Clarendon Press, 1997).

labor insofar as the laws prevented the development of a free labor market.⁷⁹ Pass laws were certainly aimed at containing labor mobility, but that is only the beginning of another story. The story of what happened to people after they were picked up on pass law violations—as an estimated 20 million black men were between 1920 and 1980⁸⁰—is an essential, but under acknowledged, part of this history. Reframing a study of vagrancy laws in this way—as one piece of a continuum that stretched through jails and prisons to rural plantations—reveals how the apartheid state and white agricultural development were bolstered by a system of prison labor.

While convict leasing in the U.S. South has been fairly widely studied, far less has been written about the use of prison labor on South African mines and farms under segregation and apartheid. This is partly due to a sharp division in the historiography on South Africa's urban and rural areas. Beginning in the 1960s, liberal historians of South Africa began to study the economic and social impetus for apartheid in a systemic way. The prevailing view became one of South Africa as a "'dual economy' with two distinct societies: a white urban and

⁷⁹ See e.g., Hindson, *Pass Controls*, 17 ("Labour was immobilized by enforcing long term service contracts, through the system of indentured labour and by pass controls over movement.").

⁸⁰ William Worger, "Convict Labour, Industrialists and the State in the US South and South Africa, 1870-1930," *Journal of Southern African Studies* 30 (2004), 68.

capitalist agrarian system on the one hand and a rural impoverished and stagnating African sector on the other.”⁸¹ Interactions between the parallel economies were perceived to be minimal. The actual dependency of the “white urban” sector upon the “rural black” sector was largely ignored, as was the reality of intermixing between the “societies.” Sub-fields of study grew up around land and agrarian studies quite separate from sub-fields on “the apartheid city” and the urban proletariat. As a result, scholars in these sub-fields tended to ask very different questions about social phenomena and the nature of historical change, and rarely engaged with each other around policies that affected both areas.⁸² This disciplinary divide has led to a blind spot around the continuum of vagrancy laws, prison populations, and captive farm labor.

I argue that studies of pass laws have focused on the function of carrying a pass, while largely overlooking the underside of these regulations—that is, the equally important function of those who did *not* carry a pass. Pass law studies, particularly the valuable work done by social historians, have tended to focus on the indignities associated with having a pass—having to procure it, carry it, produce it on demand; not to mention the time limits and curfews placed on

⁸¹ Richard Levin and Daniel Weiner, eds., *“No More Tears”: Struggles for Land in Mpumalanga, South Africa* (Trenton: Africa World Press, 1997), 7.

⁸² For more on this historiography, see chapter one.

someone who was permitted to enter a city only for a narrow purpose. However, I underscore the equally important indignities that befell those who did not have passes – and the role their labor played in economic development, particularly in the agricultural sector. The ability to violate someone who did *not* carry a pass – and thus coerce them (using a court sentence or not) into laboring on a farm – was just as integral to the labor supply.

This chapter will examine the use of prison labor on farms during segregation and apartheid in South Africa. In Part I, I will survey the historiography of pass laws and contextualize these laws within broader developments in the South African labor market in the early 20th century, with a particular emphasis on agricultural development. In Part II, I will place the use of prison labor in comparative perspective by outlining the convict leasing system in the United States. While the two systems paralleled each other in some respects in the late 19th and early 20th centuries, the system in South Africa persisted for decades longer – well into the 1960s and 70s. In Parts III and IV, I will examine the prison farm labor system in South Africa. Existing scholarship on prison farm labor in South Africa tends to end the story with the prison labor scandal of 1959; I will discuss this earlier period in Part III, but I will also extend the narrative into the 1960s and 1970s with the aid of newspaper accounts,

correspondence, and government documents from the Benjamin Pogrund Papers at Yale University.

This study focuses attention on an area that has received short shrift in South African historiography and political theory: the relationship between punishment, imprisonment, and labor markets. Over the past decade, scholars in the United States have begun to focus on the economic and political causes of mass incarceration and, in some cases, the role of prisons in controlling a surplus labor force. Most notably, Bruce Western has argued that “rising economic inequality in America and the failure of urban labor markets to provide good jobs for young unskilled men” precipitated mass imprisonment in the last decades of the 20th century.⁸³ I argue that, in apartheid South Africa in the middle of the century, the economic relationship between labor markets and incarceration was more extreme in South Africa—criminalization and imprisonment were not merely a coercive way of dealing with unemployment, but were integral to the *creation* of a labor force. Criminalization and imprisonment helped bring about cheap labor markets and, later, helped manipulate them. Until the end of the 1950s, this system was baldly coercive and punitive. After a media uproar and several court cases exposed the use of prison

⁸³ Bruce Western, *Punishment and Inequality in America*, 53.

labor on farms in 1959, the government attempted to change the face of the system from coercive and punitive to contractual and even welfarist. Still, as we shall see, these cosmetic reforms did little to change the experiences of those caught in the tripwires of pass laws and sent to work on farms and for other employers as punishment.

A note on the chapter's sources: for the comparative section, I have drawn upon the rich secondary literature on convict leasing in the U.S.⁸⁴ Less has been written about the history of prison labor in South Africa, particularly after the 1950s. In addition to secondary sources, I have relied upon primary sources in the Benjamin Pogrund Papers in the Manuscripts & Archives of the Yale University Library. Pogrund was one of South Africa's leading liberal journalists throughout apartheid, and he conducted extensive research on prisons and prison conditions. His papers include newspaper clippings on prisons spanning the 1920s-70s, drafts of articles, correspondence and interviews with people in prison and former prisoners, documents obtained from prison administrators

⁸⁴ See e.g. Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York: The New Press, 2010); Douglas Blackmon, *Slavery by Another Name: The Re-Enslavement of Black Americans from the Civil War to World War II* (New York: Anchor, 2009); Worger, *Convict Labour*; Matthew Mancini, *One Dies, Get Another: Convict Leasing in the American South, 1866-1928* (Columbia: Univ. of South Carolina Press, 1996). On black women's experiences of convict leasing, see Talitha LeFlouria's forthcoming book *Chained in Silence: Black Women and Convict Labor in the New South* (Chapel Hill: University of North Carolina Press, 2015).

(including provisions and contracts for prison labor), court files, and other research that he gathered for stories. While most accounts of convict leasing in South Africa focus on the period between 1870-1940, little has been written about the evolution of the system after that point.⁸⁵ The Pogrund papers reflect his attempt to follow up on this system through the 1960s.

It is worth noting that Pogrund's papers – and in particular the newspaper clippings he collected – offer a distinct perspective on the history of South Africa's prisons. Closed institutions present a significant challenge for investigative journalists and, decades later, for historians. Newspaper reporters and editors tended to frame accounts of apartheid prisons and of the farm labor system as "exposés" and "scandals," generating public outcry and eliciting harried responses from government officials. This public dialogue – between journalists and editors endeavoring to reveal the violence of apartheid (and in the business of selling papers) and government officials concerned with the regime's image domestically and abroad – offers glimpses, momentary and exaggerated as they may be, into the daily workings of the prison labor system

⁸⁵ One exception is a recent University of Pretoria Masters thesis by Cornelis Hermanus Muller, *Coercive Agrarian Work in South Africa, 1948-1960: 'Farm labour scandal'?*, Masters' thesis, Univ. of Pretoria (2011). The key work on prison labor, including developments into the 1950s and 60s, is Terence Macalaster Corry's *Prison Labour in South Africa* (Cape Town: National Institute for Crime Prevention and Rehabilitation of Offenders, 1978).

and the activities of police and courts that facilitated that system. These accounts give a useful perspective of how government officials sought to justify the labor system in the face of public outcry. As we will see, officials tried to make the system seem more palatable in these moments not by instituting genuine reforms but by describing the aims of the system as “welfarist” rather than punitive and by re-articulating the practices in a manner that was in line with international norms.

I. Pass laws, labor markets, and the urban-rural divide

Perhaps more so than any other policy, pass laws index the injustice of apartheid.⁸⁶ Yet pass laws’ actual function for the apartheid state is not straightforward and has been the subject of debate. Scholars have puzzled over whether passes were a means for social and political control, labor market manipulation, restricting movement, or a combination of these and other factors.

⁸⁶ See, e.g., the description of theorist Mabogo Percy More: “[I]n terms of the Influx Control Act Africans were divested of political rights whatsoever and required by law to carry the much hated pass or reference book (an identity document which Africans euphemistically called ‘*Dompass*’ meaning ‘stupid pass’) by Africans to justify their presence in various places; passbooks whose restrictions and laws were so wide-ranging, dehumanizing and demanding that it was almost impossible to comply with all its requirements hence reducing the Africans to actual and potential candidates for police harassment, arrest and imprisonment.” Mabogo Percy More, “Locating Frantz Fanon in Post-Apartheid South Africa,” *Journal of Asian and African Studies*, Published online before print Dec. 11 (2014), 5.

In the 1940s and 1950s, liberal social scientists began to develop coherent theories of why the pass laws had developed and the function they served in exerting racial control and manipulating labor markets.⁸⁷ Writing during the first several years of apartheid, liberal historians were not sure how pass laws and other apartheid policies would impact the economy, but they feared that pass and influx controls would inhibit the natural work of market forces.⁸⁸ Revisionist historians writing in the late 1960s and early 1970s argued that, rather than being autonomous spheres, the state and the market are interlinked; capitalism and apartheid were not antagonistic, but mutually strengthening.⁸⁹ In the early 1970s, Marxist writers, most notably Harold Wolpe and Martin Legassick, re-conceptualized the historiography of apartheid using a “cheap labor power” thesis.⁹⁰ Wolpe argued that repressive state interventions, including pass laws

⁸⁷ Hindson, *Pass Controls*, 4.

⁸⁸ Ibid. (citing Sheila T. van der Horst, *Some Effects of Industrial Legislation on the Market for Native Labour in South Africa*, *South African Journal of Economics* 3 [1935]; Sheila T. van der Horst, *Native Labour in South Africa* [1971]; E. Hellman, “Racial Laws versus Economic and Social Forces,” Presidential Address, SAIRR [1955]; R.J. Randall, *Economic Growth and Urban Native Policy in South Africa*, Doctoral dissertation, University of Natal-Durban [1958]).

⁸⁹ Hindson, *Pass Controls*, 5-6.

⁹⁰ The “cheap labor” thesis is largely attributed to Harold Wolpe; see Harold Wolpe, “Capitalism and Cheap Labour-Power in South Africa: From Segregation to Apartheid,” *Economy & Society* 1(4) (1972). Historian Colin Bundy’s seminal work on the South

and the Bantustan system, worked to ensure access to cheap labor after the decline of subsistence production in the reserves.⁹¹ To avoid increasing wages and to ensure a continual stream of cheap labor, influx control measures and the Bantustan system forced black people into temporary migration and worked to remove surplus populations from urban areas.⁹²

Doug Hindson's landmark 1986 study, *Pass Controls and the Urban African Proletariat in South Africa*, was the first to acknowledge the role of pass controls in creating not only a migrant labor force, but also a permanent urban African workforce and a differentiated working class (with influx control serving to regulate competition between sections of this class). Although his study focuses on the impact of pass controls on urban areas (with little focus on rural areas and their effect on the agricultural sector), it remains the foundational text on pass laws and influx control. Giving a historical overview of pass controls, Hindson locates their origins in the era of slave and servile labor (which continued

African peasantry also took aim at the dual economy thesis and laid the groundwork for "cheap labor" thesis critiques. See Colin Bundy, "The Emergence and Decline of a South African Peasantry," *African Affairs* 71 (1972).

⁹¹ Hindson, *Pass controls*, 7. See, Harold Wolpe, "Capitalism and Cheap Labour-Power;" Martin Legassick, "South Africa: Forced Labour, Industrialisation and Racial Differentiation," in *The Political Economy of Africa*, ed. Richard Harris (New York: John Wiley, 1975).

⁹² Hindson, *Pass controls*, 7.

through most of the 19th century) when they bound workers to particular landlords through indenture contracts and restricted movements between white colonial settlements and independent black African areas.⁹³ In the late 19th century, pass controls were used to maintain the temporary migrant labor system on the mines.⁹⁴ Although he touches on the early history of pass controls, Hindson's study focuses on the evolution of pass controls from the mid-1940s (after the end of World War II and at the beginning of formal apartheid in 1948) to the mid-1980s.

Hindson focuses on three main functions of the pass system in this period: influx control, labor direction, and labor placement.⁹⁵ Influx control refers to measures taken to limit the growth of the urban population, particularly unemployed work seekers and those who were not useful for their labor power (including elderly people, children, and, in many sectors at the time, women). Labor direction aims at channeling workers into particular types of employment either by force or by limiting their choice of sectors or occupations. Posel describes the objectives of the Native Affairs Department's labor "canalisation"

⁹³ Ibid., 10-11.

⁹⁴ Ibid.

⁹⁵ Ibid., 11.

program thus: "Its objectives were to 'match' labour supply and demand; to improve economic 'efficiency' by eliminating the 'wasteful' use of labour; and to 'rationalise' the distribution of labour by removing labour bottlenecks and easing labour shortcomings."⁹⁶ Finally, labor placement measures, largely undertaken by labour bureaus, provided employment services by disseminating information about work seekers and job vacancies.⁹⁷ Hindson argues that these three functions of the pass system not only ensured a supply of cheap labor and manipulated labor markets, but also impacted the reproduction of labor power by restricting black Africans' movement and settlement and creating differential access to jobs, incomes, and housing.⁹⁸

Hindson deliberately focused his study of pass laws on urban areas; his stated intention was to examine the role of pass laws in shaping an urban, black African proletariat class. Yet Hindson's account, for all its strengths, exemplifies a larger cleavage along urban-rural lines in South African historiography. For years, urban and rural development were viewed as separate phenomena and spheres of inquiry. While the cheap labor thesis of the early 1970s recognized the

⁹⁶ Posel, *Making of Apartheid*, 150.

⁹⁷ Hindson, *Pass controls*, 11.

⁹⁸ *Ibid.*

underdevelopment of rural areas as a direct product of South Africa's process of industrialization, the scholarly divide between urban and rural research remained largely intact. In the realm of pass laws, this geographical division has resulted in a significant blind spot.

As this chapter demonstrates, the government had the interests of the rural agricultural sector in mind as it shaped pass regulations and debated questions of urban administration. Pass laws might be thought of as an instance of power and influence—and labor—travelling from rural to urban and back. Harsh policing, jails, and prisons served as a crucial valve in a system that linked urban and rural areas. Because so many historians have neglected to focus on this continuum, everyday experiences of jails and prisons have also been neglected in the literature. Of course, there are exceptions. Posel gives an account of pass law enforcement, prisons, and their role in shaping labor markets in both urban and rural areas in her study of the first decade of apartheid.⁹⁹ Yet the fact remains that the historiography of apartheid South Africa has been divided into an emphasis on urban and rural areas and has lacked a focus on the role of prisons (and related institutions such as the police and courts) in shaping economic development and labor markets. This chapter seeks to move urban-

⁹⁹ Posel, *Making of Apartheid*.

rural connection and mechanisms of criminal punishment – that is, arrests, jails, and prisons – closer to the center of analysis.

Arrests and police harassment, including raids of black townships, were a pervasive part of everyday life for black people in urban areas. In *Townsmen or Tribesmen*, a study of Xhosa migrancy to and from the town of East London during the 1950s, Philip Mayer and Iona Mayer described the extent to which black Africans' presence in urban areas was contingent upon their labor and policed by authorities:

The migrant is not only permitted but compelled to participate in the White-dominated world. Under present regulations, if he fails to get himself employment in the East London area the authorities can return him from there to the country. But the limits of participation are narrow and rigid. In the White world the Black man can hardly act but as the employee of a White employer or the subject of White authorities . . .¹⁰⁰

Mayer and Mayer highlight black Africans' predicament in the cities – that of either laboring for an employer or being arrested and sent to jail or to a farm, to labor anyway in the end. Yet the extent of the second part of their observations – about black people as the subject of white authorities – has been more of an afterthought in the historiography of pass laws. The government knew that a class of people who could not show passes was ever-present in cities and towns;

¹⁰⁰ Philip Mayer and Iona Mayer, *Townsmen or Tribesmen: Conservatism and the Process of Urbanization in a South African City* (London: Oxford Univ. Press, 1961), 2.

these people provided a justification for police harassment and township raids. Posel has described the impact of policing and pass raids on black townships: “The state also used the influx control regulations as a weapon of reprisal against whole communities in times of political malcontent. Early morning pass raids by the police were stepped up in the wake of protests or riots in the townships, and ‘hundreds of Africans would be rounded up on infringements of the Pass regulations and other minor technicalities.’”¹⁰¹

As I stated in the chapter’s introduction, we need to focus not just on whom the system certified with passes (and in what numbers), but on those it did not—the unregistered, the violators, the transgressors. Pass law regulations served an economic purpose, but so did pass law *violations*. People without proper documentation were not merely ejected from urban areas but, in many cases, were channeled into a system set up to supply them to rural farms in need of labor. The system thus assumed the existence of pass law violators—and thrived on it. In her study of apartheid’s first decade, Posel compares the amount of labor supplied to rural areas through the labor bureau and through the courts. She writes:

¹⁰¹ Posel, *Making of Apartheid*, 124 (citing Bloke Modisane, *Blame Me on History* [London: Thames & Hudson, 1963], 147).

The bureaux' contributions to farmers' labour needs were consistently dwarfed by the Department of Prisons' '9d a day scheme' to supply farmers with convict labour ... In 1952, the '9d a day scheme' forced some 40,500 on to the farms, 30 per cent more than the number channeled through the labour bureaux. By 1957/8 the number of prison labourers on farms had shot up to 200,000, more than double the number of labour bureaux placements for the year.¹⁰²

Government schemes, such as the system by which farmers could lease laborers from prison for 9 pennies a day (discussed in detail below), thus supplied a larger share of the labor force than the actual bureau tasked with supplying labor. This shadow system and its role in agricultural development under apartheid demands greater attention. First, however, I will turn to a system of vagrancy laws and prison labor that has received more scholarly attention, perhaps in part because it did not operate in the shadow of a formal pass law system—convict leasing in the Southern United States.

ii. Convict leasing in the United States

While historians have undertaken comparative studies of segregation in South Africa and the United States,¹⁰³ very few have studied vagrancy laws,

¹⁰² Posel, *Making of Apartheid*, 139.

¹⁰³ See, e.g., Anthony Marx, *Making Race and Nation: A Comparison of the United States, South Africa and Brazil* (Cambridge: Cambridge University Press, 1998); Colin Bundy, "An Image of Its Own Past? Towards a Comparison of American and South African Historiography," *Radical History Review* 46/47 (1990); George Fredrickson, *White*

prison populations, and the creation of captive labor reserves in a comparative manner.¹⁰⁴ Convict leasing played an essential role in the industrial and agricultural development of the U.S. South and of South Africa. Both societies were characterized by segregationist laws and by the hyper-criminalization of black persons' presence in urban areas. Lawmakers in each society looked to their own histories for examples of vagrancy laws that could be imposed anew. Although there is some evidence that South African lawmakers visited the U.S. and observed convict leasing models there in the early 20th century, these models had long existed in the Cape Colony.¹⁰⁵

In the United States, convict leasing arose out of a similar desire to sustain a plantation model of agricultural development after the end of formal slavery. Since there was no large-scale system of passes in the U.S. South, the function of vagrancy laws as a system of legal tripwires that channeled people into prisons and then to lessees was more obvious. That is, it was not the underside of an affirmative pass law regime as in South Africa. The criminal legal system's role

Supremacy: A Comparative Study in American and South African History (New York: Oxford Univ. Press, 1981).

¹⁰⁴ The sole exception is William Worger, *Convict Labour*. His excellent study compares industrialists' use of convict labor in Birmingham, Alabama, U.S.A. and Kimberley, South Africa between 1870 and 1930.

¹⁰⁵ See Worger, *Convict Labour*.

in supplying cheap labor to farms was more immediate. In many locales, there was no need for jails at all. As we shall see, in many places, cities and counties declined to rebuild the penitentiaries that were decimated during the Civil War, electing to send arrestees directly to farms or other private business owners instead.

The practice of convict leasing in the Southern United States arose out of a number of economic and political factors in the Reconstruction era. With the end of slavery, a “remarkable socioeconomic tug-of-war” took place between planters and freedmen in the late 1860s and 1870s.¹⁰⁶ They wrestled over the terms and conditions of labor, and eventually the sharecrop system emerged, which allowed former slaves an amount of independence, while landowners enjoyed lower supervision costs in exchange for somewhat lower agricultural outputs.¹⁰⁷ Still, planters sought to reintroduce two aspects of labor discipline that had made production rates so high—and labor so brutal—under slavery.¹⁰⁸ First, large

¹⁰⁶ Mancini, *One Dies, Get Another*, 40.

¹⁰⁷ *Ibid.*

¹⁰⁸ *Ibid.*, 39. It is worth noting that other plantation economies turned to a similar solution after emancipation. In Jamaica, a “Penal Servitude Act” was passed in 1854, which allowed for prisoners to be leased out as agricultural laborers. In the first year after the act was passed, 159 prisoners were released to 14 different employers. See Diana Paton, “The Penalties of Freedom: Punishment in Postemancipation Jamaica,” in

plantations had relied on “gang” labor, with field hands divided into gangs and commanded by drivers to produce in an assembly-line fashion at a brisk pace.¹⁰⁹ Mancini describes how large plantations often divided laborers into hoe gangs and plow gangs: “The labor of each put pressure on the pace of the other, and it was in part from this interdependence that the high production levels of the slave era were achieved.”¹¹⁰ Second, under the “task” system, field hands were given a daily work assignment and quota, and work had to be completed and inspected before a laborer could leave the field.¹¹¹ Although sharecropping arrangements allowed landowners to extract many of the labor benefits they had previously enjoyed with slavery, the strict regimes of gang and task labor required a level of coercion that was no longer feasible. These modes of labor

Crime and Punishment in Latin America, ed. Ricardo Salvatore, et al. (Durham: Duke Univ. Press, 2001), 288-9.

¹⁰⁹ Mancini, *One Dies, Get Another*, 39.

¹¹⁰ Ibid. See also Alex Lichenstein, *Twice the Work of Free Labor: The Political Economy of Convict Labor in the New South* (London: Verson, 1996), 5-6 (“[T]he lease was much more than a convenient fiscal and penal stopgap; it stood as a system of forced labor in an age of emancipation;” “In harmony with the planters, the single most common complaint voiced by southern industrialists was their inability to command a reliable, predictable labor force. Leasing convicts was one of the most successful solutions to this problem.”)

¹¹¹ Mancini, *One Dies, Get Another*, 39-40.

control were revived under convict leasing—gang labor predominated on plantations, and task labor became the norm for mines.¹¹²

The necessary convict population was created through a rewriting of the criminal law in Southern states and through “corrupt networks of sheriffs and labor agents.”¹¹³ State legislatures dredged up old crimes such as “vagrancy,” the offense of not being able to prove on the spot that one is employed.¹¹⁴ Some states created “Negro crimes” such as criminal trespass and incitement to insurrection.¹¹⁵ Blackmon describes county jail records indicating thousands of arrests for “inconsequential charges or for violations of law specifically written to intimidate blacks—changing employers without permission, vagrancy, riding freight cars without a ticket, engaging in sexual activity—or loud talk—with white women.”¹¹⁶ Often these offenses entailed court costs and fines; with no other means to pay, convicts were further induced to labor for lessees.¹¹⁷ Surges

¹¹² Ibid., 40-1.

¹¹³ Ibid., 41.

¹¹⁴ Blackmon, *Slavery by Another Name*, 1.

¹¹⁵ Mancini, *One Dies, Get Another*, 41.

¹¹⁶ Blackmon, *Slavery by Another Name*, 7.

¹¹⁷ Alexander, *The New Jim Crow*, 31. See also, Blackmon, *Slavery by Another Name*.

in arrests did not correlate with crime waves, but rather “rises and dips in the need for cheap labor.”¹¹⁸ Mancini put it succinctly: “The criminal justice apparatus was systematically geared for the collection of labor.”¹¹⁹

Convict leasing was a system of mutual profit for landowners, corporations, and other lessees and the state. Ayers has described the extent to which Southern penitentiaries were decimated during the Civil War.¹²⁰ With convict leasing, there was no need for states to repair dilapidated penitentiaries, as they became mere “outposts” of the massive labor network;¹²¹ many convicts proceeded straight from sentencing to the farms or mines, without a stay in prison. Indeed, the South maintained very few prisons for the 50 years following the Civil War. Instead, people convicted of crimes often went straight to those

¹¹⁸ Blackmon, *Slavery by Another Name*, 7.

¹¹⁹ Mancini, *One Dies, Get Another*, 41. See also Blackmon, *Slavery by Another Name*, 7 (“By 1900, the South’s judicial system had been wholly reconfigured to make one of its primary purposes the coercion of African Americans to comply with the social customs and labor demands of whites.”).

¹²⁰ Edward Ayers, *Vengeance and Justice: Crime and Punishment in the 19th-Century American South* (New York: Oxford Univ. Press, 1984), 186-7.

¹²¹ *Ibid.*, 186.

who had contracted with the state for their labor in coalmines, farms, railroads, brickyards, or sawmills.¹²²

Aside from not having to maintain and manage penitentiaries, Southern states reaped other financial benefits as well. Initially, states were content with breaking even on contracts since convict leasing saved them the cost of maintaining prisons, but they soon realized that convict labor could fetch high profits.¹²³ By 1886, Alabama and Tennessee ran the most profitable systems, meeting a large demand from the mines. Both states took in roughly \$100,000 annually from leasing prisoners—about one-tenth of each state’s total annual revenue.¹²⁴ Northern states also made money from manufacturing enterprises within prison walls, but the profits were not nearly as high as those reaped through convict leasing. As Ayers writes, “Nationally, all prisons which did not use the lease system earned only 32 percent of their total expenses, while those who did take advantage of the demand for convict labor outside the prison walls earned 267 percent.”¹²⁵ Blackmon estimates that revenues from convict leasing

¹²² Mancini, *One Dies, Get Another*, 1.

¹²³ Ayers, *Vengeance and Justice*, 196.

¹²⁴ *Ibid.*

¹²⁵ *Ibid.*

brought the equivalent of tens of millions of dollars into the treasuries of Alabama, Mississippi, Louisiana, Georgia, Florida, Texas, North Carolina, and South Carolina.¹²⁶

As the system became more entrenched, the line blurred between state and private interests—and, indeed, state and private actors. Politicians accepted bribes from prospective lessees to vote certain ways, and corruption permeated the system at all levels.¹²⁷ In an 1887 sermon on prison reform, the Southern minister Atticus Haygood stated that every prison official in every Southern state, “from the superintendent of the penitentiary down to the merest guard that stands sentry over a county chaingang, is a politician, and holds his office because he is a politician.”¹²⁸ In many places, the same man doubled as entrepreneur/lessee and officeholder.¹²⁹ Jeremiah South, a lessee of Kentucky convicts throughout the 1870s, supposedly exerted more power over the state’s legislature than any other individual; he was said to have controlled a third of

¹²⁶ Blackmon, *Slavery by Another Name*, 7-8.

¹²⁷ Ayers, *Vengeance and Justice*, 195.

¹²⁸ Ibid. (citing Atticus Haygood, *Two Sermons: Prison Reform; The Good and the Bad* [Macob: J. W. Burke, 1887], 9).

¹²⁹ Ibid.

the legislators “as absolutely as he controlled the convicts.”¹³⁰ Georgia senator Joseph Emerson Brown made a fortune leasing convicts in the 1880s.¹³¹ Clean divisions between state and private interests thus became increasingly harder to draw. Indeed, convict leasing systems were thoroughly entrenched within the politics and the economy of the U.S. South during this period.

iii. Convict leasing in South Africa through the 1950s

Few studies exist on the use of prison labor on South African farms and mines. The accounts that have been written tend to focus on the period from 1870-1930,¹³² although some studies have touched on the 1940s and 50s.¹³³ Generally accounts have ended with the 1959 prison farm labor scandal (discussed in more detail below); after journalist Ruth First published a pamphlet exposing the violent regime of prison labor on white farms, the government appointed investigatory commissions and adopted new protocols to regulate the

¹³⁰ Ibid.

¹³¹ Ibid.

¹³² See, e.g., Worger, *Convict Labour*; Allen Cook, *Akin to Slavery: Prison Labour in South Africa* (London: International Defence and Aid Fund, 1982); Corry, *Prison Labour*.

¹³³ See, e.g., Muller, *Coercive Agrarian Work*; Kelly Gillespie, “Containing the ‘Wandering Native’: Racial Jurisdiction and the Liberal Politics of Prison Reform in 1940s South Africa,” *Journal of Southern African Studies* 37 (2011): 513-15.

use of prison labor.¹³⁴ I will give a brief overview of early pass controls and then discuss their role in the expanding agricultural sector in more depth.

The diamond mining industry in Kimberley made extensive use of prison labor in the last few decades of the 19th century. The Kimberley prison processed more than 10,000 prisoners a year throughout the 1870s, most of them black men sentenced to short terms for pass law violations.¹³⁵ Cecil Rhodes' De Beers Consolidated Mines constructed a private prison in 1885 (using prison workers supplied free of charge by the Cape Colony administration) to house 300 "native prisoners" to work in the mines.¹³⁶ Rhodes, an elected member of the Cape Colony government, negotiated a contract with that same government to receive "such able-bodied long sentenced native prisoners as they [De Beers] may require."¹³⁷ This snapshot reveals the difficulty of disentangling public and private actors, or state and market interests—a difficulty that would persist throughout the 20th century. Beginning in 1905, the British colonial

¹³⁴ Ruth First, *Exposure!: The Farm Labour Scandal* (Johannesburg: New Age, 1959).

¹³⁵ Worger, *Convict Labour*, 70. See also, Dirk Van Zyl Smit, *South African Prison Law and Practice* (Durban: Butterworths, 1992), 14-16 ("[By 1903], the role of the state as the provider of unskilled black labour for the mines through the penal system had become manifest.").

¹³⁶ Worger, *Convict Labour*, 74.

¹³⁷ *Ibid.*

administration introduced the leasing of black male prisoners in the Transvaal, with labor being used primarily by the gold mines.¹³⁸ In 1911, the new Union government passed the South African Prisons and Reformatories Act which authorized the leasing of black male prisoners to work where possible on public works, primarily at “road camps.”¹³⁹ Secretary of Justice and Director of Prisons Jacob de Villiers Roos, the architect of the 1911 Prisons Act, established a policy of racial differentiation of prison labor: “the native for outside work and the European for inside workshop work.”¹⁴⁰ The government and the mining industry were the primary users of prison labor until 1931 when the ‘6d a day scheme’ was introduced, which allowed prisoners to be sent to work on private farms.¹⁴¹ The scheme applied to prisoners with a maximum sentence of one month—these were mainly black men arrested on pass offenses. In 1932, the scheme was extended to men with a maximum sentence of three months.¹⁴² The government’s stated intention for the scheme was to reduce prison crowding and

¹³⁸ Cook, *Akin to Slavery*, 75.

¹³⁹ Ibid. See also, Van Zyl Smit, *South African Prison Law*, 25.

¹⁴⁰ Van Zyl Smit, *South African Prison Law*, 25.

¹⁴¹ Cook, *Akin to Slavery*, 75.

¹⁴² Ibid.

prevent first offenders from falling under the bad influence of experienced offenders. As Corry observes, “This good intention coincided admirably with the acute shortage of farm labour brought about by the sudden industrial expansion after the [currency] devaluation of 1932.”¹⁴³

In order to tell a fuller story of pass laws in South Africa and to give an account of prison labor, it is necessary to give more background on the sector that helped spur these systems—the agricultural sector. In the years between 1910 and 1950, South Africa underwent an agricultural revolution, with white farmers heavily subsidized by the government.¹⁴⁴ Beginning in 1910, the government introduced harsh segregationist policies, and these policies would intensify with the introduction of apartheid in 1948. Over this period, South Africa shifted from importing a substantial amount of its food to becoming an exporter; after World War I, agricultural exports made up nearly a third of total annual exports.¹⁴⁵ The total value of white farms’ agricultural output increased

¹⁴³ Corry, *Prison Labour*, 129.

¹⁴⁴ Alan Jeeves and Jonathan Crush, “Introduction,” in *White Farms, Black Labor: The State and Agrarian Change in Southern Africa, 1910-50*, ed. Alan Jeeves and Jonathan Crush (Pietermaritzburg, University of Natal Press, 1997).

¹⁴⁵ *Ibid.*, 5.

from £29 million in 1911-12 to nearly £200 million in 1948.¹⁴⁶ Roughly 80 acts were passed between 1910 and 1933 to support the farming sector, and support included: direct state grants and loans (through the Land Bank, established in 1912) for fencing, irrigation, and other improvements; artificially inflated agricultural and food prices; relief measures meant to protect farmers and farm incomes; and a tax system that directed revenue from the mining sector and from consumers into agriculture.¹⁴⁷ White farmers also pushed for state intervention in the labor market to ensure cheap labor. As Jeeves and Crush write, “White southern African farmers not only demanded state aid to regulate production, prices, and markets, these same sheltered, subsidized, and protected agriculturalists insisted also that governments provide them with labor at sub-market rates.”¹⁴⁸ Under the Native Labour Regulation Act of 1911 and with help from the Native Affairs Department, white farmers received special concessions to facilitate the recruitment of farm labor, including banning non-farm labor recruiters from most white farming areas.¹⁴⁹ However, the extent to which the

¹⁴⁶ Ibid.

¹⁴⁷ Ibid., 9.

¹⁴⁸ Ibid., 15.

¹⁴⁹ Ibid., 16.

state's provision of a convict labor force contributed to the growth of the agricultural industry has been underappreciated. For example, in an otherwise very thorough account of state regulation and agricultural production, Jeeves and Crush devote just two sentences to convict labor, and they present it as a new draconian measure adopted only after the National Party came to power and instituted apartheid in 1948.¹⁵⁰

Pass law convictions increased after the Urban Areas Act of 1923 was passed, which made unemployment a crime and imposed harsher pass controls relating to registration, work seeking, and residence.¹⁵¹ The urban black population grew in the inter-war period, but two major depressions (in the early 1920s and the early 1930s) led to fewer available jobs in the cities. Urban unemployment was further accentuated by crop failures in 1935 and 1936, which led more black men and women to leave rural areas to seek work in cities.¹⁵² In 1936, the government passed the Native Trust and Land Act, essentially

¹⁵⁰ Ibid., 20 (“[In the early 1950s], a new [labor] source became available. Stricter enforcement of influx control regulations produced a swelling harvest of statutory offenders whom the state made available to farmers as cheap convict labor. Unlike the Smuts government, its successor had no qualms about supplying such labor in quantity to individual farm employers.”).

¹⁵¹ Hindson, *Pass Controls*, 40-6.

¹⁵² Ibid., 43.

consolidating the 1913 Native Lands Act (which had reserved a mere 7 percent of the country's land for black Africans). The Act further restricted the land available to black people and severely limited squatting and labor tenancy on white farms.¹⁵³ In addition, more and more municipalities extended local pass law provisions, and convictions increased sharply. Between 1920 and 1924, around 48,000 people were convicted under pass laws; this figure rose to 94,000 between 1930 and 1934, and to 183,829 in 1940.¹⁵⁴ In 1936, Justice F. E. T. Krause, Judge-President of the Orange Free State, gave his account of the extent of imprisonment for pass law violations at the National Conference on Social Work in Johannesburg. He argued that the whole pass system "seems to serve only to extract revenue from the employer and to collect a fine from the underpaid and poverty stricken native, or in default send him to prison." He concluded, "The sooner our pass laws are scrapped the better."¹⁵⁵ The pressures and restrictions on black men and women who moved to the cities to seek employment persisted, and they continued to be imprisoned for being in urban areas without proof of

¹⁵³ See Essy Letsoalo, *Land Reform in South Africa: A Black Perspective* (Johannesburg: Skotaville, 1987), 39-41; Muller, *Coercive Agrarian Work*, 46.

¹⁵⁴ Hindson, *Pass Controls*, 45.

¹⁵⁵ "African Prisons: Mr. Justice Krause: Vindictive Punishment Condemned: Pass Law Abolition Called For," *Rand Daily Mail*, October 2, 1936, BPP, Box 4, Folder 1.

employment. In 1945, the vast majority of prisoners were employed outside the prisons by private parties and by authorities other than the Prisons Department.¹⁵⁶

Beginning in the late 1940s, a new arrangement between some private farmers and the state gelled the interests of state and private actors in prisons even further. Under this new procedure, private farmers would build prisons on their farms according to state specifications, and these buildings would subsequently be taken over and run by the Prison Service as state prisons.¹⁵⁷ The prisoners would work on the farm and neighboring farms in the area. The state-run farm prisons were highly sought after among white farmers, and more and more of them petitioned the state to allow them to build farm prisons in the late 1940s and early 1950s.¹⁵⁸ These facilities were ideal for farmers because they could easily access cheap labor while leaving the management and security oversight of the barracks to the state.¹⁵⁹

¹⁵⁶ Corry, *Prison Labour*, 139.

¹⁵⁷ Gillespie, "Containing the 'Wandering Native,'" 514.

¹⁵⁸ *Ibid.*

¹⁵⁹ *Ibid.*

In her study of the liberal discourse around prisons in the 1940s, Gillespie describes outrage among some members of the public over the new apartheid regime's "permissive relationship to the mistreatment of privatised African prison labour."¹⁶⁰ In November 1949 *The Star* reported "an angry scene in Johannesburg ... when a large group of Europeans and non-Europeans crowded around a lorry parked in Commissioner Street [containing African prisoners in a cage on their way to a Ventersdorp farm] ... Shouts of 'slavery' were heard among the crowd."¹⁶¹ The following March the *Cape Times* reported this account: "... the reader, who was driving behind the van, alleged that the wind whipped off a covering tarpaulin to reveal Natives huddled in a cage. It was a private and not a police van ... The van's number, a Montagu registration, was taken and has been passed on by the *Cape Times* to the Director of Prisons."¹⁶² The use of prison labor on private farms shocked the conscience of liberal white South Africans and they appealed to the Director of Prisons to stop what they assumed to be aberrant instances of neo-slavery.

¹⁶⁰ Ibid.

¹⁶¹ Ibid (citing Historical Papers, Johannesburg Public Library Press Clippings A1913, *The Star*, November 26,1949).

¹⁶² Ibid. (citing Historical Papers, Johannesburg Public Library Press Clippings A1913, *Cape Times*, March 11, 1950).

Liberal citizens were hardly the only ones to condemn the prison labor system and the distortions of the judicial system; some prison officials and a high-profile commission also voiced grievances with the system in the late 1940s. In 1945, the Smuts government responded to pressures from some members of parliament who had called for a review of the prison system by appointing a Penal and Prisons Reform Commission, chaired by Justice C. W. H. Lansdown.¹⁶³ The Lansdown Commission released its report in 1947; it emphasized that the aim of imprisonment should be reformation and rehabilitation, achieved through education, vocational training, and employment.¹⁶⁴ The Commission recommended that the government terminate the '6d a day scheme.' The government complied, but immediately introduced a '9d a day scheme' in its place. Under this scheme, the daily rate was raised and farmers now paid it directly to the prison laborer, rather than the Prisons Department.¹⁶⁵ There was also a provision stating that prisoners should be consulted about whether they

¹⁶³ Ibid., 509.

¹⁶⁴ Corry, *Prison Labour*, 132.

¹⁶⁵ Cook, *Akin to Slavery*, 13.

wanted to go work on a farm, but accounts show that men were regularly sent to farms over their objections.¹⁶⁶

In late September 1948, the outgoing Director of Prisons, Mr. W. G. Hoal (who had run the prison system for 18 years), also had harsh words for the prison and judicial systems.¹⁶⁷ He condemned the rates at which South Africa jailed people for being unable to pay fines. Hoal said that this “dumping” of people in prison frustrated the whole intention of the law; he said it accounted for about 83 percent of the Native and 67 percent of the European prison population, and resulted in extreme overcrowding.¹⁶⁸ Hoal also lamented the fact that prisons were filled with an enormous number of awaiting trial prisoners, prisoners serving sentences of six months or less (40 percent of the total inmate population), and people caught up in mass arrests where officials hoped to sort out the guilty ones—although he said that class was not kept for long.¹⁶⁹ He said that in cases where fines were imposed the majority of convicted people were the underprivileged classes who could not afford the fines and went to prison; he

¹⁶⁶ *Ibid.*, 13.

¹⁶⁷ “Union’s prison system condemned by retiring director,” *Star*, Sep. 30, 1948, BPP Box 4, Folder 1.

¹⁶⁸ *Ibid.*

¹⁶⁹ Cook, *Akin to Slavery*, 13.

pointed out that the whole object of fines was to save people from prison. "The Courts must impose fines which have some relation to the man's earning capacity and ability to pay while keeping himself and his dependants." Hoal said that something had to be done to enable magistrates to assess people's ability to pay fines. He also raised questions about the use of prison labour, saying: "The country is crying out for roads and soil conservation work. There is the cockeyed Government scheme which starts up construction work in an area and immediately attracts all the labour off neighbouring farms. Then the farmers come to the Prisons Department and ask for prison labour. The Government should use prison labour for their schemes at the standard rate of wages for such labour. From this money could be deducted sufficient to keep the prisoners' families, to supply compensation to injured complainants, or to be saved towards paying fines."¹⁷⁰

The '9d a day scheme' that replaced the '6d a day scheme' in 1947 operated alongside a covert operation for supplying pre-trial arrestees to farms that began that same year. The 'inter-departmental scheme' was introduced at the Fordsburg (Johannesburg) Native Commissioner's Court and channeled pass

¹⁷⁰ Ibid.

offenders directly to farms in lieu of prosecution.¹⁷¹ The scheme was wholly separate from the Prisons Department (except that it was organized in consultation with the Department of Justice, which included the Prisons Department); the scheme was coordinated by the Department of Native Affairs in consultation with the Department of Justice and the Commissioner of the South African Police.¹⁷² Over 3,000 men were sent to farms by the Fordsburg court each year, and the scheme was introduced in other courts as well.¹⁷³ Cook argues that the '9d a day scheme' and the 'inter-departmental scheme' were merely different administrative devices for accomplishing the same end of getting cheap labor to the farms. The experience of laborers who reached farms under the varying systems was identical:

Once [on the farm], all schemes were the same. Labourers got the same 'uniform,' a sack with holes cut out for the head and arms—a tell-tale garment on the country roads should a 'volunteer' try to escape. Labourers were locked and guarded in the same foul 'compounds,' whipped and driven with the same whips and sticks, fed with the same maize porridge, regardless of which particular 'scheme' had ensnared them—or even, indeed, if they had gone to the farm of their own 'free' will. Sometimes farmers also had their 'free' labourers arrested and

¹⁷¹ Ibid., 76.

¹⁷² Ibid., 14.

¹⁷³ Ibid., 14, 76.

convicted and sent back to them under the '9d a day scheme' because it was cheaper than the £4-a-month going wage for farm labourers.¹⁷⁴

The 'inter-departmental scheme' was officially announced in an internal circular dated June 14, 1954, but the circular acknowledged that the scheme had been operating for some time already.¹⁷⁵ The circular was addressed to officers of the Department of Native Affairs and all Magistrates and Justices of the Peace. It explained the program and gave instructions on how to implement it:

It is common knowledge that large numbers of Natives are daily being arrested and prosecuted for contraventions of a purely technical nature. These arrests cost the State large sums of money and serve no useful purpose. The Department of Justice, the South African Police and this Department (Native Affairs) have therefore held consultation on the problem and have evolved a scheme, the object of which is to induce unemployed Natives now roaming the streets in the various urban areas to accept employment outside such urban areas.

... When contravention of two of the sections of the Natives Taxation Act, 1925, two sections of the Natives (Urban Areas) Act, 1945, and certain regulations under this Act, and of the Labour Bureau Regulations are alleged – Natives arrested between 2 p.m. on Sunday and 2 p.m. on Friday are not charged immediately after arrest, but merely detained by the police. Natives so detained are removed under escort to the district labour bureau and handed over to the Employment Officer. The Natives must be offered such employment as is available in non-prescribed (rural) areas. Priority should be given to farm labour ...

... Natives who, on account of their declining to accept employment, are not released, are returned to the police for prosecution ...¹⁷⁶

¹⁷⁴ Ibid., 15.

¹⁷⁵ Ibid., 14.

¹⁷⁶ General Circular No. 23 "Scheme for the Employment of Petty Offenders in Non-Prescribed Areas," cited in First, *Exposure!*, 9-10.

The legality of the protocol was highly suspect, as it was not authorized by statute or common law.¹⁷⁷ Officially, transgression of the laws specified in the circular was only meant to carry a small fine and less than a month in prison.¹⁷⁸ Yet detainees were forced to sign a three-month labor contract with farmers, a period which could be considerably longer than 90 days as off-days, Sundays, sick-days, and days that were “unworkable” due to weather did not count.¹⁷⁹

During the 1950s as many as 200,000 prisoners worked on white farms every year.¹⁸⁰ In August 1956, the liberal newspaper the *Rand Daily Mail* reported on farm labor brutality, drawing renewed attention to abuses on farms that would soon receive much more publicity. The Native Affairs Department had long been aware of these conditions; throughout the 1950s it received a steady flow of letters from farm laborers complaining of abuses and poor conditions. (The NAD also received letters from farmers calling for more laborers).¹⁸¹ In the

¹⁷⁷ First, *Exposure!*, 10; see also, Cornelis Hermanus Muller, “Dealing with a Hot Potato: The Commemoration of the 1959 Potato Boycott,” *Historia* 55 (2010): 85.

¹⁷⁸ Muller, “Dealing with a Hot Potato,” 85.

¹⁷⁹ *Ibid.*

¹⁸⁰ Cook, *Akin to Slavery*, 3.

¹⁸¹ Muller, “Dealing with a Hot Potato,” 86.

mid-1950s, accounts of farm abuses and working conditions gained more traction in the press. In its August 1956 report, the *Rand Daily Mail* recounted the story of a black worker who said he had been found guilty in Johannesburg of a minor trespassing offence and had been sent to a farm for a 40-day sentence.¹⁸² The man described “how he had been mercilessly beaten every day in the fields while picking mealies [corn], kept locked up in a concrete room with 50 or 60 other prisoners at night, and been forced to work 12 hours at a stretch, with only a ten-minute break for food—and with nothing to drink.”¹⁸³ A second farmworker came forward with a similar story. The first farmworker was being treated at a hospital for injuries he said “were caused by the boss boys’ blows, by the chafing sackcloth he was forced to wear, and by a strap round his waist which held a heavy mealie bag.” A doctor reported that he had “grossly septic fungating wounds overlying both legs from calf to heel” and septic wounds on his hip and thigh.¹⁸⁴ Despite increased media awareness, the use of prison labor under the

¹⁸² “Prison, Native Affairs Take Action: Inquiry into ‘R.D.M.’ Report of Farm Labour Brutality: Second Complaint Made,” *Rand Daily Mail*, Aug. 15, 1956, BPP Box 4, Folder 2.

¹⁸³ *Ibid.*

¹⁸⁴ *Ibid.*

'9d a day scheme' continued apace. In 1957-58, 199,312 prisoners were hired out to farmers under the '9d a day scheme' alone.¹⁸⁵

In 1959, spotty coverage of farm abuses gave way to a full-on scandal around the use of coerced labor on farms. Muller, who has written about the unfolding of the 1959 farm labor scandal in close detail, writes that "the allegations became an unstoppable avalanche of press exposés, court cases, protest action and commissions of enquiry."¹⁸⁶ That year journalist Ruth First published her 23-page pamphlet, "Exposure! The Farm Labour Scandal," which described the 'inter-departmental scheme' and collusion between white farmers and the government in great detail.¹⁸⁷ Other papers reported on the farm labor system as well. In May, the *Golden City Post* appealed to its readers who had missing relatives whom they believed to be working on farms to come down to the paper's office with details. More than a dozen relatives came forward to ask for help in tracking down their loved ones. On May 24, the *Post* recounted its

¹⁸⁵ Cook, *Akin to Slavery*, 76. See also Tessa Marcus, *Restructuring in Commercial Agriculture in South Africa: Modernising Super-exploitation: An Investigation into the Impact of Restructuring on the Position and Conditions of Farm Workers* (Amsterdam: Dr. Govan Mbeki Fund, University of Amsterdam, 1986), 118 (By 1957-8, the number of prison laborers on farms reached 200,000).

¹⁸⁶ Muller, "Dealing with a Hot Potato," 86.

¹⁸⁷ First, *Exposure!*.

successful campaign to free 30-year-old Daniel Mahloane of Alexandra from the Straffontein farm, owned by a Mr. Bazil Feldt.¹⁸⁸ Mahloane had been arrested on a pass offence and was told that if he did not go to the farm he would be sent to Baviaanspoort prison.¹⁸⁹ Mahloane's brother responded to the *Post's* appeal to readers with missing relatives, showing up to their offices with a letter from Mahloane written at Straffontein farm. The *Post* tracked him down on the farm, and contacted a Johannesburg attorney who, along with the advocacy organization Black Sash, helped secure his release "in a dramatic habeas corpus hearing at the Supreme Court, Pretoria."¹⁹⁰ Black Sash soon returned to Straffontein farm to obtain the release of other farm laborers, including 49-year-old Paul Anthony, who had been sent to the farm eight months before after being arrested for not possessing a passbook.¹⁹¹ In April-June 1959, judges of the Transvaal Provincial Division granted several *habeas corpus* orders in suits by

¹⁸⁸ "Post Freed Him from 'Den' of Misery," *Golden City Post*, May 24, 1959, BPP, Box 31, Folder 136.

¹⁸⁹ *Ibid.*

¹⁹⁰ *Ibid.*; "Black Sash Gets Release of More Farm Labourers," *Rand Daily Mail*, May 25, 1959, BPP, Box 34, Folder 2.

¹⁹¹ "Black Sash Gets Release of More Farm Labourers." The article also describes Black Sash's successful efforts to secure the release of John Lusunzi, who had been arrested the previous month because his pass was not in order.

friends or relatives of people who were “alleged to be wrongfully detained against their will by private employers of their labour.”¹⁹²

By June 1959, the head of the Bantu Administration and Development (BAD) Department, Minister de Wet Nel, was forced to account for the prison labor scheme. On June 16, he told parliament that he had appointed an investigatory committee. The committee would be tasked with investigating practices under General Circular No. 23 of 1954 and determining ways to revise the scheme to preclude irregularities or malpractices.¹⁹³ De Wet Nel also announced that the farm labour system was temporarily suspended. He did not say that the program was a bad idea—indeed, he stated that it responded to pleas on both sides of parliament for black workers who streamed into towns illegally to be diverted to useful employment.¹⁹⁴ Rather, he called the program “technically wrong,” acknowledging that sending people to be employed on farms before they were convicted of any crime constituted a technical error.¹⁹⁵

¹⁹² Sydney Kentridge, “Habeas Corpus Procedure in South Africa,” *South African Law Journal* 79 (1962): 286 (citing as typical examples the following unreported cases: *Sadika v. Potgieter*, Apr. 29, 1959; *Mahloane v. Feldt*, May 21, 1959; *Mtembu v. Botha*, Jun. 11, 1959).

¹⁹³ Reproduction of *The Star* article dated June 17, 1959, BPP Box 4, Folder 4.

¹⁹⁴ Reproduction of *Rand Daily Mail* article dated June 17, 1959, BPP Box 4, Folder 4.

¹⁹⁵ *Ibid.*

The scandal also drew international attention; by June 18, the International Confederation of Free Trade Unions announced that it would submit a complaint to the ILO's Forced Labour Committee about "the exploitation of cheap prison labour and other instances of ill-treatment of African workers in South Africa."¹⁹⁶

On June 27, the *Rand Daily Mail* reported that, with the suspension of the farm labor scheme, black "petty offenders" arrested on vagrancy or other pass charges were now being prosecuted in court.¹⁹⁷ Arrestees faced the possibility of fine or imprisonment, and did not have the alternative of a two to six month farm-labor contract. Inducements to seek farm labour still existed, however, since urban unemployment levels persisted while black people were required to show proof of employment to remain in the city. According to the paper:

Some Africans are still, however, being offered work in the rural areas, including employment on farms.

Africans, who apply for employment at the Municipality's Non-Europeans Affairs Department, are referred to the Department of Bantu Administration and Development, if no work is available for them in the Johannesburg area. They are taken to the District Labour Bureau in Market Street and are offered employment in the rural areas.

But where an African does not make this voluntary approach—and no statistics are available of the number who do so—the 'vicious circle' of arrest, gaol, release, arrest, etc., continues.¹⁹⁸

¹⁹⁶ Reproduction of *Rand Daily Mail* article dated Jun. 19, 1959, BPP Box 4, Folder 4.

¹⁹⁷ "Gaol Takes Place of Farm Labour Scheme," *Rand Daily Mail*, Jul. 27, 1959, BPP Box 34, Folder 2.

¹⁹⁸ *Ibid.*

The paper described how this cycle played out in the experience of a man who had aged out of his job in the city and now had no rural home to return to:

On the other side of the fence, there is often heart-break and desperation. Take the case of Jeremiah, a 65-year-old African, who made his home in Alexandra Township in 1941.

Until a year ago, Jeremiah was employed as a watchman. He lost his job because he was too old. Now—from the official point of view—he must return to his home in the Transkei. But, although he has visited his old home sporadically, his roots are in Alexandra.

And even if he wished to return to the Transkei, he has no money to pay for his train-fare. His alternatives: to remain here and to become part of the vicious circle. Or else he can accept work in a rural area in the hope of saving money. But at his age, what work can he do?

It is a problem for which officials see no solution at present.¹⁹⁹

Of course, this was a problem of the officials' own making. One possible solution—allowing for black Africans to remain in urban areas beyond their days as able-bodied laborers—was wholly at odds with an administrative system that conceived of black Africans entirely through the lens of labor productivity. Indeed, Posel writes that the influx control system and Labour Bureau regulations “made plain that the state regarded Africans as mere units of labour power at the disposal of white employers, with little right to choose if, where, and when they wanted to work.”²⁰⁰

¹⁹⁹ Ibid.

²⁰⁰ Posel, *Making of Apartheid*, 123.

Revelations about the treatment of prison farm laborers also spurred protest from black resistance organizations, including the first national boycott of farm produce in South African history.²⁰¹ In his 1962 memoir, *Let My People Go*, ANC President Albert Luthuli described the conditions on farm prisons that, along with the habeas court cases,²⁰² precipitated the boycott:

On the affected farms, African men—some are no more than boys—dig potatoes with their bare fingers. ‘Boss-boys’ and overseers stand over them with whips, which they do not hesitate to use. The convicts live in hovels, filthy little huts or filthy great barracks, under guard. Their diet is unmentionable, a good deal worse than prison fare Murders, the result of prolonged beatings and semi-starvation, or of sudden fits of anger, are committed. Some come to light.²⁰³

At the end of May 1959, an ANC activist, Robert Resha, called for a boycott of potatoes at the organization’s national Anti-Pass Conference in Johannesburg.²⁰⁴

²⁰¹ See Janos Mihalik, “Restrictions on Prison Reporting: Protection of the Truth or Licence for Distortion?” *South African Journal on Human Rights* 5 (3) (1989): 408; Albert Luthuli, *Let My People Go* (Johannesburg and London: Collins, 1962), 218.

²⁰² “Report of the National Executive Committee of the ANC, Submitted to the Annual Conference, December 12-13, 1959,” in *From Protest to Challenge: Vol. 3: Challenge and Violence, 1953-1964*, ed. Thomas Karis and Gwendolen Carter, (Palo Alto: Stanford Univ. Press, 1977): 473.

²⁰³ Luthuli, *Let My People Go*, 218.

²⁰⁴ Muller, “Dealing with a Hot Potato,” 92; Karis and Carter, *From Protest to Challenge*, 292. See also “Report of the National Executive Committee of the ANC,” 473 (“The May Conference decided to use a potato boycott for a limited period as a demonstration and protest against the Transvaal potato farmers whose treatment of the African workers as revealed by a number of court cases shocked the world.”).

The campaign was conceived of as a short-term protest against the potato farmers who used prison labor, as highlighted in the recent court cases and media coverage.²⁰⁵ The ANC launched a boycott calling on black people to withhold their purchasing power – estimated to be a £400 million contribution to South Africa’s economy on an annual basis—from particular retail establishments and to stop buying potatoes in particular.²⁰⁶ The boycott’s slogan was “potatoes are blood-stained.”²⁰⁷

The boycott took off slowly, but it gained momentum after a series of protest marches at Johannesburg markets in June.²⁰⁸ As Muller writes, “Dressed in hessian sacks and with potato necklaces strung around their necks, boycott supporters paraded through the streets with banners stating: ‘Potatoes are produced with slave labour’ and ‘Don’t eat potatoes—Don’t buy chips.’”²⁰⁹ A *Golden City Post* reporter who visited a Johannesburg market in mid-June found

²⁰⁵ “Report of the National Executive Committee,” 473.

²⁰⁶ Muller, “Dealing with a Hot Potato,” 92.

²⁰⁷ “The Boycott Hits the Farmers Hard,” *Golden City Post*, Jun. 21, 1959, BPP, Box 31, Folder 136.

²⁰⁸ Muller, “Dealing with a Hot Potato,” 92.

²⁰⁹ *Ibid.*, 92 (citing “Boycott Parade with Necklaces of—Potatoes,” *The Star*, June 15, 1959, 3).

sacks of second- and third-grade potatoes piled high, with few buyers. One auctioneer told the reporter, “If this goes on for long the potatoes will rot in the sheds. Normally I sell between 300 and 500 pockets a day. Today I’ve sold less than 130.”²¹⁰ The boycott’s actual financial impact was disputed, however—predictably, the National Party and the Afrikaans press downplayed the protests and their impact, maintaining that they had only a minimal impact on sales, while the ANC and the liberal English press (notably the *Rand Daily Mail*) claimed that the boycott was highly effective.²¹¹ The *Rand Daily Mail* contradicted reports by the Potato Board that any dips in sales were due to a poor season that had resulted in less lower-grade potatoes (those sold to African consumers) on the market. The *Mail* reported that the Board had been buying large quantities of potatoes for export to help subsidize farmers and clear the surplus.²¹² The *Mail*’s account is supported by documents from the government’s Division of

²¹⁰ “The Boycott Hits the Farmers Hard,” 131.

²¹¹ Muller, “Dealing with a Hot Potato,” 92-93. See also, “Boycott on Potatoes Gets Stronger: ‘It has not cracked an inch,’ says official,” *The World*, July 11, 1959, BPP, Box 31, Folder 136 (“Reports that the potato boycott is breaking down are strongly denied by officials of the ANC in Johannesburg. After making a country-wide check, Mr. Alfred Nzo, an executive member of the ANC, said: ‘The boycott has not cracked an inch—in fact, it’s strengthening.’”).

²¹² Muller, “Dealing with a Hot Potato,” 93 (citing “Potato Board Buying Eases Selling,” *Rand Daily Mail*, June 24, 1959, 1).

Commodity Services, which show that the boycott had a direct impact on the Board's "stabilization scheme" by which the government subsidized lower-grade potatoes for sale in reserves and townships.²¹³ By the end of August, the oversupply of low-grade potatoes became a crisis and the Board proposed that a "buy one get one free" scheme be launched to encourage sales in black townships near Johannesburg and Pretoria.²¹⁴ The ANC called off the boycott on August 31, 1959, with Luthuli stating, "I hope those white farmers of South Africa who are guilty of treating their African workers in atrocious ways will repent ... [R]espect for moral standards of behavior demands this of them."²¹⁵

The next year would represent a turning point in the consolidation of apartheid and hard-line conservative National Party rule. Urban black African resistance had escalated dramatically in the late 1950s. Indeed, most accounts of this period overlook the Potato Boycott since it was overshadowed by shop floor strikes (between 1955-58, the number of industrial disputes and strikes doubled over the levels of five years earlier), protests against forced removals (particularly at the Cato Manor squatter settlement in Durban, beginning in early

²¹³ Ibid., 93.

²¹⁴ Ibid.

²¹⁵ Ibid. (citing "Potato Boycott is Over," *New Age*, Sept. 3, 1959, 1).

1959), local bus strikes, a hunger strike by nurses, and other protests – largely by women – aimed at prohibitions on the home brewing of beer and new policies around cattle dipping in rural areas.²¹⁶ In December 1959, the Pan-Africanist Congress (PAC) and the ANC launched national anti-pass campaigns.²¹⁷ The ANC's National Executive Committee declared that "the struggle against the pass system is in fact a struggle against the very roots of the entire system of cheap labour, exploitation and oppression of the African people."²¹⁸ The Sharpeville Massacre followed just three months later in March 1960; 67 black African demonstrators were killed, most of them shot in the back, and 186 others were wounded.²¹⁹ Images of police opening fire on crowds in Sharpeville brought the violence of apartheid to international attention in an unprecedented way. To quell the spread of protests to other parts of the country, the government declared a national state of emergency.²²⁰ South Africa withdrew from the Commonwealth and international confidence in its economic situation

²¹⁶ Posel, *Making of Apartheid*, 237; Karis and Carter, *From Protest to Challenge*, 291.

²¹⁷ Posel, *Making of Apartheid*, 237.

²¹⁸ "Report of the National Executive Committee of the ANC, Submitted to the Annual Conference, December 12-13, 1959," 471.

²¹⁹ Karis and Carter, *From Protest to Challenge*, 126, 334.

²²⁰ Posel, *Making of Apartheid*, 237.

plummeted; in 1960 South Africa's economy saw a net outflow of R180 million and its most severe balance of payments crisis since 1932.²²¹ On April 8, 1960, the government banned both the ANC and the PAC, declaring them unlawful organizations and thus making any organizing efforts on their part illegal.²²²

Crucially, the combination of urban protest and economic woes presented an excuse for greater national government intervention in the administration of local cities. As Posel writes in an unparalleled close study of this period, these interventions could have gone in multiple directions. Some reformers thought the government could best stabilize turbulent townships by fostering a black middle class in urban areas (through allowing greater freedom of movement and employment).²²³ At the beginning of April 1960, three senior Cabinet ministers quietly pressured Prime Minister Verwoerd to get rid of the pass system, but their request was overshadowed by a would-be assassin's attempt on his life on April 9.²²⁴ While Verwoerd was in the hospital recovering, one of the three

²²¹ Ibid. at 237-8. See also Karis and Carter, *From Protest to Challenge*, 335-6.

²²² Karis and Carter, *From Protest to Challenge*, 341.

²²³ Posel, *Making of Apartheid*, 239. See also Karis and Carter, *From Protest to Challenge*, 340.

²²⁴ Posel, *Making of Apartheid*, 238.

cabinet ministers who had pushed for an end to passbooks, Sauer, became acting Prime Minister. In that capacity he spoke out in favor of:

‘[A] new deal for the African’ by way of a far-reaching overhaul of the legislation affecting Africans in urban areas. ‘The old book of South African history was closed at Sharpeville a month ago,’ declared Sauer; ‘we must get rid of the pin-pricks which made the Native ripe for the propaganda of the PAC and ANC.’”²²⁵

Despite the fact that others within the National Party echoed Sauer’s calls for reform, a more conservative faction, constituted by Broederbond members, would win out.²²⁶

Instead of loosening restrictions on black Africans in urban areas, Verwoerd’s government would move in the opposite direction. The Broederbond, a secret society founded in 1918 dedicated to Afrikaner advancement, had grown immensely in size and influence over the course of the 1950s and it entered the forefront of political decision-making when Verwoerd became leader of the NP and Prime Minister in 1958.²²⁷ By the late 1950s, all three key decision-makers in the Department of Bantu Administration and Development (BAD) were members of the Bond (ie. Minister de Wet Nel, Deputy Minister

²²⁵ Ibid., 239.

²²⁶ Ibid., 241.

²²⁷ Ibid., 242 (stating that the Bond’s membership increased from 3,662 members in 260 cells in 1950 to 5,760 members in 409 cells in 1960).

Botha, and Secretary Eiselen). The South African Agricultural Union (SAAU) and many of its affiliated agricultural co-operatives were also thoroughly infiltrated by Broederbond members by 1960, to the frustration of some Afrikaner farmers who disapproved of the Bond.²²⁸ Broederbond members maintained a “tight grip” on agriculture by ensuring that fellow Broeders received better loans than non-Broeders, as co-operative officials were in charge of allocating tens of millions of pounds in loans allocated by the Land Bank.²²⁹ Soon after the Sharpeville Massacre, the SAAU’s Liaison Committee met with leading BAD Department officials to draft a bill that would extend the amount of state control over black Africans in urban areas.²³⁰ The “Bantu in European Areas Bill” was the most draconian measure drafted by BAD to date, and it sought to: give the Minister of BAD sole authority to stipulate the number of black people allowed in an urban area to meet its labor requirements; repeal removal exemptions for urban residents who had lived in the cities since before World War II; and rob local authorities of all power to set regulations regarding urban African

²²⁸ Ibid., 243-4.

²²⁹ Ibid., 244 (“In 1959 £32.5 million was loaned to farmers by the Land Bank, and £320,869 paid out for seed, fuel, etc.”).

²³⁰ Ibid., 244-5.

administration.²³¹ Although the bill failed due to opposition from organized commerce and industry, it was indicative of BAD's orientation and several of the proposals, including a wide expansion of BAD control over local administration, would be implemented in various ways over the next decade.²³² The agricultural sector would thus continue to exert influence over matters of urban administration, pass laws and influx control, and labor regulations. Their access to prison labor would also continue, albeit quietly and with some adjustments, into the next decade.

iv. The evolution of the prison labor system in the 1960s

After the prison farm labor scandal broke in 1959, the government made cosmetic changes to the prison labor system. These changes allowed the government to re-characterize the program in two respects. First, it portrayed the system as a "welfare" scheme, downplaying its punitive aspects and instead depicting it as an effort aimed at assisting black Africans who were out of work. Second, the government depicted the system as "contractual" rather than forced. The system was made to resemble a relationship between an employer and a

²³¹ Ibid., 245-7.

²³² Ibid., 248-9.

worker who freely chose to labor for a wage. Whether this exchange was actually free of coercion is highly doubtful, given that gross manipulations of the labor market remained in place and that potential laborers were contracting from captivity in police stations or other forms of custody. Between these two changes, the government was able to claim that a system of coerced prison labor no longer existed even though, as we shall see, the experience of the system for those caught up in it and detained on pass law violations changed little.

The 1959 prison farm labor scandal led to some changes, but mainly, parliament moved to push prisons out of the public eye in order to avoid similar public outcry in the future. Parliament passed the Prisons Act of 1959 to prevent any further publication of information about prisons or the use of prison labor on farms.²³³ This act was successful in shutting down further public inquiry or media coverage of the prison farm labor system. The reports of the investigatory committees appointed by Minister de Wet Nel were never published.²³⁴ Within

²³³ See Van Zyl Smit, *South African Prison Law*, 31 ("Section 44(f) of the new Act made it an offence to publish any false information on prisons or prisoners. For good measure the publication of photographs of prison conditions was banned as well."). See also Mihalik, "Restrictions on Prison Reporting."

²³⁴ See, e.g., Reproduction of *Rand Daily Mail* article dated Jan. 30, 1960, BPP Box 4, Folder 4 (reporting that Minister de Wet Nel had stated that the inter-departmental committee appointed the year before had finished its report, but that it had been decided to appoint a further committee with wider terms of reference. He stated that he thus

two months after the height of the 1959 scandal, the government Information Service declared that no system of coercive prison labor existed at all. According to a report in *The Star* from August 27:

There is no scheme in operation in South Africa whereby Bantu, whether convicted in a court of law or not, are compelled to work on farms, states the South African Information Service.

Bantu found guilty of minor offences and sentenced to short term imprisonment of less than four months may be released for farm work as paid wage earners, but only with the full and free consent of the individuals concerned.

Their accommodation on the farms is subject to periodic inspection by prison officials. Such prisoners are free agents while on parole. A farmer has no right to deprive them of their liberty of movement or to prevent them from terminating their services.

Bantu are not sent to farms in lieu of prosecution. The system may rightly be called a welfare scheme.²³⁵

The Information Service's statements reflected changes to the '9d a day scheme' and the 'inter-departmental scheme' which amounted to cosmetic changes, but that ultimately preserved both schemes. In order to legitimate the new versions

could not comply with an MP's request to share the first committee's report with parliament).

²³⁵ Reproduction of *The Star* article dated Aug. 27, 1959, BPP Box 4, Folder 4. The Department of Prisons made similar statements about the scheme to repudiate other allegations of forced farm labor, see, e.g., "Officials deny reports on prisons," *Rand Daily Mail*, Aug. 12, 1960, BPP Box 9, Folder 60 ("Repudiating the allegation about forced farm labour, the [Department of Prisons'] statement said that a parole system existed whereby short-term prisoners could voluntarily signify their willingness to undertake outside labour. These prisoners were paid for their work and their employers must provide them with food, accommodation and medical services, all under the supervision of prison authorities.").

of the schemes, the government reframed them as welfarist and contractual, rather than punitive and exploitative.

In line with this reframing, the 'inter-departmental scheme' morphed into a system of 'Aid Centres' and was described as a mode of welfare provision. Immediately after the scandal broke in 1959, the scheme was suspended for Africans born in South Africa; however, large numbers of foreign-born Africans (who had always been a substantial part of those sent to farms under the scheme) were still sent out to farmers. To correct the "technical" error conceded by de Wet Nel, new procedures required foreign-born Africans to be charged, tried, and sentenced. If found guilty, they were given documents stating that their presence in the urban area was illegal. They were forced to leave the town and had the choice of returning to their country of origin (at their own expense, which very few could afford) or seeking employment on a farm through the district labor bureau.²³⁶ Most Africans could not afford to pay for the trip to their country of origin and some had fines to pay off, resulting in their being forced to work on a farm.²³⁷

²³⁶ Cook, *Akin to Slavery*, 24.

²³⁷ Ibid.

In 1964, the government passed the Bantu Laws Administration Act, which provided a new legal basis for dealing with pass offenders—but which resembled the old ‘inter-departmental scheme’ quite closely.²³⁸ The “new system” was implemented through the Aid Centres and was presented as a means of helping black South Africans or residents of Bantustans whose documents were not in order. The program gave statutory authority to the procedures that had previously taken place outside the law. Though portrayed as centers of assistance, the Aid Centres had tremendous authority to arrest and detain individuals.²³⁹ Yet even though the centers had taken over many functions that the courts had previously carried out, they were not considered judicial bodies. The experiences and consequences were similar to being processed through the criminal legal system, but the procedures were described euphemistically. As Cook explains:

Instead of the procedure whereby the police were instructed to hand pass offenders directly to the employment officer of the district labour bureau, the new machinery provided for the police to ‘admit’ or ‘refer’ Africans directly to the centres, or to transfer them to centres from police cells or prisons. Africans would not be ‘detained’ at the centres, but would be ‘kept’ there. But as the Deputy Minister explained, if they should decide to

²³⁸ Ibid.

²³⁹ Hindson, *Pass Controls*, 71.

run away they would do so at their own risk, being liable to arrest by the police.²⁴⁰

While the Aid Centres reduced the number of people sent to courts on technical violations, the process and outcomes were remarkably similar to those under the 'inter-departmental' scheme.

The '9d a day scheme' became a system of 'parole' whereby prisoners could enter into contracts directly with farmers. The government publicized it as a sort of "new deal" for forced laborers.²⁴¹ The official purpose of the parole scheme was the same as that of the '9d a day scheme,' which was to keep short-term offenders out of prisons. Van Zyl Smit highlights the government's "conscious attempt to (re-)legitimize the system" by invoking international ideas and standards.²⁴² He writes, "Parole, as a concept, was, of course, internationally acceptable, but what parole meant in this case was something very different. Short-term African prisoners were given the choice of being granted parole if they entered into a strict contract of employment with a farmer. Failure to remain in employment automatically meant that their 'parole' was revoked."²⁴³

²⁴⁰ Cook, *Akin to Slavery*, 24-5.

²⁴¹ *Ibid.*, 20.

²⁴² van Zyl Smit, *South African Prison Law*, 31.

²⁴³ *Ibid.*

In practice, the parole system operated much as the '9d a day scheme' had. Corry describes the parole system as follows:

The essence of the scheme is that immediately after being sentenced prisoners are asked if they would rather serve their sentence in prison or be released on parole to work for a private person at market wages. The majority of prisoners opt for parole. A standard contract is entered into between the employer and the parolee which states that the employer must be responsible for the food, clothing and shelter of the prisoner and on expiry of the parole period the prisoner must be returned to the prison. In addition the employer must pay the parolee the current market wages in his particular district. The maximum hours of work are stipulated as being ten per day. The employer has no right of restraint over the parolee who can leave the employment and return to prison if he wants to do so.²⁴⁴

Although the employer technically had no right to keep the laborer on his farm against his will, the laborer's only other option under the terms of the contract was to return to prison. While systems of parole in other countries often included conditions for remaining on release, this system of totalized control was far outside the norm. Whereas other systems were focused on rehabilitative aims and transitioning people out of their term of punishment, this system, like its previous incarnation, had labor provision at its core.

After repeated requests to multiple officials, journalist Benjamin Pogrund obtained a copy of the provisions and contract for the release of short-term

²⁴⁴ Corry, *Prison Labour*, 159-60.

prisoners on parole from the Commissioner of Prisons, V. R. Verster, in June 1962.²⁴⁵ The provisions stated that, as of January 1, 1960, prisoners sentenced for up to and including four months could be released on parole subject to certain conditions.²⁴⁶ Officers and members of the Prison Service were authorized to release black male prisoners on parole, but the release of white prisoners (male and female) and non-white female prisoners required the approval of the Prison Board.²⁴⁷ Among other provisions, the document on the release of short-term prisoners on parole stated that prisoners could be placed in the employment of white as well as non-white persons, “on the distinct understanding, however, that a white prisoner shall not be placed in the employment of a non-white person.”²⁴⁸ The document also stipulated that employers were to pay a wage of 20 cents per day to white laborers and 10 cents per day to non-white laborers, although it is unclear how often white men and women were actually paroled to employers. This was consistent with the long-standing racial differentiation in

²⁴⁵ Letter from Commissioner of Prisons V. R. Verster to Benjamin Pogrund, Jun. 26, 1962, BPP Box 9, Folder 60.

²⁴⁶ “Provisions and contract: ‘Short Term Prisoners: Release on Parole,’” BPP Box 4, Folder 4.

²⁴⁷ *Ibid.*

²⁴⁸ *Ibid.*

prison labor that allowed for black men to be leased for “outside work” while white prisoners remained within the prison walls to labor in workshops (more often gaining a skill that could serve them after release). The document set out conditions applicable to the employer and the parolee, emphasizing that the parolee must give their consent to be released to work for the employer. The contract resembled other employment contracts, but specified that “although a parolee should otherwise be treated as an ordinary free employee he may not leave the service of his employer during the period of parole.”²⁴⁹

In June 1960, the *Star Express* newspaper reported that a new wave of forced labor had broken out in a farming area south of Johannesburg. The paper’s inquiry into farm labour and cruelty to workers revealed that “some farmers take advantage of influx control laws to obtain ‘sweat’ labour.”²⁵⁰ It stated that workers were afraid to report these cases because, due to influx control laws in cities, they had nowhere to go if they were kicked off farms. The paper reported that farmers were using this vulnerability to their advantage.²⁵¹ Dr. T.S. van Rooyen, acting chief information officer of the BAD department, told

²⁴⁹ Ibid.

²⁵⁰ Reproduction of *S. Express* article dated Jun. 26, 1960, BPP Box 4, Folder 4.

²⁵¹ Ibid.

the reporter that the department was taking a serious view of the situation: "A few farmers are taking advantage of the influx control laws. Our inspectors are misled by Natives who, under threats, will not give a true report. When guilty farmers are found they will be 'blacklisted.' We will not help them to get workers."²⁵² Despite this strong rhetoric, few farmers were actually blacklisted.

The next several years would see a cycle of farmers panicking about potential labor shortages and the government rushing to "help them to get workers," to use van Rooyen's phrasing. In February 1961, 500 Transvaal farmers met in Pretoria at a conference called by the Transvaal Agricultural Union to discuss ways to retain African farm laborers. The *Rand Daily Mail* reported that farmers were "worried at the rate at which farm workers emigrate to the cities to work for shorter hours and higher wages."²⁵³ The farmers were said to be meeting to discuss ways to develop a stable labor force; among the matters to be discussed were housing on farms, education, wages, and leave privileges.²⁵⁴ According to the paper, "Farmers fear that if conditions are not improved an

²⁵² Ibid.

²⁵³ Reproduction of *Rand Daily Mail* article dated Feb. 21, 1961, BPP Box 4, Folder 4.

²⁵⁴ Ibid.

acute shortage of labour could develop.”²⁵⁵ In June, the *Sunday Times* reported that Transvaal Agricultural Union officials were cooperating with the BAD Department in an intensive drive to make all farmers fully aware of their legal obligations as employers of farm labour. This included sending pamphlets about these legal obligations to all district and local unions of the TAU.²⁵⁶ Efforts to bring labor conditions up to a standard that would be more appealing to workers and that would be more similar across employers was one part of ensuring against a labor shortage, but securing prison labor was still a widely used strategy.

In January 1962, *The Star* reported that the Bethal farming district (the site of a well-publicized farm labor scandal in 1949) hosted nine farm prisons. The prisons supplied about 2,000 laborers to surrounding farms.²⁵⁷ The next year, the *Sunday Times* reported, “Many farmers in the Western Cape want more farm prisons—they are relying more and more on jail labour, and the authorities cannot meet demand.”²⁵⁸ Farmers’ profit motive seemed to be driving the

²⁵⁵ Ibid.

²⁵⁶ Reproduction of *Sunday Times* article dated Jun. 26, 1961, BPP Box 4, Folder 4.

²⁵⁷ Reproduction of *The Star* article dated Jan. 9, 1962, BPP Box 4, Folder 4.

²⁵⁸ Reproduction of *Sunday Times* article BPP Box 4, Folder 4.

construction of rural farm prisons as much as ever, and the authorities could not keep up with the demand for incarceration and the resulting captive labor force. While the balance between government and private interests was more equal in the past, by 1962, the demand from farmers seems to have outstripped the state's capacity to supply.

In mid-1964, the government reached another solution. Parliament passed legislation that provided that farmers could request the Minister of BAD to abolish the tenant labor system in their area.²⁵⁹ This allowed for the large-scale removal of labour tenants from areas in order to artificially decrease the labour supply and ensure that those who remained did not enjoy the same autonomy as labour tenants. The *Rand Daily Mail* reported that "[t]he Government is ready to implement its plan to move thousands of African squatter families of platteland farms to the African areas According to the SA Agricultural Union, which supports the removal of squatters, requests from farmers have already been received by the Minister."²⁶⁰ At the same time, farmers in the Western Cape had found another way to cope with potential labor shortages – trading convict labor on the black market. In November 1965, *The Star* reported on the emergence of

²⁵⁹ Reproduction of *Rand Daily Mail* article dated Jul. 28, 1964, BPP Box 4, Folder 4.

²⁶⁰ *Ibid.*

this black market: "A Wellington wine farmer, Mr. H. N. Brink, alleged here today that there was a black market in convict labour among farmers in the Western Province. He said it could cost as much as R1,200 to persuade a farmer with surplus convict labour to lend one out."²⁶¹ This rate chimes with other estimates of the profit that white farmers stood to gain for employing prison labor. As Corry writes, in 1965 the right to employ prison labor in the Western Cape was valued at R1,000 per convict.²⁶²

Benjamin Pogrund wrote to MP Helen Suzman in late 1966 asking for her help in discerning the present extent of the farm labor system. He attached lists of questions that he hoped she could raise on the parliament floor, along with excerpts from newspaper articles that he had collected on relevant matters. From his own investigations, he had determined that there were likely five categories of farm labor at that time in South Africa:

- 1) Farm jails;
- 2) The parole system whereby prisoners go out daily from jail;
- 3) The BAD Department's farm labour scheme;
- 4) Ordinary farm workers; and

²⁶¹ Reproduction of *The Star* article dated Nov. 11, 1965, BPP Box 4, Folder 4.

²⁶² Corry, *Prison Labour*, 157.

5) The squatter system.²⁶³

Although farmers' use of coerced labor received far less attention after the scandal and subsequent cosmetic reformers of 1959-60, Pogrund was quite right that these systems continued unabated five years later. Pogrund and others had also conducted interviews with prisoners and former prisoners as part of their investigations on prison conditions. In an interview from 1965, a 31-year-old prison farm laborer named Amos Mosidi described his experiences:

I was convicted on a charge of theft.

I served two weeks at Modder B. and six weeks at Jacobson's Farm, Belfast.

I was among prisoners who were sold from Modder B. to Mr. Jacobson, a farmer in Belfast.

While I was at Modder B., I made a complaint to a White warder that I could not work as I suffered from kidney trouble.

The warder ignored me and, instead, ordered me to go and work with a 'span.' I thought I would die that day, because of pains.

When I could not work any further, I made another complaint. This, too, was ignored.

When I arrived at Jacobson's farm, I repeatedly made complaints to Mr. Jacobson himself, who told me: 'Ek het nie medisiene om jou to gee.'

During the six weeks I spent on the farm as a dying man, I was never taken to the hospital or a doctor. Instead, I was confined to bed for three days when it became evidence [sic] to Mr. Jacobson that I was on the verge of death.

When healthy, I did my work well, starting at 2 a.m. to 8 a.m. and from 2 p.m. to 6 p.m. For services renders [sic], I was rewarded with a khakhi shirt. I was released in August, 1965. I am still not feeling well.²⁶⁴

²⁶³ Benjamin Pogrund letter to Helen Suzman, Oct. 3, 1966, BPP Box 4, Folder 4.

²⁶⁴ Statement of Amos Mosidi (1965) BPP Box 10, Folder 69.

Mosidi's account stands in stark contrast to the government's framing of the scheme as welfarist and voluntary. The description of being "sold" to the farmer remains, an echo of the language used to describe previous prison labor schemes—in her 1959 exposé, Ruth First described how common that phrase was among black people whose husbands, sons, fathers, or neighbors had left in the morning and did not return at night.²⁶⁵ There is no sense that this was a voluntary decision, or a relationship governed by contract. The farmer made no effort to seek medical treatment, as required under the contract provisions for short-term laborers established in 1960.²⁶⁶ Mosidi's labor appears to have cost the farmer the equivalent of slave labor.

Corry offers a rare glimpse into the parole labor system of the early 1970s; by that time, objections remained that the system allowed farmers to access labor at exploitative rates and that it was liable to abuse.²⁶⁷ In 1971, the system received harsh criticism after a paroled prisoner was beaten to death by his employer.

²⁶⁵ First, *Exposure!*, 3.

²⁶⁶ Section 11(b) provides: "An employer shall provide the parolee, who is ill or has been injured, with the necessary medical and hospital treatment applicable to ordinary workers or employers and is responsible for any costs incurred in connection with any such medical and hospital treatment." "Provisions and contract: 'Short Term Prisoners: Release on Parole,'" BPP Box 4, Folder 4.

²⁶⁷ Corry, *Prison Labour*, 160.

Oversight of the system was lax, and in some cases prisoners were released on parole to farmers whom the Prison Department had blacklisted under the '9d per day scheme' because of their poor employment conditions.²⁶⁸ The judge presiding over the case of the farmer who had killed his employee also criticized the employment contract used by the Department of Prisons as being so full of errors that some phrases did not make sense.²⁶⁹ As a result of the criticisms, the Department increased its supervision and during 1972 it carried out 357 inspections; however, these visits were not numerous enough to adequately supervise the conditions of the 124,648 prisoners released on parole that year.²⁷⁰

In 1980, the liberal South African Institute of Race Relations included in its annual survey of race relations the case of a northern Transvaal farmer accused of routinely beating up naked parolee prisoners upon their arrival at his farm. The farmer testified that no less than 4,000 parolee prisoners had worked on his farm between 1972 and 1977, and that he fetched them from as far away as Modderbee Prison in Benoni.²⁷¹ The use of prison labor on private farms would

²⁶⁸ Ibid.

²⁶⁹ Ibid.

²⁷⁰ Ibid.

²⁷¹ Mihalik, "Restrictions on Prison Reporting," 408. Citing SAIRR, *A Survey of Race Relations in South Africa* (1980), 239.

continue until 1988.²⁷² The last prison outstations on farms were closed, at least in part, due to international pressure; South Africa was warned that it was a contravention of the General Agreement on Tariffs and Trade (GATT) to export goods produced by forced labor.²⁷³ However, an Africa Watch study published in the final year of apartheid found that people were still being released on parole to work in private sector businesses with little or no remuneration.²⁷⁴ As for the pass laws, the apartheid government finally abolished the pass system in 1986, but this hardly meant relief from repression and arrests for black people in urban areas as trespass, illegal squatting, and vagrancy laws were still used to hinder movement.²⁷⁵

v. Conclusion

²⁷² Chris Giffard, *Out of Step?: The Transformation Process in the South African Department of Correctional Services*, University of Cape Town Institute of Criminology Occasional Paper (1999), 28 (citing forthcoming version of Dirk Van Zyl Smit, "Change and Continuity in South African Prisons," in eds., Robert Weiss and Nigel South, *Comparing Prison Systems* [Amsterdam: Gordon and Breach, 1997]).

²⁷³ *Ibid.*

²⁷⁴ Africa Watch, *Prison Conditions in South Africa* (New York: Human Rights Watch, 1994), 63.

²⁷⁵ "Pretoria Pass Law Dies, but Spirit Lives," *New York Times*, Jun. 27, 1988.

As we have seen, incarceration and the use of prison labor played a larger role in apartheid than historians have imagined. In this brief concluding section, I will discuss some of the implications this may carry for South African historiography and for reforms in South Africa today.²⁷⁶ I will offer some provisional answers to the question: How does recasting pass laws within the history of prisons and agricultural development help us re-think the history of apartheid, and the relationship between urban and rural areas under apartheid? Although I can foresee several potential answers, I hope that further research into the continuum that stretched from apartheid city streets through jails and prisons to rural plantations will open up more lines of inquiry still.

This history of pass laws reveals that the influence of the agricultural sector on the policies that entrenched segregation and apartheid—in both rural and urban areas—was more extensive than many historians have thought. This carries implications for the farm labor system in South Africa today, and may help us better understand the direction of post-apartheid reforms to the rural agricultural sector—or, more precisely, the lack of reforms in this area. In general, post-apartheid reforms have been heavily biased toward improving life and decreasing segregation in urban areas. While the government and policy

²⁷⁶ For a fuller discussion, see chapter six.

advocates have made much of the need to “remake the apartheid city,” their conceptions of how cities have related to rural areas in the past and the need for reforms that target change in both areas have been rather thin. As discussed in chapter one, there remains a stark delineation between “urban” issues (i.e. housing and utility service delivery) and “rural” issues (i.e. land reform, tenure security, working conditions on farms). Overall, there is very little sense of the power the agricultural lobby has wielded in shaping both the urban and rural spheres in modern South Africa.

Although the pass law system and prison farm labor schemes ended in the last years of apartheid, the historical relationships, power relations, and economic interests that fostered their existence and benefitted from them have remained remarkably well-preserved despite the democratic transition. For this reason, among others, historical research on these interests and institutions and on the interconnections between rural and urban areas under apartheid has much to offer debates about how to approach more far-reaching reforms today. Similarly, a renewed focus on pass laws that situates them within a broader fabric of police, courts, jails, prisons, and rural labor markets may also highlight the extent of reform needs in the areas of prisons and criminal procedure. As I have argued, criminalization and imprisonment helped bring about cheap labor

markets in modern South Africa and, later, helped manipulate them; since the country continues to be characterized by racialized dispossession and labor relationships marked by degradation, historians, political economists, and legal scholars would do well to better understand the breadth of institutions—some urban, some rural, but most that blur these lines—that brought about the South Africa present.

CHAPTER THREE:

'A disciplining method for holding standards down':
The World Bank, Urban Planning, and South Africa's Transition from Apartheid

On April 30, 2008 the Johannesburg High Court ruled that prepaid water meters, which had been installed in poor townships in Soweto beginning in 2004, were a violation of South Africans' constitutional right to access to sufficient water. Judge MP Tsoka ruled in favor of five residents of Soweto's Phiri township who had filed suit against the City of Johannesburg and Johannesburg Water. The city had launched Operation Gcin'amanzi ('Save Water' in Zulu) in 2001, in an attempt to reduce unaccounted water use in the city's poorest districts. City officials had argued that poor township districts were wasting water because of their decrepit apartheid-era water infrastructure. In 2006, Operation Gcin'amanzi received a R320-million loan from the French Development Agency to complete installation of pre-paid water meters in Soweto.²⁷⁷ The city had hired a French multinational corporation, Suez, to install the meters, which automatically disconnected water supply after residents consumed a free allocation (of 25 liters per person per day, or the equivalent of two toilet flushes per day for a household of eight). Beyond the allotted amount,

²⁷⁷ Tammy O'Reilly, "French PM lights the flame of freedom," Media Release, Johannesburg Development Agency, Dec. 7, 2006.

the resident had to pay in advance for water. Although prepaid water meters were outlawed in Britain in 1998 because of public health concerns, South Africa sought to become a model for the technology – with an eye toward expanding its use on the African continent.²⁷⁸

Beginning in 2004 township residents were forced either to accept the prepaid meters or to face total disconnection from the city's water supply (Lindiwe Mazibuko initially chose the latter option and, for seven months, resorted to walking three kilometers to obtain water from a reservoir). Residents in wealthier areas, with far larger water consumption rates, faced no such restrictions. Judge Tsoka highlighted the discriminatory nature of the municipality's provision of water in his judgment, finding that:

The underlying basis for the introduction of prepayment meters seems to me to be credit control. If this is true, I am unable to understand why this credit control is only suitable in the historically poor black areas and not the historically rich white areas. Bad payers cannot be described in terms of colour or geographical area. There may be as many bad customers in the historically rich white areas as they [sic] are in the historically poor black areas. Bad debt is a human problem not a racial problem.²⁷⁹

²⁷⁸ See Greg Ruiters, "Social Control and Social Welfare Under Neoliberalism in South African Cities: Contradictions in Free Basic Water," in *Cities in Contemporary Africa*, ed. Martin J. Murray and Garth A. Myers (New York: Palgrave Macmillan, 2006); Antina Von Schnitzler, "Citizenship Prepaid: Water, Calculability, and Techno-Politics in South Africa," *Journal of Southern African Studies*, 34(4) (2008): 899-917.

²⁷⁹ *Mazibuko and Others v. City of Johannesburg and Others*, High Court of South Africa, Witwatersrand Local Division (2008), 59.

Citing Phiri residents' poverty, high incidence of HIV and AIDS, and their reliance upon state pensions and grants to make ends meet, Judge Tsoka ruled that the city must provide Phiri residents with 50 free liters of water per person per day and give them the option of an ordinary credit-metered water supply. He argued that increasing the free water supply would not strain the city's water and financial resources, especially if free basic water already supplied to rich households were redistributed to the poor through cross-subsidization of water tariffs. The city appealed Judge Tsoka's decision to the Supreme Court of Appeal and the Constitutional Court. Ultimately, the country's highest court ruled that pre-paid meters were consistent with the Constitution. In a blow to the Phiri residents, the Court held that Johannesburg's free water allocation was reasonable and that prepaid meters were introduced in a manner that was lawful, procedurally fair, and not unfairly discriminatory.²⁸⁰

The Phiri case—the first ever to deal explicitly with the right to water—was the latest development in post-apartheid battles over the provision of housing and 'basic services' such as water and electricity. After the African National Congress came to power in 1994, millions of people were hooked up to water, electricity, and phone lines within a few years. Millions, however, were

²⁸⁰ *Mazibuko and Others v. City of Johannesburg and Others*, 2009. Constitutional Court of South Africa. (CCT 39/09).

later disconnected for being unable to pay their bills. At least 40 percent of new phone lines were out of service by 2003 and ten million people had been disconnected from water.²⁸¹ Municipalities' moves to privatize service provision and implement 'cost-recovery' mechanisms – with prepaid water meters as the most extreme example – gave rise to a number of social movements beginning in 1999, including Johannesburg's Anti-Privatisation Forum.²⁸² Minister for Safety and Security Charles Nqakula reported that there were more than 6,000 recorded protests across the country in the 2004/2005 financial year.²⁸³ Quieter protests abounded as well; some people disconnected their prepaid water meters and reconnected their households and neighborhoods to the city, circumventing the meters. Others reconnected their electricity following cut-offs.²⁸⁴ Of course,

²⁸¹ David McDonald, "Water: Attack the Problem Not the Data," *Sunday Independent*, Mar. 11, 2003. See also David McDonald and John Pape, *Cost Recovery and the Crisis of Service Delivery in South Africa* (Cape Town: HSRC Publishers, 2002).

²⁸² See e.g., Richard Ballard et al., *Voices of Protest: Social Movements in Post-apartheid South Africa* (Durban: University of KwaZulu-Natal Press, 2006). See also Steven Robins. *From Revolution to Rights in South Africa: Social Movements, NGOs & Popular Politics after Apartheid* (Suffolk: James Curry Press, 2008), 20 .

²⁸³ Simon Delaney, "Amandla!: Protest in the new South Africa," Freedom of Expression Institute, May 15, 2007.

²⁸⁴ See e.g., Ruiters, "Social control and social welfare;" Ronnie Kasrils (Minister of Water Affairs and Forestry), "A decade of delivery: The water sector in South Africa," Speech delivered at Solidarity conference, London, Oct. (2003).

battles over urban governance and service provision were not new to South Africa; rent boycotts and calls for 'one city, one tax base' were key features of urban anti-apartheid activism from the mid-1980s.

The ANC's approach to urban governance and service provision aimed to overcome the spatial inequalities created by apartheid legislation. However, by adopting a range of techniques circulating at the international level, the ANC's approach rapidly became a model for 'public-private partnerships.' The story of how private sector-led shelter and service provision became viable options—while more direct state-led attempts at redistribution fell off the policy agenda—reveals much about the structuring of urban space, permissible claims, and political demands at the turn of the 21st century. In South Africa and many other countries in the Global South, the World Bank had a large role in shaping the direction of urban governance and in framing the ideal relationship between states, markets, and citizens. This chapter will examine such framing processes through the World Bank's trial-and-error efforts at urban assistance in the 1970s and 1980s. Specifically, I will trace the Bank's arguments about the ideal role of the state in housing and service provision. Over this period the World Bank encouraged governments to withdraw from providing public housing directly, and to instead act as an 'enabler' of market forces. The 'urban poor' were thus

encouraged to construct 'self-help housing' through the Bank's sites and services and slum upgrading approach.

This chapter draws on World Bank internal memoranda, mission reports, and staff reviews found in the archives of Michael Cohen, a head staffer in the World Bank's urban division from 1972-1999, as well as on speeches and publications.²⁸⁵ In contrast to other studies of public housing, urban assistance, and the role of international financial institutions, my study seeks to clarify the World Bank's self-conceptions, rather than focusing solely on the outcomes of its actions. My inquiry is guided by the following questions: How was the relationship between the post-colonial state, market, and its citizens envisioned within the Bank? What was the state's projected role as 'enabler' of market forces and the private sector meant to involve? Though focused on the 1970s and 80s, the chapter will conclude with a brief discussion of South Africa in the early 1990s, when the World Bank (after two decades of practice in promoting

²⁸⁵ The Cohen Archives are located in the New School University's Graduate Program in International Affairs office (New York City). Cohen joined the faculty at the New School in 2001, and brought his personal archive of published and unpublished World Bank materials, including reports, conference proceedings, budget documents, staff reviews and correspondence. He has made the material available for research purposes. During his tenure at the World Bank, he worked in over 50 countries and was responsible for much of the bank's urban policy development between 1972 and 1999. From 1994-98, he served as the senior advisor to the bank's vice-president for Environmentally Sustainable Development. Cohen has published widely on urban policy and economic development.

privatized land and housing markets) counseled the African National Congress on its post-apartheid policies. The ANC's adoption of these policies has resulted in explosive confrontations with civil society activists who hold alternative visions of the role of the state in housing and service provision.

The World Bank started to focus on urbanization and urban development in the late 1960s, paralleling a rising interest in urban space among social theorists. Beginning in 1970 with the publication of Henri Lefebvre's *The Urban Revolution*, scholars began to theorize urban space and urban society as conceptual units in their own right. Contesting Marxist scholarship that focused on the shift from an agricultural to an industrial world, Lefebvre argued that an additional transition had occurred—from an industrial to an urban world—and that this shift had ushered in profound changes in social organization. Before 1970, urban research in sociology and other social sciences had been largely descriptive, and research was usually framed in a technocratic fashion in order to meet the needs of housing and urban development policy.²⁸⁶ In this chapter, I approach the assumed divide between theoretical and technocratic approaches to urban space differently. My analysis of the World Bank's urban assistance

²⁸⁶ See Neil Smith, "Foreward," in Henri Lefebvre, *The Urban Revolution* (Minneapolis: University of Minnesota Press, 2003).

projects focuses on understanding the theory implicit in such technocratic approaches, and how these theories have shaped urban possibilities by altering the way people think about the relationship between states and markets. My approach draws upon the work of scholars who have theorized the role of experts and expert knowledge in producing political and economic subjectivities.²⁸⁷ I will conclude with a discussion of how the African National Congress in South Africa relied upon such expert knowledge from the World Bank to construct a more palatable narrative of the post-apartheid economy. The narrative relied on advice from the World Bank that was based on the bank's experiences in urban assistance elsewhere on the continent and in other parts of the world.

Existing literature on the World Bank and its policies is polarized. The bank itself has published thousands of reports, policy papers, and other documents reflecting upon its mission and direction. Critics—and there are many—have savaged the bank, particularly after its forays into structural adjustment beginning in the 1980s.²⁸⁸ For all their differences, both Bank

²⁸⁷ Julia Elyachar, *Markets of Dispossession*; Timothy Mitchell, "The Work of Economics: How a Discipline Makes Its World," *European Journal of Sociology* 46 (2005); Timothy Mitchell, *Rule of Experts*; James Ferguson, *The Anti-Politics Machine*.

²⁸⁸ See, e.g., Patrick Bond, *Looting Africa: The Economics of Exploitation* (London: Zed Books, 2006); William Easterly, "What Did Structural Adjustment Adjust? The

publications and the writings of critics tend to obscure the evolving relationship between what the bank set out to do, what it in fact did, and what it then had to say about its actions. The bank was indeed part of an effort to remake the relationship between states, markets, and citizens. But bank officials constantly traversed a wide gap between ideology and practice; this gap was particularly pronounced in the case of mission staff who were in charge of implementing bank policy in any given country. The World Bank often talked up a neoliberal approach, but its walk was sometimes more of a Keynesian stumble—revealing an awareness that the ‘free market’ is rarely ever free (or self-regulating), and that attempts to ‘jumpstart’ it often necessitate continued intervention.²⁸⁹ Such contradictions have been rife at the bank. For instance, neoliberal calls for the state to bow to private-sector service provision sometimes entailed voucher systems or other forms of government subsidy to ‘enable markets to work’ on

Association of Policies and Growth with Repeated IMF and World Bank Adjustment Loans,” *Journal of Development Economics* 76 (2005), 1-22; Thandika Mkandawire and Charles Soludo, *Our Continent, Our Future: African Perspectives on Structural Adjustment* (Ottawa: IDRC Books, 1999); Adebayo Olukoshi, *The Elusive Prince of Denmark: Structural Adjustment and the Crisis of Governance in Africa* (Uppsala: Nordiska Afrikainstitutet, 1998); John Walton and David Seddon, *Free Markets and Food Riots: The Politics of Global Adjustment* (Oxford: Blackwell, 1994).

²⁸⁹ Witness, for example, the United States and European Union—staunch proponents of free trade—sustaining their dominance in global agricultural markets through subsidies to their own farmers.

their own. And calls to minimize state intervention have often, in practice, resulted in bloated bureaucracies needed to manage unwieldy bank projects and to oversee cost recovery.²⁹⁰ On the other hand, the displacement of local public servants by World Bank consultants and by bank mandates that governments cut costs through payroll cuts has been significant. Given the scale and scope of the World Bank's operations, it is worth understanding this disconnect between ideology and practice. The bank has attained a reputation as a polished neo-colonial enterprise despite its daily actions, which look much more like over-confident games of trial-and-error – with devastatingly high stakes. Nonetheless, the bank has managed to influence the relationship between governments and their citizens by reframing entitlements. Understanding the World Bank's framing is essential to understanding the constraints it places upon current modes of political engagement.

In examining accounts of Bank practitioners (some of which are discussed publicly for the first time in this study), the tensions between neoliberal theories

²⁹⁰ As John Campbell put it in his study of the bank's urban shelter projects in East Africa, "Bank projects appear to have called forth, if not a proliferation, then an expansion of bureaucracy as new and more complicated regulations are required to administer the scale and type of projects it sponsors. The result has been to reinforce the power and patronage of the state over the poor." John Campbell, "World Bank Urban Shelter Projects in East Africa: Matching Needs with Appropriate Responses?," in *Housing Africa's Urban Poor*, ed. Philip Amis and Peter Lloyd (Manchester: Manchester University Press, 1990), 213.

of urban development and the frustrations of implementing such theories come squarely into focus. Pure utopian accounts of how the market should be able to provide for the poor while reducing the burden on the state were forced to give way to practical realities. Within the bank, staff who recognized the failure of the neoliberal model saw a need for states to underpin markets while at the same time subduing popular aspirations for development. The gap between theory and implementation was thus filled by an explicit plan to hold standards down and to depress expectations. Although bank practitioners were constantly forced to navigate the gap between theory and practice—and between popular expectations and outcomes—throughout the 1970s and 1980s, the prominent account of the bank during this period is of a self-confident neoliberal institution. In contrast, this article explores the relationship between the recognition of the practical inadequacies of the market's ability to 'deliver' to the poor and the resulting need to dampen popular expectations and radically reframe entitlements.

First, some background on the World Bank. While the bank is typically associated with lending to 'developing' countries, this was not its original remit. The Bank was established in July 1944 during a conference of 44 countries in Bretton Woods, New Hampshire. The United States government had been

drafting plans for new international financial institutions for the post-war era since it entered the war in 1941.²⁹¹ The architects of these institutions sought to stabilize the global capitalist system and prevent a situation like that following the 1929 stock market crash in which countries like France, Belgium, Italy, and Great Britain were unable to repay their external debts to the United States.²⁹² It was thought that providing public capital through a number of public, multilateral institutions would mitigate the risk of private international investments.²⁹³ Officially called the International Bank for Reconstruction and Development, the bank focused overwhelmingly on rebuilding Europe after the war. Between 1946 and 1948 the bank granted over \$500 million to countries in Western Europe, and granted just one loan to a developing country.²⁹⁴

In 1947-48 senior World Bank officials took several steps toward surveying developing countries and determining a potential role for the bank in

²⁹¹ See Eric Toussaint, *The World Bank: A Critical Primer* (London: Pluto, 2008), 9-10; Christopher Gilbert et al., "Positioning the World Bank," *The Economic Journal* 109 (459) (1999): F598-F633; Louis Galambos et al., "Organizing and Reorganizing the World Bank, 1946-1972: A Comparative Perspective," *The Business History Review*, 69 (2) (1995).

²⁹² Toussaint, *The World Bank*, 10.

²⁹³ *Ibid.*, 13.

²⁹⁴ *Ibid.*, 19. See also Devesh Kapur et al., *The World Bank: Its First Half Century* (Washington DC: Brookings Institution Press, 1997), 71, 78.

development lending. Officials conducted survey missions in several countries (mainly in Central and South America) and began project discussions with officials in 20 countries.²⁹⁵ By the end of 1948 the bank had published its first income estimates for different parts of the world, showing that per capita income in 'highly developed countries' in North American and Europe was over ten times that in most 'underdeveloped' countries.²⁹⁶ The Chinese revolution of 1949 further encouraged bank officials to incorporate an 'under-development' dimension into the bank's work, as a means for combatting what they saw as the rising threat of Communism.²⁹⁷ The bank's *Fourth Annual Report*, published in September 1949, expressed a newfound commitment to 'economic development.'²⁹⁸

The bank began lending money at high interest rates to developing countries for specific projects such as roads, port infrastructure, dams, and agricultural projects.²⁹⁹ Until 1962 the bank did not grant a single loan for a

²⁹⁵ Kapur et al., *The World Bank*, 83.

²⁹⁶ Ibid.

²⁹⁷ Toussaint, *The World Bank*, 19-20.

²⁹⁸ Kapur et al., *The World Bank*, 83.

²⁹⁹ Toussaint, *The World Bank*, 21.

school, health unit, drainage system or drinking water conveyance.³⁰⁰ The bank tried to ensure that its projects would be profitable and that money spent on infrastructure projects would go to companies based in industrialized countries. Based on the World Bank's own annual figures, in its first 17 years more than 93 per cent of the money lent came back each year to the most industrialized countries in the form of purchases of goods and services.³⁰¹ The World Bank stopped making such figures public after 1962 when it became less politically palatable to boast about how much international aid was flowing right back to the United States and Western Europe.³⁰²

Beginning in the early 1970s, the World Bank and other international agencies began to focus on housing and shelter provision as key elements in what they called 'urban assistance' programs. The scale of these urban assistance projects and the extent to which they sought to remake municipal governance was staggering. As Michael Cohen, former head of the World Bank's urban division, wrote in a 2001 article that took stock of the Bank's urban assistance programs:

³⁰⁰ Ibid.

³⁰¹ Ibid., 22.

³⁰² Ibid.

Ten thousand urban centres in more than 150 countries received international aid. ... From the Bank, projects, plans, investments, research and loans were used to mobilize and leverage local resources to provide needed housing, water supply, sanitation, transportation, environmental management, education, social services and community development. Some US \$60 billion was transferred to these urban areas, in most cases through their national governments. The primary objective was to alleviate poverty...³⁰³

A key element of bilateral and multilateral agencies' shift toward shelter provision and urban poverty alleviation was the construction of the role of the state as an 'enabler' of market forces and private sector service provision, rather than a direct provider of housing and other services. The next sections will describe how this role came about, and how it fitted into the bank's larger conception of its urban assistance work.

Imagining 'urban' at the World Bank

The focus on urban development—or even 'urban' as a concept—is not intuitive. Throughout the 1960s, development donors preferred to focus on rural projects, as developing countries' cities were seen as “inherently complex and difficult environments in which to operate.”³⁰⁴ Their populations—increasingly

³⁰³ Michael Cohen, “Urban Assistance and the Material World: Learning by Doing at the World Bank,” *Environment and Urbanization*, 13 (1) (2001): 39.

³⁰⁴ United Nations Centre for Human Settlements / World Bank, 1992. A new focus on aid for urban development. Paper submitted for consideration at the Organization for

composed of migrants between the ages of 15 and 29—were seen as ‘potential sources of upheaval,’ whose frustration over a lack of employment opportunities could easily be converted into a politically dangerous force.³⁰⁵ For their part, newly independent governments in Africa faced high levels of differentiation between urban and rural areas during the 1960s, as colonial attempts at “labor stabilization” begun in the 1930s had created a high wage urban sector and a large “urban-rural divide.”³⁰⁶ In the early to mid-1960s, government housing policies tended to focus on fostering a middle class by providing subsidized public sector housing, particularly to civil servants.³⁰⁷ In Lagos, for example, 62 percent of funds spent on public housing from 1957 to 1966 went into projects for

Economic Cooperation and Development’s Development Assistance Committee meeting on Aid for Urban Development, held 16–17 November 1992. Restricted distribution: 24 September, 1992. Box: World Bank Urban, Cohen Archives, Graduate Program in International Affairs, New School University, New York, 21.

³⁰⁵ *Ibid.*, 7.

³⁰⁶ Philip Amis and Peter Lloyd, eds., “Introduction: Key themes in contemporary African urbanization,” *Housing Africa’s Urban Poor* (Manchester: Manchester University Press, 1990), 4.

³⁰⁷ *Ibid.*, 5. Since housing policies varied widely among African governments, generalizations such as these are only marginally useful. Individual countries and regions have their own rich literatures, which it is outside the scope of this paper to explore. For case studies on the housing markets of Nigeria, Egypt, Tunisia, Tanzania, Kenya, Malawi, and Zimbabwe see chapters in Amis and Lloyd, *Housing Africa’s Urban Poor*. See also Murray and Myers, eds., *Cities in Contemporary Africa*; Minion Morrison and Peter Gutkind, *Housing the Urban Poor in Africa* (Syracuse: Maxwell School of Citizenship and Public Affairs, Syracuse University: 1982).

high and middle income groups, while just 19 percent went to projects for middle or low income groups; the remainder went toward re-housing people who were displaced by clearance schemes.³⁰⁸ With increased migration to urban areas by the late 1960s, many African countries began to see rising unemployment levels and more and more squatters in urban areas. Governments were not able to keep up with growing demand for housing. In Nairobi, for instance, the annual need for new housing was 9,000 units by 1972—not including the accumulated backlog from previous years. The city was expected to construct roughly 5,000 units per year starting in 1965 in order to house the population at the prevailing growth rate, but they always fell thousands short of that target.³⁰⁹

As governments began to puzzle over the new ‘unemployment problem’ in urban areas, new trends in economics and anthropology began to draw attention to high levels of self-employment, which official employment estimates had overlooked. Economic anthropologist Keith Hart coined the term ‘informal economy’ in the early 1970s, following dissertation fieldwork among self-

³⁰⁸ Sandra T. Barnes, “Public and Private Housing in Urban West Africa: The Social Implications,” in *Housing the Urban Poor in Africa*, ed. Morrison and Gutkind, 7.

³⁰⁹ J. W. Muwonge, “Intra-urban Mobility and Low Income Housing: The Case of Nairobi, Kenya,” in *Housing the Urban Poor in Africa*, ed. Morrison and Gutkind, 61-2.

employed migrants in Accra (which he deemed a “study of modernization,” indicative of the dominant vision in development economics at the time).³¹⁰ Hart opened his 1973 article “Informal Income Opportunities and Urban Employment in Ghana” asking: “Does the ‘reserve army of urban unemployed and underemployed’ really constitute a passive, exploited majority in cities like Accra, or do their informal economic activities possess some autonomous capacity for generating growth in the incomes of the urban (and rural) poor?”³¹¹ Hart thus fueled a focus on the self-help, income-generating capacities of the urban poor—and a reification of the divide between what he deemed the informal and formal economic “sectors.”³¹²

³¹⁰ See Keith Hart, *Entrepreneurs and Migrants: A Study of Modernization Among the Frafras of Ghana* (PhD diss., Cambridge University, 1969).

³¹¹ Keith Hart, “Informal Income Opportunities and Urban Employment in Ghana,” *Journal of Modern African Studies* 11 (1) (1973), 61.

³¹² Subsequent research and analysis from the early 1990s onward, such as that of Alejandro Portes and Kate Meagher, has demanded a reformulation of Hart’s question and approach, arguing that it is misguided to try to measure the “autonomous capacity” of informal activity that is, in fact, deeply bound up with ‘formal’ activity. Meagher’s work further reveals the error in viewing informal activity as a “sector,” instead defining *informalization* as a social and historical process. Revisiting the term just after the end of the Cold War, Hart himself was deeply skeptical of its usefulness and its popularity among academics and development practitioners, calling it a “neologism [that] reflected the cold war ideology of a frozen opposition between the state and the market” and arguing that “its popularity was indicative of the blindness of academics and policy-makers to real conditions and historical trends in Africa.” Keith Hart, “Market and State after the Cold War: the Informal Economy Reconsidered”, in *Contesting Markets*, ed. Roy Dille (Edinburgh: Edinburgh University Press, 1992), 216. Nonetheless, this idea was

Around the same time, the work of British architect John Turner was stirring up great interest at the World Bank. Based on his experiences in the slums of Lima in the late 1960s, Turner argued that squatters tended to solve their own housing needs, and thus that the “‘problem’ might be more accurately described as part of the ‘solution.’”³¹³ Turner’s work inaugurated a total shift in the conceptualization of slums.³¹⁴ According to researcher Lisa Peattie, “a differentiation was made between the ‘slums of despair’ of the non-upwardly-mobile resident of old central cities in the USA and ‘slums of hope’ in the developing world, in which new urban migrants were struggling to make their way upward in a newly-industrializing economy. The shanties were not housing

popular with the bank in the early 1970s and remains so. See Kate Meagher, “Crisis, Informalization and the Urban Informal Sector in Sub-Saharan Africa,” *Development and Change*, 26 (1995), 259-8; Alejandro Portes, “The Informal Economy and Its Paradoxes” in *Handbook of Economic Sociology*, ed. Neil Smelser and Richard Swedberg (New York: Russell Sage, 1994), 426-449.

³¹³ Amis and Lloyd, “Introduction: Key themes in contemporary African urbanization,” 18; John Turner, *Housing by People* (London: Marion Boyars, 1976). For more on Turner’s influence on the World Bank, see Cohen, “Urban assistance and the material world,” 58.

³¹⁴ For more on Turner’s influence, see Herbert Werlin, “The slum upgrading myth,” *Urban Studies*, 36 (9) (1999), 1523-1534. Werlin worked on urban projects at the World Bank, and years of observing the impact of Turner’s ideas would lead him to conclude “that the ‘minimal state’ advocated by Turner can deal with the problems typically encountered in slum upgrading is a dangerous illusion” (Ibid., 1526).

in deterioration; they were housing in process of improvement.”³¹⁵ Between these two trends in the literature on urbanization, the focus in development circles turned to encouraging the “informal sector” and “slum upgrading.”

‘Urban’ became a concept and catchphrase at the World Bank in the late 1960s. It was thought that the bank’s work in various sectors, such as transportation, water, and sewerage, needed to be seen as being part of a “larger urban context.”³¹⁶ A working group under a Department of Special Projects “began to address the problem of describing what ‘urban’ might mean in Bank terms.”³¹⁷ In 1971, the working group produced the bank’s first urban sector working paper, “Urbanization,” in which they identified concepts that, according to one bank staffer, “became basic tenets of urban practice in the Bank: for example, the focus on poverty in the urban context, on affordability and cost-recovery, on replicability at large scale.”³¹⁸

³¹⁵ Lisa Peattie, “Some Second Thoughts on Sites-and-Services,” *Habitat International* 6 (1/2) (1982), 132.

³¹⁶ Cheryl Mattingly et al., “Urban Practice in the Bank: Notes toward a Learning Agenda,” (1984), Box: African Urban - Eastern and Central, Cohen Archive, Graduate Program in International Affairs, New School University, New York, 3.

³¹⁷ *Ibid.*

³¹⁸ *Ibid.*

Robert McNamara's term as President of the World Bank began in 1968 (he came to the bank directly after serving as US Secretary of Defense, acting as a chief planner of the Vietnam War). McNamara ushered in a shift towards focusing efforts more directly on the poor in developing countries.³¹⁹ Initially, this meant focusing on the rural poor. In a 1970 speech to the UN Economic and Social Council, McNamara attested to the bank's lack of knowledge about urban issues.³²⁰ In 1973, he reiterated the bank's commitment to attacking rural poverty in a speech to the bank's Board of Governors in Nairobi.³²¹ Just two years later, however, McNamara made a speech at the bank's Annual Meeting in which he committed the bank to assisting the urban poor, focusing on the organization's responsibility to alleviate poverty among the people crowding cities in the developing world at an ever-increasing rate. McNamara's argument turned largely on the potential of the 'urban poor' to be a destabilizing force that might upset efforts to spur economic growth. He framed the threat in no uncertain

³¹⁹ For more on bank staff's perceptions of the shifts under McNamara, see Mattingly et al., "Urban Practice in the Bank," 4.

³²⁰ Michael Cohen, "Aid, Density, and Urban Form: Anticipating Dakar," *Built Environment*, 33 (2) (2007), 145-156.

³²¹ Robert McNamara, "To the Board of Governors," Nairobi, Sep. 24, 1973, in *The McNamara Years at the World Bank*. (Baltimore: Johns Hopkins University Press: 1973/1981), 231-264.

terms: “Historically, violence and civil upheaval are more common in cities than in the countryside. Frustrations that fester among the urban poor are readily exploited by political extremists. If cities do not begin to deal more constructively with poverty, poverty may well begin to deal more destructively with cities.”³²² McNamara closed with an impassioned call to action, which would be quoted by bank officials throughout the ‘80s and ‘90s: “In the end, cities exist as an expression of man’s attempt to achieve his potential. It is poverty that pollutes that promise. It is development’s task to restore it.”³²³

Given prevailing ideas about urban areas as inherently complex and dangerous, it is not surprising that in the early 1970s when bank staffers set out to tackle cities they began by quantifying everything they could about them. “Comprehensive city studies” were meant to “provide a systematic framework for Bank activity.”³²⁴ But by 1974, such comprehensive studies had already gone

³²² Robert McNamara, “To the Board of Governors,” Washington, D.C., Sep. 1, 1975, in *The McNamara Years at the World Bank* (Baltimore: Johns Hopkins University Press, 1981), 316.

³²³ *Ibid.*, 333. McNamara is quoted, for example, in World Bank Managing Director Sven Sandstrom’s 1992 address, “Making Urban Assistance More Effective.” Address to the 20th Anniversary of World Bank Urban Assistance, Washington, DC, Jun. 23. Box: Africa Urban – Eastern and Central, Cohen Archive, Department of International Affairs, New School University, New York.

³²⁴ Mattingly et al., “Urban Practice in the Bank,” 4.

out of fashion, as they were seen as being too time consuming. As one staffer put it, “They took a great deal of time, and at the end, we found that all the data had changed. People threw up their hands in frustration. There were too many ways of interpreting the data.”³²⁵ Instead, staffers decided to focus on “small, simple things that were clearly needed – projects that would ‘get us in the door, give us an opportunity to build expertise and earn our *bona fides*.’”³²⁶ Thus began the focus on “sites and services” and “squatter settlement upgrading” projects.

The World Bank’s first targeted attempt at urban development was in Dakar, Senegal. The World Bank’s Board of Executive Directors approved an \$8 million (USD) interest-free loan for fifty years to the Government of Senegal in June 1972.³²⁷ The World Bank’s stated objective was to provide low-cost affordable housing and infrastructure (“site and services”) to urban residents in Dakar.³²⁸ This represented a radical departure from public housing, as “the intention was to make housing affordable to low-income households without the

³²⁵ Ibid., 4-5.

³²⁶ Ibid., 5.

³²⁷ Cohen, “Aid, Density,” 146-7.

³²⁸ International Bank for Reconstruction and Development, “Appraisal of a Sites and Services Project,” Jun. 7, 1972. Box: Dakar Evaluations, Cohen Archive, Graduate Program in International Affairs, New School University, New York.

payment of subsidies, in contrast to the heavily subsidized public-housing approach.”³²⁹ Rather than seeing urban slums as something to be demolished, the World Bank embarked on a plan of “slum upgrading” and “sites and services” that valorized the “self help” capacity of urban residents and facilitated a withdrawal of state and local government support for public housing. Instead of supporting single family homes—an approach that had been favored by the United Nations’ Centre for Housing, Building, and Planning and the British and French governments’ bi-lateral housing and urban planning programs, and which had been implemented in Latin America—the World Bank sought “low cost solutions such as providing one water faucet for one hundred families.”³³⁰ The idea was that individual families would be given loans to buy materials with which to build their own homes on the sites. Rather than being entitled to public housing, low-income individuals and families were meant to pay for construction—allowing the bank to recover any costs for the project from the poor.

Drawing on economist Milton Friedman’s neoliberal theory of public choice, the World Bank’s Dakar experiment sought to shift from an emphasis on

³²⁹ Cedric Pugh, “The Role of the World Bank in Housing,” in *Housing the Urban Poor*, ed. Brian Aldrich and Ranvinder Sandhu (London: Zed, 1995), in Mike Davis, *Planet of Slums* (London: Verso, 2006), 72.

³³⁰ Cohen, “Aid, Density,” 145.

supply to a focus on demand in housing provision. Michael Cohen describes the rationale for a 'supply-side orientation' thus: "...Infrastructure projects often reflect a large 'supply bias,' i.e. they reflect the design preferences of the engineers who build them, but such projects frequently are unconnected to the demand side or the potential users of these services. It should be no surprise that these projects frequently create services which the public utilities cannot sell. As a result, infrastructure projects frequently place local authorities in financial difficulties." ³³¹ The shift to a supply-side orientation limits the role of government-subsidized entitlements to housing, as the market is perceived as operating more efficiently if it takes its cues from people's ability and willingness to pay for services. Limiting government subsidies was recognized early on by some within the Bank as a politically charged proposal. As an anonymous World Bank Transportation & Urban Projects Department paper put it in April 1974 in an extended discussion on the role of subsidies: "How far settlers can justifiably be subsidised in meeting the part of the total costs of the project allocated to

³³¹ Michael Cohen, "Cities and the wealth of nations," in UN-HABITAT, *Cities – Engines of Economic Development* (Nairobi: UN-HABITAT, 2005), 24.

them is a troublesome issue since socio-political judgments are inevitably involved.”³³²

In order to keep costs down, the bank devised a model for high-density residential areas with a minimum of public infrastructure, services, and space.³³³

As Michael Cohen put it,

The challenge for project design was to reduce the costs of the project and thereby increase its affordability for low income households. ... *Density was the decision variable which could make that possible.* Reducing costs meant reducing the size of plots per hectare, and in so doing, *increasing the density and the number of households per hectare.* Residential densities were to be increased rather than creating either public space or additional space for social facilities.³³⁴

Density was certainly achieved in the Dakar project; when the bank and the Senegalese Government declared the project “completed” in 1982, the project had 10,500 plots with 10 persons per plot, making it the second largest ‘city’ in Senegal.³³⁵ As of 2006, the population was home to somewhere between 350,000

³³² International Bank for Reconstruction and Development Transportation & Urban Projects Department, 1974. “Sites and Services Projects,” Apr. 11 (1974), 19. Box: Sites & Services—Background Material, Cohen Archive, Graduate Program in International Affairs, New School University, New York.

³³³ See H. B. Dunkerley, “Sites and Service Projects—OM paper,” Draft, Oct. 3 (1973). Box: Sites & Services—Background Material, Cohen Archive, Graduate Program in International Affairs, New School University, New York.

³³⁴ Cohen, “Aid, Density,” 147. Original emphasis.

³³⁵ *Ibid.*, 149.

to 500,000 people (from three to five times the originally projected population and density per hectare).³³⁶

The Dakar project got off to a slow start, which forced bank officials to reflect upon their endeavor and its shortcomings. They had an ambitious implementation schedule—it had been assumed that “14,000 plots could be constructed and services provided in six years, with households beginning to build their self-help housing as soon as they received ownership of the plot.”³³⁷ While Michael Cohen (who worked on the implementation of the Dakar project in the 1970s) attributes delays, in part, to bank staff’s “underestimat[ing] the time for policy and institutional changes to occur,” he also points to disagreements between the bank and the government of Senegal about the merits of the project and its approach. He writes:

Delays in implementation also reflected more profound second thoughts on the part of the Senegalese Government. ... [T]hen President Leopold Senghor visited the site [in December 1974] and declared that all households in the project should have private water taps and toilets, both of which were clearly unaffordable by the majority of the intended low-income population. This signaled Government interest in settling a wealthier population on the site. Despite mixed messages and contradictory policies, the Government was legally bound by agreements

³³⁶ Ibid.

³³⁷ Ibid., 147.

it had signed with the World Bank, the implementation of the project continued...³³⁸

Mission reports on urban assistance projects often referred to the socio-political difficulties of implementing sites-and-services and cost recovery programs. Although most governments may have been doing a dismal job of delivering housing and services to low income populations (and others were not attempting the job at all), they were often hesitant to formalize low standards. The reasons for this hesitancy varied. In the case of Kenya, reluctant politicians seemed to have tourism in mind, rather than the direct needs of Kenyans. According to political economist Richard Stern, "There was for some time considerable resistance—by President Kenyatta and other members of the indigenous bourgeoisie—to sites and services. The reasoning often heard was that, if building and sanitation standards were allowed to fall in Nairobi, tourism would suffer and international firms would hesitate to locate in Kenya. It was only when dilemmas and uncertainties developed within the governing coalition that the new international planning orthodoxy was grudgingly accepted."³³⁹ But

³³⁸ Ibid., 148. See also Alymana Bathily and Rodney White, "Interim Report: Revised Version," Evaluation Bureau of the Dakar Sites and Services Project (n.d., but likely 1978), 98. Box: Dakar Evaluations, Cohen Archive, Graduate Program in International Affairs, New School University, New York.

³³⁹ Richard E. Stern, "Housing Policy and the State in East Africa," in *Housing the Urban Poor in Africa*, ed. Minion Morrison and Peter Gutkind (1982), 93.

urban anthropologist and former consultant to the World Bank, UN, and USAID on settlement planning Lisa Peattie has pointed to the fact that governments faced problems of legitimacy when lowering standards. She put it succinctly: “Which government wants to be seen building slums?”³⁴⁰ Letting slums proliferate was one thing, but “guiding” them was another.

Implementing cost recovery mechanisms at the municipal level was often considered to be too politically dangerous; governments might have agreed to implement cost recovery schemes, but fail to put them into practice out fear of losing favor politically.³⁴¹ Altering the role of the state and the market in housing and service provision promised to change not only senses of entitlement, but also conceptions of citizens’ obligations to the state. As a confidential interim report written by the Dakar project’s evaluation bureau (not dated, but likely written in late 1978) observed, the bank had failed to take such political implications into account as it defined its urban approach: “The seeds of many of the problems experienced in project implementation can be traced back to the period of

³⁴⁰ Peattie, “Some Second Thoughts on Sites-and-Services,” 134.

³⁴¹ C. Tager and P. Patel, “Urban Projects in Eastern Africa: The Experience and the Future,” World Bank office memorandum, December 20 (1979), 1. Box: African Urban—Eastern and Central, Cohen Archive, Graduate Program in International Affairs, New School University, New York.

preparation (1969-73). During this time the Bank's urban policy was poorly defined; the policy (such as it was) was the antithesis of the policy *being carried out* in Senegal; and the OHLM [Office des Habitations à Loyer Modéré] did not have the capability of carrying out such a large, novel and politically sensitive exercise."³⁴²

If in the early 1970s the bank was still struggling to define its approach to urban assistance, by the time McNamara made his speech on the need to tackle urban poverty in 1975, a fairly clear conception of the relationship between the state, the market, and 'urban poverty' had emerged in bank thinking. This view saw 'urban' as a distinct sphere facing a demographic threat. 'Urban poverty' was a function of economic dualism, with "two sectors" – the informal and formal – existing alongside each other. And '(central) government' was an entity that needed to step aside and allow markets to function more efficiently in order to provide housing to the poorest. Standards should be kept low when it came to housing and services for the urban poor. This would keep costs down – not for the government, but for the poor themselves, who were now expected to pay for their own housing and services.

³⁴² Bathily and White, "Interim Report," 28. Original emphasis.

McNamara articulated this dualist perspective of urban poverty in his 1975 speech:

To comprehend the pathology of poverty in the cities, one must begin with an analysis of the employment opportunities of the poor. Employment in the urban areas of the developing world is a function of an economic dualism that is widespread. Two sectors coexist side by side. One is the organized, modern, formal sector, characterized by capital-intensive technology, relatively high wages, large-scale operations, and corporate and governmental organization. The other is the unorganized, traditional, informal sector—economic units with the reverse characteristics: labor-intensive, small-scale operations, using traditional methods, and providing modest earnings to the individual or family owner.³⁴³

After discussing the causes of urban poverty, McNamara focused more directly on what he saw as standing between the poor and access to housing and services such as water, sewerage, transport, and education. He argued:

The whole question of ‘standards’ of urban services works to the disadvantage of the urban poor for they are often written with middle-class or upper-income orientations, and have little relevance to the situation the poor find themselves in. Standards are important, but they must be formulated to meet realistic and attainable objectives. If the needs of the poor are to be met within a reasonable time span, public utilities and social services will have to be provided at costs which they can afford to pay.³⁴⁴

McNamara went on to argue that the bank “can play a significant role in pointing out the extent to which governments’ present policies, practices, and

³⁴³ McNamara, “To the Board of Governors” (1975), 317.

³⁴⁴ *Ibid.*, 326.

investment allocations are seriously biased against the poor.”³⁴⁵ McNamara’s solution for getting around what he deemed to be governments’ anti-poor bias? Sites and services projects, as piloted in Dakar: “Sites and services projects, then, stimulate self-help, and make it possible for the poor to house themselves in a viable, cohesive community with a minimum of public expenditure.”³⁴⁶

The bank rapidly expanded its urban assistance programs throughout the 1970s; by 1979, the bank had committed \$1.84 billion (USD) to help finance 45 urban projects in all regions.³⁴⁷ The World Bank had identified the subjects of its interventions as “the urban poor,” which its Urban Poverty Task Force estimated to be almost a third of the world’s urban dwellers or 280 million people in 1979. According to the bank’s definition, the ‘urban poor’ were officially “people with per capita incomes insufficient to meet minimum nutritional requirements (the absolute poor) or those with per capita incomes less than one-third the national average (the relative poor).”³⁴⁸ As the next section will explain, apart from the definition based on income, the “urban poor” were also conceived of as the

³⁴⁵ Ibid., 330.

³⁴⁶ Ibid., 328.

³⁴⁷ Tager et al., “Urban Projects,” 1.

³⁴⁸ Ibid., 2.

“customers” of World Bank urban assistance. The label succeeded in flattening various regional- and country-specific histories and forms of politics into a one-size-fits-all model. Since the “urban poor” were to be found across the world—from Latin America to the recently independent countries in Africa to Asia—the World Bank had a (seemingly identical) “customer base” around the globe. The World Bank similarly flattened questions of land allocation—often highly skewed given histories of colonial dispossession and spatial planning—and the prospect of land reform into a more manageable question of “sites” to be parceled out and serviced. This led one observer to comment in the late 1970s “that the World Bank was interested in sites, but not land.”³⁴⁹

Institutionalizing urban and educating a customer base

As “urban” was institutionalized at the bank throughout the 1970s and early 1980s, bank staff began to sense the standardization of the bank’s ethos and operations. Over the course of eight months in 1983-84, three MIT researchers conducted interviews and project debriefing sessions with members of the World Bank’s urban staff “as part of a pilot effort to encourage the staff’s reflection on

³⁴⁹ Cohen, “Aid, Density,” 146.

practice.”³⁵⁰ The staff’s reflection reveals much about how they conceived of urban assistance projects—and even more about the culture of “learning by doing” at the bank. In taking stock of the first 12 years of the bank’s urban assistance work, the MIT researchers stressed the pressures which urban staff felt to accommodate to the institutional structure:

It is clear that [the] urban [division] has gone a long way toward establishing itself in the Bank. Staff has grown nearly ten-fold; projects, a hundred-fold. A body of professional expertise, skill and lore has been created. Throughout the developing world, a network of urban Bank customers has been nurtured. All of this has been done, however, in such a way as to require of urban staff and programs a fundamental accommodation to the dominant ethos of the Bank. In the wake of the McNamara era, and with the implanting of urban projects in regional departments, urban can survive only by continually maintaining its legitimacy, relevance, and credibility within a Bank context dominated by macro-economic ideas of Bank mission and by a control system closely bound to those ideas.³⁵¹

The extent to which project managers could actually adapt their strategies to situations in any given city varied—some urban staff complained that the bank tried “to make the context conform to the project rather than the project conform to the context” while others spoke of high levels of improvisation.³⁵² Such

³⁵⁰ Mattingly et al., “Urban Practice in the Bank,” 1.

³⁵¹ *Ibid.*, 6.

³⁵² Michael Cohen, “The Senegal Sites and Services Project: A Case Study of Project Experience,” Case Study for Course by the Economic Development Institute and UN

improvisation was deemed necessary because, as one urban staffer said, “the typical highway or low-income housing project ... will turn out wrong if done ‘by the book.’”³⁵³ The example of one particular project in Calcutta circulated as “a moral about the need for a flexible and open-ended approach.” In that case, “the need to cope with a flooded area led to the idea of digging a drainage hole which led to the idea of creating a lake which led to the idea of fish-farming.”³⁵⁴ Whatever their experiences in terms of flexibility in the field, most agreed that any learning done in a particular city was lost before it could benefit subsequent missions because of the pressure to show compliance with and support for the bank’s approach in mission reports.

In their interviews with the MIT researchers, urban staff describe the extent to which the bank had standardized both its “criteria of rational practice” and the specific “products” it offered in terms of urban assistance. Each project had to legitimate itself in terms of the bank’s key concepts: “affordability, cost-recovery, replicability, efficiency pricing.”³⁵⁵ Communicating these standards

Habitat, ‘Amelioration de l’Habitat Urbain: Conception et Execution des Projets’ (Washington: The World Bank, 1980) cited in Cohen, “Aid, Density,” 149.

³⁵³ Mattingly et al., “Urban Practice in the Bank,” 7.

³⁵⁴ *Ibid.*, 12.

³⁵⁵ *Ibid.*, 11.

involved a “teaching function”: “Interacting with the borrower involves a teaching function. Through conditionalities and through the process of negotiation itself, the host government must be brought to ‘understand things the Bank’s way.’”³⁵⁶ The bank offered not only money, but also a specific “tool kit” or product line to go with it. The key element was making governments adopt the bank’s language, conception and approach. As the MIT researchers observed:

There is, further, the idea of building up a body of educated customers who not only have developed ‘institutional competence’ themselves, but can educate others; even the Saudis, we are told, now talk to the Turks about ‘cost-recovery.’ Within the Bank, there is the idea of building up a body of staff who ‘know the game,’ as well as building up a kit of tools which permit the fine-tuning of the Bank’s product line: sites-and-services, trash collection, urban transportation, tenuring.³⁵⁷

Despite the delight which staffers took in educating their “customers,” mission staff in various countries were not always confident about the extent to which technical assistance really sunk in. As the MIT researchers put it: “From the field mission perspective, the ‘economic policy dialogue between lender and borrower’ may appear as one in which borrowers ‘put up with the technical

³⁵⁶ Ibid., 9-10.

³⁵⁷ Ibid., 12.

assistance because of the money' and conditionalities are negotiated with the understanding that there will be a degree of softness in their execution."³⁵⁸

Some of these reservations made their way into mission reports. In December 1979, two Urban Division staff members submitted the first memorandum reviewing the bank's experience with urban projects in Eastern Africa.³⁵⁹ The report was unusually lengthy, as it hoped to give other Urban Division staff a sense of the scope and underlying principles of the Eastern African project, and to situate the project within the overall context of urban operations for purposes of comparison with other projects. For these reasons, the report was remarkably candid; it offered frank assessments of the failures of sites and services projects to provide affordable housing for the poorest of urban households and to achieve cost recovery goals. Though none of the Eastern Africa projects had been completed yet, the authors set out to provide a preliminary review of several aspects of the implementation experience, including: "initial occupancy, cost recovery, user preferences, and community participation."³⁶⁰ In terms of the scale of the projects, the East Africa region

³⁵⁸ Ibid., 8.

³⁵⁹ Tager et al., "Urban Projects."

³⁶⁰ Ibid., 2.

accounted for a very small share of the bank's urban projects in the 1970s; of the bank's 45 urban projects receiving funding as of 1979, just seven of these were in East Africa. The bank provided \$117.5 million in loans to projects in East Africa, spread across Botswana, Tanzania, Zambia, and Kenya.³⁶¹ In each country, initial slum upgrading projects tended to focus on the capital or largest city, as it was hoped that success in such cities would have a positive demonstration effect and allow for expansion into secondary cities.

The authors began their description of the projects by commenting on how much the design of sites and services projects had evolved since the Dakar experiment began in 1972. The first East African projects focused on the provision of a few "standard features," meaning relatively low-cost infrastructure standards and minimum services for dwellings. In each case, levels of services were bifurcated based upon the expectation that two different income groups would occupy the site. In Zambia I, for example, "basic" plots had standpipes and pit latrines, while "normal" plots had individual water and sewer connections. In Tanzania I, 10,600 sites were to be served by water kiosk, while 1,600 plots had individual water connections. As in Senegal, the bank ran

³⁶¹ These were divided into first and second generation projects, namely Botswana I (initiated 04/1974), Tanzania I (07/1974), Zambia I (07/1974), Kenya I (04/1975), Tanzania II (07/1977), Kenya II (04/1978), and Botswana II (05/1978).

into problems involving the political viability of its slum upgrading and sites and services approaches. In Kenya, for instance, the government required that 100 per cent of sites be provided with individual water and sewerage connections. By 1975, the projects “had come to include a wider mix of options (serviced plots only; plot with sanitary core; plot with sanitary core and kitchen; plot with sanitary core, kitchen plus bedroom) and a spectrum of service levels designed to meet different needs at varying prices.”³⁶² This differentiation in terms of standard levels was further stretched in order to include “the very poor,” or the bottom 20 per cent of the income scale. When Tanzania II was initiated in 1977, it provided “19,000 basic surveyed plots with a communal water supply only – in effect, an attempt to guide squatting through provision of secure tenure and potable water. The other services were designed to be provided in subsequent states as incomes permitted.” Kenya II, on the other hand, stretched in the other direction; here the authors observed that “the concept of differential charging has been extended to the sale for profit of larger, commercial plots, to permit even larger numbers of the urban poor to participate in shelter schemes.”³⁶³

³⁶² Tager et al., “Urban Projects.”

³⁶³ Ibid.

The authors also highlighted what they considered to be the bank's progress in terms of extending credit to individual occupants in order to build or improve their dwellings. The Dakar project had not contained such a credit mechanism, but by 1979, it had "become a standard feature in projects throughout the regions." Botswana I was the first Eastern African project to have a building materials loan program. It made loans amounting to \$450 (USD) per household to pay for bricks, cement, sand and other building supplies—an amount considered adequate for building two rooms. Each East Africa project differed in terms of which types of institutions administered the loans and whether the loans were paid all at once or in stages (with each tranche subject to verification of progress on previous construction phases). The second generation projects involved a shift from loans of materials to construction loans for the following reason:

In the earlier projects, no provision was made in the loan amounts for hiring labor, since Bank policy concerns favored the promotion of self-help defined in its very limited sense—each beneficiary household, itself, constructing a shelter. Experience, however, revealed a very different trend; most households (40-80%) used small contractors to build a major part of their shelter. Families appear to pursue this course because they lack certain building skills and experience and/or because they simply cannot afford to take time off from work.³⁶⁴

³⁶⁴ Tager et al., "Urban Projects," 7; see also D. Keare and S. Parris, "Monitoring and Evaluation of Shelter Programs for the Urban Poor: A Report on the Final IBRD-IDRC Annual Conference," The World Bank Development Economics Department. Urban and

Thus the bank's original conception of "self-help" needed to be revised in order to take into account other economic demands upon households (not to mention the need to move beyond the assumption that all locals were innately talented in home construction).

The report's authors were frank in their conclusion that, in several key aspects, the projects were failing on their own terms. They focused on failures in terms of actually providing housing to the poorest 20 per cent of urban households and cost recovery. On provision of affordable housing to the poorest, the authors made the following observation:

With regard to the target beneficiaries in sites and services, plots are currently not affordable to the poorest 20% of urban households. But that is a social and political constraint to design; it has proven impossible to design technical solutions which at the same time are socially and politically acceptable to governments—thus ultimately to the users—at a cost low enough to be affordable to the poorest. Another observation arising from the experience is that the income groups benefitting from site and services appear to be slightly higher than anticipated at the time of project design. This is due to at least two factors: rapidly rising construction costs, requiring an upward adjustment in the income cut-off points of intended beneficiaries and pressure from middle income groups for whom few, if any, shelter programs usually exist.³⁶⁵

Regional Report No. 81-13. June (1981), 4. Box: Housing, Cohen Archive, Graduate Program in International Affairs, New School University, New York.

³⁶⁵ Tager et al., "Urban Projects," 20.

The authors acknowledged this as a “trickling up” of the project benefits. This chimes with the experience of the majority of bank urban assistance projects; though they had set out to rectify what they considered to be governments’ failure to provide housing to the poorest of their citizens, historian Mike Davis states that “even the World Bank’s most ambitious and touted projects tended to be poached by the middle classes or non-needy in the same way as had public housing.”³⁶⁶ In 1987, it would be estimated that “the bottom 30 to 60 percent, depending on the country, were unable to meet the financial obligations of sites-and-services provision or loans for upgrading.”³⁶⁷ Thus like the government programs they were meant to show up, sites and services programs ended up catering to a middle income population.

On cost recovery, the report authors attribute the “dismal” record in the East Africa projects to an inability to reconcile technical solutions with social and political dynamics. As in other World Bank documents examined here, they describe cost recovery as being important because it “provides a disciplining mechanism for holding standards down to affordable levels.”³⁶⁸ However, not all

³⁶⁶ Mike Davis, *Planet of Slums*, 73.

³⁶⁷ Lisa Peattie, “Affordability,” *Habitat International* 11 (4) (1987), 69-76, in Davis, *Planet of Slums*, 73.

³⁶⁸ Tager et al., “Urban Projects,” 4.

governments or urban residents were keen on having their standards adjusted in this way. The authors write:

It is important to note here that collections performance in our project areas is necessarily linked to municipal collections of monies owed to them in property taxes, water and other utility tariffs, and public housing rents. The record in most municipalities is dismal. We believe that in earlier projects, Bank staff did not pay enough attention to the need to establish simple, workable, and well manned mechanisms for collections. But even more important, the analysis of social/cultural practices and political realities in project cities was not rigorous. The result is cost recovery targets for our projects which are completely out of touch with the social/political environments where the projects are located. Thus while the goal of full cost recovery should be maintained, the mechanics and setting of targets for achieving the same requires careful attention.³⁶⁹

This is a telling moment, as the authors are wrestling with the tension between technical solutions and social, cultural, and political realities or, more precisely, expectations. The bank was becoming increasingly aware that it needed to produce citizens with lower senses of entitlement toward their governments—educating them into being customers of the private sector, and to expect delivery of services and utilities not from their governments but from the market. At the time, however, the report’s authors ended on a discouraged note: “Until collections can be improved, the claim that it is possible to design and implement affordable housing solutions without public subsidies remains effectively in

³⁶⁹ Ibid., 18.

doubt.”³⁷⁰ Thus there were concerns even within the bank about the possibility of providing for the poor without government subsidy.

And yet, publicly, the idea of the state as an ‘enabler’ of the private sector was gaining a chorus of support on the international development scene. The concept of ‘enablement’ had been around for decades, but it was gaining a higher public profile among international housing authorities. Bilateral and multilateral agencies began targeting housing and shelter provision and urban poverty alleviation in similar ways in the 1970s and 1980s. In line with the World Bank’s approach, such agencies construed the role of the state as an ‘enabler’ of market forces and private sector service provision rather than a direct provider of housing and other services. The United Nations Center for Human Settlements (UNCHS/Habitat) began to articulate this role explicitly after 1976, recommending that governments concentrate on creating incentives for households, NGOs, and the private sector to provide shelter and services.³⁷¹ This anti-statist and pro-market approach became even more fashionable in the 1990s, riding a wave of triumphalist rhetoric after the end of the Cold War.

³⁷⁰ Ibid., 21.

³⁷¹ United Nations Center for Human Settlements (UNCHS/Habitat), *Global Strategy for Shelter to the Year 2000* (1998); Karen Hansen and Mariken Vaa, *Reconsidering Informality: Perspectives from Urban Africa* (Uppsala: Nordiska Afrikainstitutet, 2004).

Indeed, the World Bank model had been conceived in the context of the Cold War in contrast to a Soviet model of centralized planning and public housing. At the end of the Cold War, the bank saw a 'competing lender' fold and it perceived an opportunity to consolidate a neoliberal world economy. In a September 1992 paper entitled "A New Focus on Aid for Urban Development" prepared by UN-Habitat and the World Bank and circulated to a restricted group ahead of the Organization for Economic Cooperation and Development's Development Assistance Committee meeting in November 1992, the anonymous authors describe this opportunity under the heading "The 'one-model' world economy: the end of choice?":

The rapid collapse of the Communist regimes in Eastern Europe and the subsequent disintegration of the Soviet Union has had important consequences for macro-economic policy and for development strategy choice in the developing countries as well. The first consequence has been the termination of an important source of political, economic and technical support for those Third World countries which had attempted wholly, or in part, to emulate the centrally-planned model of economic development. The second consequence has been the reduction in policy choice. Although the "Third Way" appropriate for the "Third World" was never found during the Cold War struggle, a lot was learned. Innovation did take place. What the changed international political environment of the 1990s will do to this independent innovative spirit in developing countries is unclear. On the other hand, it has also been argued that the failure to conform rigorously to the market economy model has been

responsible for the absence of positive economic performance in many developing countries.³⁷²

The document's authors envisioned a rapid expansion of the bank's urban lending in the early 1990s.³⁷³ In looking forward, the authors stressed that only through greater participation and accountability at the local level will goals of "better governance, democracy, and economic growth" be met. Later on, however, they defined participation in a peculiar way—as a willingness to pay for services. They wrote: "If the emphasis is on user satisfaction, if users are seen as clients, not as beneficiaries, then one would also assume that there will be a greater willingness to pay for these services. Participation can therefore be part and parcel of sound economic management."³⁷⁴ They concluded by calling on

³⁷² United Nations Centre for Human Settlements and the World Bank, "A New Focus on Aid for Urban Development," Paper submitted for consideration at the Organization for Economic Cooperation and Development's Development Assistance Committee meeting on Aid for Urban Development, held Nov. 16-17, 1992. Restricted distribution: Sep. 24, 1992, 11. Box: World Bank Urban, Cohen Archive, Graduate Program in International Affairs, New School University, New York.

³⁷³ They made the following projection: "The Bank is expected to more than double its urban lending by fiscal year 1993, by which time it will reach \$3.5 billion. Over the five-year period 1991-95, the Bank is expected to fund approximately 150 urban projects, for a total value of \$15 billion. This compares to about 180 urban project loans from 1972 through 1989, and will represent an increase in the urban portfolio from 5 to 9 per cent of total lending" (Ibid., 11).

³⁷⁴ Ibid., 13.

donors to support efforts to “create the policy framework conducive to an expanded role for the private sector.”³⁷⁵

The World Bank would publicly declare its support for the “enabling” framework in a 1993 policy paper called “Housing: Enabling Markets to Work,” authored by Stephen K. Mayo, the Urban Development Division’s principal economist, and Shlomo Angel, a housing policy consultant. The policy paper began with a clear statement of the policy direction it recommended for the bank and its borrowers in years to come: “[The paper] advocates the reform of government policies, institutions, and regulations to enable housing markets to work more efficiently, and a move away from the limited, project-based support of public agencies engaged in the production and financing of housing. Governments are advised to abandon their earlier role as producers of housing and to adopt an enabling role of managing the housing sector as a whole.”³⁷⁶ They specifically defined an enabling strategy as one in which “governments

³⁷⁵ Ibid., 17.

³⁷⁶ Stephen K. Mayo and Shlomo Angel, “Housing: Enabling Markets to Work,” World Bank Policy Paper (1993), 1. Publicly available, but also found in Box: South Africa, Cohen Archive, Graduate Program in International Affairs, New School University, New York.

move from producing, financing, and maintaining housing to improving housing market efficiency, particularly on the supply side.”³⁷⁷

The World Bank and South Africa's transition

The same year that Stephen Mayo and his co-author published this policy paper advocating for the enabling framework across the bank's urban policies, he also focused on how the framework might be applied in South Africa. In 1993, he drafted a paper called “Housing Policy Reform in South Africa: International Perspectives and Domestic Imperatives.”³⁷⁸ Though the World Bank had refrained from lending to the apartheid state (it did, however, remain in conversation with the African National Congress in exile), the Bank sent a mission to the country in 1990 once it was clear that a transition was imminent. The bank would attempt to shape the ANC government-in-waiting's urban policies into market-based programs in line with the “enabling framework.”

It is important to clarify that what follows is not a comprehensive account of the emergence of the ANC's neoliberal policies in post-apartheid South Africa.

³⁷⁷ Ibid., 103.

³⁷⁸ Stephen K. Mayo, “Housing Policy Reform in South Africa: International Perspectives and Domestic Imperatives,” Washington, D.C.: World Bank (1003). Found in Box: South Africa, Cohen Archive, Graduate Program in International Affairs, New School University, New York.

The fact that the ANC was influenced by techniques circulating at the international level is well known, and has been ably discussed by others.³⁷⁹ In order to give a full account of the World Bank's influence on the ANC's emerging urban policy, it would be necessary to examine how proposals for state-led redistribution (such as the ANC's Reconstruction and Development Programme, or RDP) fell off the table. Instead, this chapter's final section makes a contribution to existing accounts by fleshing out the World Bank's role in pre-emptively de-legitimizing certain forms of political engagement and protest.

After decades of honing its approach to 'urban assistance,' the World Bank was prepared to lend its expertise to the transition from apartheid in South Africa.³⁸⁰ In his authoritative study of South Africa's 1990-1994 transition period,

³⁷⁹ See e.g., Philip Harrison, Marie Huchzermeyer and Mzwanele Mayekiso, eds., 2003. *Confronting Fragmentation: Housing and Urban Development in a Democratizing Society* (Cape Town: University of Cape Town Press, 2003); Marie Huchzermeyer, "A Legacy of Control? The Capital Subsidy for Housing, and Informal Settlement Intervention in South Africa," *International Journal of Urban and Regional Research* 27 (3) (2003), 591-612; Hein Marais, *South Africa: Limits to Change: The Political Economy of Transition* (Cape Town/London: University of Cape Town/Zed Books, 2001); Patrick Bond, *Elite Transition: From Apartheid to Neoliberalism in South Africa* (London: Pluto Press, 2000).

³⁸⁰ As the bank's urban sector reconnaissance mission to South Africa stated in a May 1991 aide memoire, "It appears that many parties envisage a top-down approach, in which 'standards' are decided upon and services meeting those standards provided to people. Experience in other countries at similar levels of development have shown that such approaches inevitably fail" (World Bank Mission, South Africa Urban Sector Reconnaissance Mission Aide Memoire. May 10, 1991. Box: South Africa, Cohen Archive, Graduate Program in International Affairs, New School University, New York, 11).

political journalist Hein Marais writes of early and extensive World Bank involvement in the transition, noting that “the World Bank soon after the 1990 thaw had opened channels to the ANC and the trade unions, and enlisted researchers associated with the democratic movement in its projects. ‘This is the only country in the world where we speak to the opposition,’ its representative [Isaac Sam] later boasted.”³⁸¹ South African journalist William Gumede describes the sheer force of the bank’s influence:

It was an onslaught for which the ANC was wholly unprepared. Key economic leaders were regularly ferried to the head offices of international organizations such as the World Bank and IMF, and during 1992 and 1993 several ANC staffers, some of whom had no economic qualifications at all, took part in abbreviated executive training programmes at foreign business schools, investment banks, economic policy think tanks and the World Bank, where they were ‘fed a steady diet of neo-liberal ideas.’ It was a dizzying experience. Never before had a government-in-waiting been so seduced by the international community.³⁸²

For the ANC, which only formed a dedicated department of economic policy in 1990 (after 80 years as a liberation movement), the prospect of sitting across the negotiation table from the ruling National Party, which was backed by big

³⁸¹ Marais, *Limits to Change*, 128. See also Bond, *Elite Transition*.

³⁸² William Gumede, *Thabo Mbeki and the Battle for the Soul of the ANC* (Cape Town: Zebra, 2005), 72.

business and state resources, was daunting.³⁸³ ANC officials with scant economic background or concrete policy ideas of their own often welcomed the authority that came with World Bank ties. For instance, when plans for a Durban regional economic development conference went sour in September 1990 (with the ANC claiming that the backroom preparations and politicking by representatives of white government and business “make President de Klerk look like an ultra-left radical”³⁸⁴), the ANC urged the World Bank to decline an invitation to attend the conference. They promised to keep the bank “informed of our discussions with the key actors in the region,” as they “trust[ed] these discussions might in the near future allow us to support such a visit by you to our lovely, but strife-torn, city.”³⁸⁵ As much as the bank may have been shaping the ANC’s economic policies, the ANC was also strengthening its position by, to some extent, guiding the bank’s engagement in the country.

³⁸³ Ibid.

³⁸⁴ African National Congress Southern Natal Region Co-convenor, Letter to Michael Cohen (Chief of Urban Development Division, The World Bank) re: Economic Development Conference for the Durban Functional Region, Sep. 24, 1990. Box: South Africa, Cohen Archive, Graduate Program in International Affairs, New School University, New York.

³⁸⁵ Ibid.

An analysis of World Bank publications and internal memos on the institution's work in South Africa during the transition reveals the approach to economic policy it prescribed for the ANC government-in-waiting. Stephen Mayo pushed the Bank's 'enabling framework' in his 1993 paper on housing policy reform. The paper draws on work done in the early 1990s in South Africa as part of a joint program of the United Nations Centre for Human Settlements and the World Bank (the Housing Indicators Program), as well as part of several World Bank missions to the country. Mayo writes:

An appropriate overall framework for housing policy in South Africa could be the 'enabling framework'.... Within such a framework, the role of government is an important one, though one primarily of enabling and facilitating the activities of the private sector—individuals, businesses, and community based organizations—to provide and maintain housing. In South Africa, the key elements of such an approach involve action on three broad fronts: (1) stimulating the demand for housing, (2) facilitating housing supply, and (3) creating an appropriate institutional framework for the management of the housing sector.³⁸⁶

Internal World Bank office memos and aide memoires dated February 23 and April 6, 1993 spell out the 'enabling framework' for South Africa in more depth. The February 23 memo, authored by Kyu Sik Lee and based on a five-member Urban Economic Mission to South Africa during January 23-February 13, stresses the importance of moving away from "supply-side" models of service delivery

³⁸⁶ Mayo, "Housing Policy Reform in South Africa," 7.

towards “demand-side” ones. These would aim to jumpstart the market for housing, electricity, and other utilities by providing “the urban poor” with one-time vouchers, which could be “cashed in” for such services. The rationale was that supply-side approaches, in which the government would build houses and provide services, might prove wasteful—houses might be built in areas where people do not want to live, for example. A demand-driven approach would help the government and private companies better understand the will of consumers, and allow the market to work most efficiently. The memo continues: “An additional feature of a cost recovery voucher would be that after it is initiated, there would be no financial justification for boycotts of tariff or tax payments.”³⁸⁷ Given that non-payment of taxes and utility fees in black townships was used to protest the apartheid government, this feature aimed at preempting such forms of protest. The memo recommends the privatization of utilities and the implementation of user fees and full cost recovery mechanisms: “Infrastructure that may be financed fully by user charges (e.g. tariffs for electricity, water

³⁸⁷ Kyu Sik Lee, “South Africa Urban Economic Mission Aide Memoire,” Attached to 2/23/93 World Bank office memorandum to Michael Cohen. Feb. 12, 1993, Paragraph 38. Box: South Africa, Cohen Archive, Graduate Program in International Affairs, New School University, New York. See also Junaid Ahmad, “South Africa Urban Sector Report,” Attached to 4/6/93 World Bank office memorandum to Michael Cohen. Box: South Africa, Cohen Archive, Graduate Program in International Affairs, New School University, New York.

supply and sanitation) should be reformed as independently managed and financially autonomous utilities, thus removing this type of infrastructure from the fiscal balance issue.”³⁸⁸

In November 1993, just months before the national elections which would bring Nelson Mandela and the ANC to power, the ANC’s acceptance of the World Bank’s economic recommendations was solidified when the party entered into a secret \$850-million loan agreement with the IMF. The statement of intent attached to the loan expressed an acceptance of World Bank recommendations and would be fulfilled with the rapid introduction of neoliberal policies from 1996 onward. As William Gumede writes, “The secret letter of intent that accompanied the loan pointed out the dangers of increases in real wages in the private and public sector, stressed the importance of controlling inflation, promised monetary targeting, and trade and industrial liberalization, and argued in favor of the virtues of market forces over regulatory interventions.”³⁸⁹

Such policies would involve a very specific role for the state as an “enabler” of market forces—instead of the direct redistributor of resources for which most South Africans oppressed by apartheid had long struggled and

³⁸⁸ Lee, “South Africa,” paragraph 19.

³⁸⁹ Gumede, *Thabo Mbeki*, 77. See also Marais, *Limits to Change*, 134.

hoped. Such a policy direction would require the right kind of post-apartheid citizen—initially, the poor were meant to understand themselves as new ‘consumers,’ equipped with vouchers to buy housing, land, and utilities on the market. Within a few years, cost recovery measures (without direct voucher assistance for utilities) became the norm. The 1998 White Paper on local government highlighted tough measures for implementing cost recovery, and the deputy director-general of the Department of Constitutional Development, Chippy Olver, stated: “Where residents fail to meet their obligations in terms of service payments and rates, they will be cut off and prosecuted. Only in this way can we build a local democracy that works.”³⁹⁰ Inculcating a “culture of payment” was suddenly at the heart of local democracy. Municipalities implemented “credit control” measures and cut millions of families off of water and electricity between 1998 and 2000.³⁹¹ As Greg Ruiters of the Municipal Services Project writes, “By 2000, threats to law and order through illegal reconnections (theft of water and electricity) were managed by the state often using private security companies to whom law and order actions such as cutting

³⁹⁰ Cited in Ruiters, “Social control and social welfare,” 294.

³⁹¹ McDonald and Pape, *Cost Recovery and the Crisis of Service Delivery*.

water, removing infrastructure, and carrying out evictions were outsourced.”³⁹² A series of social movements arose at this time, with several directly targeting the government’s push towards privatization of services. With little success at cost recovery, widespread illegal connections, and growing political unrest – and with municipal elections just around the corner – the South African government pledged in December 2000 to give all households a free ration of basic services.³⁹³ However, in the case of water this free ration was soon accompanied by even harsher cost recovery in the form of prepaid meters.

The World Bank has hailed its on-going work in South Africa as “a unique opportunity to pilot our evolving role as a ‘knowledge bank,’” strengthening the role of the private sector and cost recovery mechanisms to an extent unheard of in most other countries.³⁹⁴ In the early and mid-2000s, former President Thabo Mbeki relied heavily upon classic World Bank conceptions of urban poverty to justify prioritizing a business-friendly atmosphere over direct government investments in the poor majority. While the dual economy thesis has been discredited by social scientists and activists who point to the fact that the ‘two

³⁹² Ruiters, “Social Control and Social Welfare,” 294.

³⁹³ Ibid.

³⁹⁴ World Bank, 1999. *South Africa Country Assistance Strategy* (Washington, D.C./Pretoria: The World Bank Group, 1999), Foreward.

economies' actually represent a unified economic process,³⁹⁵ Mbeki relied on this thesis. In mid-2003, he began speaking of 'two economies' co-existing within South Africa's borders. Though some hailed this as a step forward, arguing that it indicated a renewed commitment to addressing the needs of the country's poor, it soon became evident that this constituted a way to leave certain divisions unaltered and to justify a lack of fundamental change in wealth ownership within the 'first economy.' Rather than focusing attention and resources on the 'second economy' directly, Mbeki argued that investments and gains in the 'first economy' would eventually translate into benefits for the 'second economy.' As he stated in his February 2004 State of the Nation address:

We must continue to focus on the growth, development and modernization of the First Economy, to generate the resources without which it will not be possible to confront the challenges of the Second Economy. This is going to require further and significant infrastructure investments, skills development, scientific and technological research, development and expansion of the knowledge economy, growth and modernization of the manufacturing and service sectors, deeper penetration of the global markets by our products, increasing our savings levels, black economic empowerment and the further expansion of small and medium enterprises.³⁹⁶

³⁹⁵ This shift away from the dual economy thesis in favor of thinking about unified economic processes is similar to the work of scholars who have attempted to replace the formal/informal sector dichotomy with analyzes of "processes of informalization" (see e.g. Meagher, "Crisis, Informalization").

³⁹⁶ Thabo Mbeki, "State of the Nation Address of the President of South Africa," February 6, 2004, in Stephen Greenberg, "Post-apartheid Development, Landlessness

Mbeki's comments resonate with earlier conceptions about the divide between the formal and informal "sectors" (as highlighted in McNamara's 1975 speech on urban poverty). Despite the theory's dismissal among many academics, it remained a favorite trope of the World Bank. In the World Bank's 2003 Country Strategy Paper for Senegal (the site of the first urban assistance experiment), for instance, the authors write: "Senegal is two nations. One is approaching middle-income levels. It has access to middle class levels of education, public services, health care, housing, financial services, social protection, and urban amenities. The other—larger—nation exists near or below the poverty line. It is rural or lives in urban slums and is ill fed, ill clothed, ill housed, insecure, and uneducated."³⁹⁷ A bifurcated conception of "two economies" or "two nations" existing alongside each other—but only interacting with each other in a "trickle down" manner, never an exploitative one—has helped to justify market-based approaches with little role for direct government intervention to assist the poorest of its citizens.

and the Reproduction of Exclusion in South Africa," Centre for Civil Society Research Report No. 17 (Durban: Centre for Civil Society, 2004), 2.

³⁹⁷ World Bank, Senegal: Country Assistance Strategy Paper. Report No. 25498-SE. (Washington D.C.: The World Bank Group, 2003) in Cohen, "Aid, Density," 154.

Notions of rights, the role of the state, and the appropriate form of political claim-making represent key points of contention in the post-apartheid order. Despite its bold language on socio-economic rights, the country's Constitution enshrined only a minimal role for the government in providing access to housing, health care, food, water, and social security. These are all included in the bill of rights, but it is immediately added that provision of such rights depends on the state's financial and administrative capacity. (The right of children to adequate shelter in section 28(1)(c) of the Constitution has no such limitation, however, and it was on this basis that squatters won government-provided alternative shelter upon eviction in the landmark Grootboom case in 2000).³⁹⁸ As the Constitutional Court's 2009 decision on the right to water revealed, the government need only partner with the private sector to install a prepaid meter – whether or not Soweto residents can afford to keep them on is not of concern.³⁹⁹ The litigants, Soweto residents and the Coalition Against Water Privatization, had hoped that the Constitution would bear out a more active role for the state in ensuring real access to basic services. They brought the case out of

³⁹⁸ *Government of the Republic of South Africa and Others v Grootboom and Others*, 2000. South African Constitutional Court. (CCT 11/00).

³⁹⁹ *Mazibuko and Others v. City of Johannesburg and Others*, 2009. Constitutional Court of South Africa. (CCT 39/09).

a hope that South Africans were not just customers, but citizens whose rights must be ensured by the state, not the market.

Although the ANC's policy decisions can be attributed to a number of factors, many of which are outside the scope of this chapter, the World Bank played a fundamental role in ensuring that private sector-led shelter and service provision were of central focus. The bank's trial-and-error attempts to frame the relationship between states, markets, and citizens as one of government "enablement" of the private sector throughout the 1970s and 1980s were crucial in devising an urban policy framework for post-apartheid South Africa. As evidenced by Bank mission reports, one element that the Bank consistently underestimated was the difficulty of implementing cost recovery in light of socio-political concerns. Indeed, as the South African government has piloted ever more extensive cost recovery measures, the political reaction from its citizens—many of whom refuse to be customers in this way—has been explosive. South Africa is therefore an important case in terms of the political fallout of the bank's "enabling approach" for governments, as activists continue to fight to re-define the relationship between the post-apartheid state and its citizens.

CHAPTER FOUR:

“To All Who Live In It”: Crime, Prisons, and Neoliberal Development

I visited the new Kokstad Prison facility this morning and could not help but reflect on the irony of the potential of a prison to unleash such an abundance of opportunities for so many sectors of our society.

-- Deputy President Thabo Mbeki, April 17, 1999⁴⁰⁰

Introduction

On the morning of April 17, 1999, Deputy President Thabo Mbeki visited Kokstad, a large town near the border of KwaZulu-Natal and the Eastern Cape, two of South Africa’s poorest provinces. Mbeki had arrived to hail the town as a frontier of opportunity and a model for how the new South Africa would achieve economic growth in the years to come. The engine of that growth—the first and largest super-maximum prison in the southern hemisphere—was unusual, and Mbeki’s task was to garner support. In his post-site tour address, Mbeki briefly noted the prison’s role in addressing the problem of crime. He stated that the “efficient management of convicted persons under maximum-security conditions” would “fundamentally address what could be termed a societal ‘burning issue.’”⁴⁰¹ Nonetheless, Mbeki did not dwell upon the crime and safety

⁴⁰⁰ Address by the Executive Deputy President, Thabo Mbeki, on the Site Tour of the New Kokstad Prison and Launch of the Skills Development Programme, Apr. 17 (1999).

⁴⁰¹ Ibid.

concerns—and recent prison escapes⁴⁰²—that had drawn newspaper headlines and raised questions about the ANC’s ability to maintain order. The Deputy President turned quickly to how the new prison fit into the ANC’s visions for governance and economic development.

Mbeki explained that the prison would be a “launching pad for changing the lives of the people of Kokstad,” and he outlined the “socio-economic objectives” of the prison project.⁴⁰³ The Department of Public Works, he stated, would create more than 7500 jobs in the construction phase of the Kokstad prison facility, with more opportunities to follow once the prison was built. Mbeki touted plans to train youth in construction skills, and he made much of tremendous, if undefined, “downstream potential” for secondary industry goods and services. He hoped the prison project, and the government’s targeted procurement process that brought it about, would be a model for how local-level endeavors could generate “a substantial redistribution of wealth and

⁴⁰² See, e.g., “Ambush Frees South African Prisoners,” *BBC News*, Jan. 4, 1999 (“Twenty-one prisoners escaped from police custody in South Africa after the convoy in which they were travelling was ambushed by armed men. ... The incident follows the reported escape of 11 prisoners from a Johannesburg jail on Christmas Day.”) According to official statistics, South Africa had 1,069 prison escapes in 1997 and 480 in 1998 (*Ibid.*).

⁴⁰³ *Ibid.*

opportunities to the poor and historically disadvantaged.”⁴⁰⁴ In Mbeki’s framing, the prison was a promise kept. He stated that the ANC government’s R350 million expenditure in the local economy “re-affirms the commitment of our government to deliver critical infrastructure and to meet your needs.” Echoing the language of the Freedom Charter that guided the ANC through decades of struggle, Mbeki declared, “For the first time in the history of this country, we can say with confidence that opportunity in South Africa belongs to all who live in it.”⁴⁰⁵

Early on in his speech Mbeki acknowledged the uncomfortable tension of answering the calls of the Freedom Charter with a prison town. He stated that he “could not help but reflect on the irony of the potential of a prison to unleash such an abundance of opportunities for so many sectors of our society.” Yet, Mbeki maneuvered the contradiction by deflecting attention away from the brick, mortar, and barbed wire structure that would soon loom on the edge of Kokstad, and focusing instead on the metaphorical prison of South Africa’s apartheid past. He had opened his address with a quote from U.S. Supreme

⁴⁰⁴ Ibid.

⁴⁰⁵ Ibid. The Freedom Charter, adopted by the ANC at the Congress of the People in 1955, opens with the line: “We, the People of South Africa, declare for all our country and the world to know: that South Africa belongs to all who live in it, black and white[.]” African National Congress, *The Freedom Charter* (1955).

Court Chief Justice Warren Burger: “the greatest prison is not the one with the most imposing walls but that which locks in our identity, potential for growth and a sense of self-worth.”⁴⁰⁶ For Mbeki, this quote “captures the essence of the challenges we face in South Africa.” He compared apartheid to a prison with imposing walls that had locked in the full potential of the country and its people. Freed from centuries of colonialism and decades of apartheid social engineering, South Africa could now chase economic growth, development, and opportunity. Now, at the Kokstad prison site, the country had “come out of the prison of despair into the radiant light of hope.”⁴⁰⁷

The question of how the ANC reached this point—of promoting a new super-maximum prison as a triumph of economic development and service delivery—is this chapter’s focus. Given that so many individuals in the party’s leadership—and, as discussed in chapter two, so many in the broader population—had experienced prison, criminalization, and miscarriages of justice in the courts, it is odd, on first glance, that the party would herald the Kokstad super-maximum prison as fulfilling the dreams laid out in the Freedom Charter. Yet this development was in line with a broad range of criminal justice and

⁴⁰⁶ Ibid.

⁴⁰⁷ Ibid.

prison reforms adopted in the first five years after the end of formal apartheid. Within four years of the transition from formal apartheid, the government had passed legislation that imposed mandatory minimum sentences, made bail more difficult, imposed 'truth-in-sentencing' and limited parole, and allowed the government to enter into contracts for private prisons. The result of this and other legislation was a dramatic rise in the country's prison population. Between 1996 and 2003 South Africa's incarceration rate rose from 280 to 402 per 100,000.⁴⁰⁸ By 2000, sentences of seven to 10 years, 10 to 15 years, 15 to 20 years and 20 years to life had increased by 50 percent, 67 percent, 70 percent and 124 percent respectively.⁴⁰⁹

While there is much to be said and understood about the intense period of criminal justice reform in the first five years after apartheid and the resulting increase in the incarceration rate, this chapter will focus on an aspect that has received little scholarly attention. Other studies of post-apartheid criminal justice and prisons have tended to focus on: prison conditions (with a heavy focus on

⁴⁰⁸ Gail Super, "Punishment and the Body in the 'Old' and 'New' South Africa: A Story of Punitive Humanism," *Theoretical Criminology* 15(4) (2011), 428. Citing Gordon, 2006: 259.

⁴⁰⁹ Super, "Punishment and the Body," 428. Citing South African Law Commission, 2000.

violations of Constitutional law and human rights);⁴¹⁰ prison privatization;⁴¹¹ or critical (most often Foucauldian) analysis of crime discourses and governance.⁴¹² While these studies have contributed much, few studies link the broad literature on service delivery and market-driven development through austerity to prisons and criminal justice. I do so here. I contribute to the literature on private prisons, but also push further to understand the place of private prisons and harsh new criminal procedure and sentencing laws within a broader shift toward neoliberal economic development strategies. Since the vast majority of South Africa's prisons remained under public control—only two of the country's 240 prisons were privately-run—a focus on private prisons can overshadow more systemic trends. The relationship between criminal justice reform and neoliberal development goes far beyond the small number of “public-private” partnerships with U.S. and British consortia and companies like Wackenhut and Geo Group.

⁴¹⁰ See, e.g., Steinberg, “Prison Overcrowding;” van Zyl Smit, “Swimming Against the Tide;” Fagan, “Curb the Vengeance.”

⁴¹¹ See, e.g., Goyer, *Prison Privatisation in South Africa*; Sloth-Nielsen, *Overview of Policy Developments*; Dissel and Ellis, “Reform and Stasis;” Ramagaga, *Lessons from Prisons*; Coyle, *Prison Privatization*; Open Society Foundation for South Africa, *Prison Privatization*; Kenter and Prior, “Globalization of Private Prisons;” Sloth-Nielsen, “Business of Child Justice.”

⁴¹² See, e.g., Super, “Punishment and the Body;” Super, *Governing through Crime*; Gillespie, *Criminal Abstractions*; Gillespie, “Moralizing Security.”

I argue that “tough-on-crime” criminal justice reforms and prison expansion helped to propel a neoliberal approach to economic development in the years immediately after South Africa’s democratic transition (1995-2000). While public safety and crime were no doubt valid concerns in this period, there are many possible solutions to these problems. South Africa adopted a particular solution, borrowing heavily, as we shall see, from carceral technology and “war on crime” rhetoric developed in the United States. Indeed, there exists no better model than the United States for expanding a national prison economy during an era of neoliberal austerity. I argue that, in South Africa, prisons and harsh criminalization were meant to spur the economy in two ways: 1) by showing that the ANC was “tough on crime” and committed to making the country safe for foreign investment and white commercial farming; and 2) by generating development through the punishment economy. That is, prison contracts were framed as a form of “service delivery,” as they were meant to create jobs in construction and corrections as well as secondary markets such as prison food vending. In reality, however, towns like Kokstad—where the government pinned its plans for economic growth on high-tech new prisons—continue to struggle to meet their residents’ basic needs. As for private prisons, they proved to be a costly and unexpectedly short experiment.

Deputy President Mbeki's declaration that the super-maximum prison at Kokstad was a "radiant light of hope" begs the question: what are prisons *for* in post-apartheid South Africa? Historians and social theorists from a range of disciplines have grappled with the role that mass incarceration plays within neoliberal democratic societies. While punishment and confinement are certainly part of prison's function, historians and theorists (particularly scholars of late 20th century United States, the most heavily incarcerated country on the planet) have sought to contextualize exploding incarceration rates within broader economic shifts—namely, the intensification of neoliberal deregulation and privatization over the past 30 years.⁴¹³ Within this focus, scholars have expanded on Foucault's call to understand incarceration as a form of statecraft,⁴¹⁴ focusing on penal expansion as a political project, one that is fundamentally about the state's continued control of poor, predominately black people. Specifically, this literature focuses on the role of prisons in: warehousing surplus labor;⁴¹⁵

⁴¹³ See Wacquant, *Punishing the Poor*. See also Harcourt, *The Illusion of Free Markets*; Alexander, *The New Jim Crow*; Western, *Punishment and Inequality*; Thompson, "Why Mass Incarceration Matters."

⁴¹⁴ Foucault, *Discipline & Punish*.

⁴¹⁵ Wacquant, *Punishing the Poor*; Western, *Punishment and Inequality*.

maintaining a racial caste system;⁴¹⁶ and constituting a market for private interests.⁴¹⁷ In the South African context, Gail Super has made a compelling argument for understanding the ANC's crime discourse as a way of consolidating power and defining "criminals" as traitors of the new nation in the years after the transition from formal apartheid.⁴¹⁸ This chapter adds to this literature by examining how prisons came to be framed as a mechanism for nation-building and economic development by the ANC in the first years of its rule.

This chapter examines the interplay of several factors that shaped the direction of prison and criminal justice reform during the first five years of ANC rule. Part I provides historical context for the reforms of the mid-1990s, describing characteristics of the prison and criminal justice system at the end of apartheid. Part II examines the move to public-private partnerships in the prison industry in the first years after the transition. Part III examines parliamentary debates that culminated in the passage of criminal justice reform legislation

⁴¹⁶ Alexander, *The New Jim Crow*.

⁴¹⁷ See, e.g., The Sentencing Project, "Prison Privatization and the Use of Incarceration" (2004) at 1. See also Geoffrey Schotter. *Prisons for Profit: A Look at Prison Privatization*. American Civil Liberties Union of Ohio (2011).

⁴¹⁸ Super, *Governing Through Crime*.

including the Criminal Law Amendment Act of 1997. These sections will focus on understanding how prisons fit into broader economic reforms, as well as the role of international (largely American) influence on the direction of criminal justice and prison policy. As we shall see, this influence was both direct, taking the form of consultants and exchange visits, and indirect, in terms of the popular notions of crime and punishment that often shaped the terms of parliamentary debate. The concluding section will examine how South Africa's experiment with private prisons failed, bringing the discussion up to 2011, when the Minister of Corrections decided to scrap plans for any more private prison contracts.

My sources include *Hansard* parliamentary records, speeches, governmental reports, newspaper archives, and secondary literature. The parliamentary debates and media coverage from the time allow for an understanding of legislative moves toward private prisons and harsh criminalization as they unfolded. This allows us to see how media hype over rising crime rates created a sense of pressure to address crime. At the same time, the debates show the extent to which Cabinet ministers and parliamentarians were constrained by an overall push for austerity and budget cuts. The debates provide insight into how the government's neoliberal economic approach, namely its extensive involvement of the private sector in traditional state

functions, was chosen and rationalized. The debates also show a heavy U.S. influence on the terms of the debate and in the solutions adopted; the U.S. was a reference point for how to fight an ambitious “war on crime” while also entrenching austerity and an increased reliance on the private sector.

I. *Historical Context: Prisons & Criminal Justice in Late Apartheid*

To understand what role prisons played in South Africa just after the democratic transition, it is necessary to understand what the prison system looked like in the last years of apartheid. Chapter one described the relationship between pass law arrests, jails, farm prisons, and the use of convict labor on farms. Although the pass laws were abolished in 1986, Black South Africans continued to face arrests and repression as authorities used trespass, illegal squatting, and vagrancy laws to restrict movement.⁴¹⁹ And while South Africa formally dismantled the system allowing the private sector to hire prison labor in the late 1980s, prisoners were still released on “parole” to work in private sector businesses through the early 1990s.⁴²⁰ Convict leasing was a persistent feature of

⁴¹⁹ John Battersby, “Pretoria Pass Law Dies, But Spirit Lives,” *New York Times*, Jun. 27, 1988. The pass laws were ended by the Abolition of Influx Control Act No 68 of 1986.

⁴²⁰ Africa Watch, *Prison Conditions in South Africa* (New York: Human Rights Watch, 1994), 63.

South Africa's jails and prisons, dating back to the colonial era (as chapter one discusses). But it is worth giving a brief overview of reforms within the broader prison system. While individuals arrested on pass law offenses faced only brief stints in jail before being leased out on parole, prisons were crowded with those serving longer sentences.

The apartheid prison system was characterized by militarization, racial segregation, and overcrowding. The Prisons Act of 1959 applied the policy of apartheid throughout the Prisons Service, including racial segregation of prisoners and different diets and uniforms depending upon one's racial classification.⁴²¹ The court system was similarly divided by race, with the Bantu Affairs Commissioners' Court serving as a district court for blacks only and the Bantu Appeal Court and Bantu divorce court handling only cases involving black people. Judges were generally poorly qualified to handle the matters before them.⁴²² After the Sharpeville massacre of 1960, prisons were used increasingly

⁴²¹ S. Singh, "The Historical Development of Prisons in South Africa: A Penological Perspective," *New Contree*, No. 50 (Nov. 2005), 24; Van Zyl Smit and van der Spuy, "Importing Criminological Ideas in a New Democracy," 185; Sarah Oppler, *Correcting Corrections: Prospects for South Africa's Prisons*, Institute for Security Studies (ISS) Monograph no. 29 (1998), 1.

⁴²² ANC MP Mninwa Johannes Mahlangu offered this description of the apartheid court system during a June 1996 debate over justice appropriations and the legal system: "The Bantu Affairs Commissioners' Court was a district court for Blacks only, under the Bantu Administration Act. The presiding officers were normally poorly qualified

to repress political movements, with growing numbers of political detainees and sentenced political prisoners filling the prisons.⁴²³ As discussed in chapter one, apartheid prisons were closed institutions, as authorities banned all media, outside inspections, and publishing of photographs.⁴²⁴

Beginning in the 1970s, the National Party government made a series of liberal reforms to the judicial and prison systems.⁴²⁵ In 1974, a Penal Reform Commission (the “Viljoen Commission”) was appointed to study the penal system and recommend improvements. (The question of whether the death

Whites. The criminal jurisdiction of these courts included the following made-up offences: failure by Blacks to be in possession of a *dompas* and the presence of Blacks who were originally from rural areas in any town without permits. They could commit unemployed Blacks to hard labour in farming institutions for up to 18 months. While these courts were normally presided over by less-qualified White males, their jurisdiction was equal to that of the Supreme Court with regard to the amount claimed, as long as the parties before court were Blacks. The Bantu Appeal Court was the second leg of the Blacks-only courts. The elderly Bantu Affairs Commissioners were allowed to preside. One did not have to have a judge’s qualifications or experience to preside over these courts.” *Hansard*, “Appropriation Bill,” Debate on Vote no 19—Justice, June 13 (1996), col 2909-10.

⁴²³ Singh, “The Historical Development of Prisons in South Africa,” 25.

⁴²⁴ *Ibid.*

⁴²⁵ For an in-depth discussion of these reforms, see Super, *Governing through Crime*, chapter 6; Dirk van Zyl Smit, *South African Prison Law and Practice* (Durban: Butterworths, 1992).

penalty should be retained was explicitly off limits).⁴²⁶ The Viljoen Commission was the first to investigate the prison system since 1947, when the Lansdown Commission published its report, and it saw a need to understand and address the country's "alarmingly high prison population."⁴²⁷ The Commission published its findings and recommendations in 1976. The report criticized mandatory minimum sentences and called for the establishment of "pre-sentence diagnostic centres" staffed by probation officers, psychiatrists, doctors, and social workers who would write reports to influence a judicial officer's sentencing decision.⁴²⁸ The report also promoted alternatives to imprisonment.⁴²⁹ The use of the death penalty and corporal punishment persisted after the Viljoen Commission's report, but with some modifications. With the 1977 Criminal Procedure Act, the legislature placed age restrictions on the use of corporal punishment (lowering the maximum age from 50 to 30) and reduced the number of times someone could be lashed with a whip.⁴³⁰

⁴²⁶ Republic of South Africa, *Commission of Inquiry into the Penal System of the Republic of South Africa* (Pretoria: Republic of South Africa Government Printer, 1976), 1.

⁴²⁷ *Ibid.*, 3.

⁴²⁸ *Ibid.*, 102. See also Super, *Governing through Crime*, 109.

⁴²⁹ Republic of South Africa, *Commission of Inquiry into the Penal System*, 133.

⁴³⁰ See Super, *Governing through Crime*, 109.

Still, the Viljoen Commission released its report the same year as the Soweto uprising so, despite the commission's calls for liberalization and alternatives to incarceration, the NP government was determined to continue using prisons to detain political activists and repress resistance.⁴³¹ As Super has observed, the period following the Viljoen Commission report actually saw an increase in imprisonment and a lengthening of prison sentences.⁴³² The rate of imposition of the death penalty increased over the 1980s as capital punishment was used a tool of repression against liberation movements; in 1987 a new category of death row prisoners was created, those sentenced to death for "political unrest."⁴³³ Despite that, 42 percent of those sentenced to die received a presidential reprieve in 1987, and that rate increased until the last execution took place in November 1989.⁴³⁴

However, the 1980s saw a distinct shift in penological focus toward rehabilitation.⁴³⁵ Beginning in 1981, prison staff was to become more involved in

⁴³¹ Singh, "The Historical Development of Prisons in South Africa," 26.

⁴³² Super, *Governing through Crime*, 108.

⁴³³ *Ibid.*, 114.

⁴³⁴ *Ibid.*

⁴³⁵ *Ibid.*, 112-13.

the treatment of prisoners and, beginning in 1983, prisoners were given more privileges such as increased visits and higher amounts of money permitted for purchases.⁴³⁶ Still, stark racial differences in treatment remained, with far more social workers on staff to “treat” white prisoners than coloured, Indian or black prisoners.⁴³⁷ The government recognized that vast overcrowding remained a problem, and in 1984 the Krugel Working Group released a report calling again for alternative sentencing options.⁴³⁸ In 1986, the legislature amended the Criminal Procedure Act No 51 of 1977 to institute community service sentences as a viable alternative to prison sentences.⁴³⁹

The political changes of the early 1990s—including Nelson Mandela’s release from prison and the unbanning of the ANC and other banned organizations—also brought changes in the prison service. The government repealed racially discriminatory legislation regarding the treatment of prisoners,

⁴³⁶ Ibid., 112.

⁴³⁷ Ibid., 111.

⁴³⁸ Singh, “The Historical Development of Prisons in South Africa,” 27.

⁴³⁹ Ibid., 27.

and began to desegregate prisons.⁴⁴⁰ In 1991 the Prisons Service was separated from the Department of Justice and renamed the Department of Correctional Services. The new department was tasked with managing prisons and administering a new category of non-custodial sentence called “correctional supervision.”⁴⁴¹ In light of this brief overview of penal reforms in the 1970s and 1980s, it is clear that the “correctional supervision” system was not invented out of whole cloth in 1991, but instead can be seen as the legal implementation of steps that began with calls from the Viljoen Commission and then the Krugel Committee. While apartheid prisons remained horribly overcrowded and prisoners endured gross indignities and human rights violations,⁴⁴² the government had moved toward liberal reforms, some of which—including the “correctional services” appellation and approach—would endure through the democratic transition process.

II. Crime, criminal justice & prisons during the transition period

A. Visions & key players

⁴⁴⁰ Human Rights Watch, *The Human Rights Watch Global Report on Prisons* (New York: Human Rights Watch, 1993), 227.

⁴⁴¹ *Ibid.*

⁴⁴² Along with a number of prison memoirs, see Africa Watch, *Prison Conditions in South Africa*.

As with nearly all policy changes during the transition from apartheid, the move to adopt harsh criminal justice and prison policies took place in a very compressed period. In its years as a freedom movement, the ANC had not developed clear policy prescriptions on crime, policing, courts, and prisons. Yet there is evidence that the party's position on crime and punishment was once more skeptical of prisons as a solution for criminal activity. A 1992 ANC policy document on crime, crime control, and the role of the police characterized crime as linked to poverty and declared that prisons would not solve the country's crime problem. The policy document "referred to 'crimes of the poor such as street crime' and attributed these to 'the structural violence of the apartheid era.' It stated that 'our crime problems are NOT being solved by large-scale imprisonment' and that 'however much one condemns those deeds' the State response should show compassion for the perpetrator."⁴⁴³ The ANC's Reconstruction and Development Programme (RDP), the socio-economic policy framework it adopted in 1994, included a short section on prisons. The RDP stated that prisons must not only restrain but also rehabilitate and train convicted persons; that the military command structure of the prison service

⁴⁴³ Super, "Punishment and the Body," 428 (citations omitted, original emphasis; citing: African National Congress (1992) Discussion Document: Crime and Crime Control. What Role Should the Police Play? Centre for Applied Legal Studies, File AK 2195, P2 Police, South African History Archives, University of the Witwatersrand).

must be transformed; that prisoners must enjoy human rights and that punishment that infringes basic human rights (including solitary confinement and dietary punishment) must be ended; that the Prison Act must be substantially reformed to allow the public to be informed about prison conditions; that all children should be released from prisons and police cells; and that special accommodations should be made for pregnant women and mothers with small children in prison.⁴⁴⁴ These were specific recommendations, but the space given to prisons paled in comparison to other socio-economic issues.

Ultimately, the direction of post-apartheid prison reform would be decided in large part by a political outlier: Dr. Siphon Mzimela, an Anglican priest who spent 33 years in exile, and had a tumultuous relationship with the ANC. He was an ANC loyalist until the late 1980s when he abruptly joined the IFP.⁴⁴⁵ In 1993, he published a book, *Marching to Slavery: South Africa's Descent to Communism*, in which he denounced Mandela and the ANC, charging that they were marching the country down a communist path that would spell “the end of

⁴⁴⁴ African National Congress, *The Reconstruction and Development Programme (RDP): A Policy Framework* (1994), ss. 2.13.17 and 5.8.

⁴⁴⁵ Mark Gevisser, “Priest Who Takes No Prisoners,” *Mail & Guardian*, Mar. 1, 1996.

civilization in all of black Africa.”⁴⁴⁶ He would later distance himself from the book, but his career in the coming years would focus on proving his main political point: “a small decentralized government is best.”⁴⁴⁷ After delivering an impassioned prayer to open the IFP’s national congress in 1993, Mzimela became a fiery party leader who, within two years, would become national deputy chair. After the 1994 election, President Mandela appointed Mzimela as Minister of Correctional Services. Despite the ANC’s landslide victory, the interim constitution had provided for a controversial “government of national unity,” mandating that any opposition party that received more than 5 percent of the vote be represented in the cabinet.⁴⁴⁸ The Correctional Services portfolio was not a high priority for the ANC, and leadership over the portfolio was given to Dr. Mzimela.⁴⁴⁹ Thus, Mzimela had little allegiance to the ANC’s vision or to President Mandela. Rather, Mzimela came into his post with strong U.S. connections and an affinity for U.S.-style incarceration, acquired from his years

⁴⁴⁶ Ibid; Sipho Mzimela, *Marching to Slavery: South Africa’s Descent to Communism* (Dunwoody: Soundview, 1993).

⁴⁴⁷ Gevisser, “Priest Who Takes No Prisoners.”

⁴⁴⁸ See Goyer, *Prison Privatisation in South Africa*, 5; Giffard, *Out of Step?*, 32.

⁴⁴⁹ See Giffard, *Out of Step?*, 32.

as a former prison chaplain in the U.S.⁴⁵⁰ During his years in exile, he had met Goltz Wessmann, a businessman specializing in the use of technology to modernize prison systems, who would become his Special Advisor in 1995.⁴⁵¹

Still, the ANC did not cede the ground entirely to Mzimela. Responding to pressure from outside the department, Deputy President Thabo Mbeki convened a meeting in early 1995 of all key players in the corrections field, including the Department, the Minister, the parliamentary portfolio committee, and the newly formed Penal Reform Lobby Group.⁴⁵² In July 1995, a Transformation Forum, funded by the Danish Government, was created to bring various stakeholders together to reshape the Department of Correctional Services.⁴⁵³ The forum was chaired by ANC politician Carl Niehaus, a former political prisoner who also chaired the parliamentary portfolio committee on correctional services. The

⁴⁵⁰ Sloth-Nielsen, *Overview of Policy Developments*, 5.

⁴⁵¹ "Goltz Wessmann: Managing Director," <http://fastcomm.ilocals.info/portfolio/goltz-wessmann-managing-director/>. Fran Buntman and Lukas Muntingh, "Supermaximum Prisons in South Africa," in Jeffrey Ian Ross, ed. *The Globalization of Supermax Prisons* (New Brunswick: Rutgers, 2013).

⁴⁵² Giffard, *Out of Step?*, 34. The Penal Reform Lobby Group (PRLG) included the trade union Police and Prison Officer's Civil Rights Union (POPCRU), the South African Prisoners Organization for Human Rights (SAPOHR), the National Institute for Crime and the Rehabilitation of Offenders (NICRO), Lawyers for Human Rights and research groups (Ibid.).

⁴⁵³ van Zyl Smit and van der Spuy, "Importing Criminological Ideas," 194-5; Giffard, *Out of Step?*, 34.

forum was made up of “a strange mixture of old-regime prison staff generals, former ‘common law’ prisoners, trade union activists and idealistic penal reformers.”⁴⁵⁴ In preparation for the forum’s work, a group of 22 individuals representing the Department, NGOs involved in correctional services, and members of the parliamentary committee on correctional services took a two-week tour to Denmark, Holland and Britain to visit prisons and institutions.⁴⁵⁵

Virtually from the start, the Transformation Forum was plagued by a total lack of coordination between it and Minister Mzimela’s office. The ministry did not send representatives to forum meetings as promised, and by February 1996 it announced that it was terminating the Department of Correctional Services’ participation in the forum.⁴⁵⁶ After a media fight between the forum and the department, President Mandela instructed the Minister to re-engage with the forum, which he did.⁴⁵⁷ Even so, the lack of communication and coordination continued. By late 1996 Niehaus had been appointed ambassador to the

⁴⁵⁴ Van Zyl Smit et al., “Importing Criminological Ideas,” 195. See also Giffard, *Out of Step?*, 34.

⁴⁵⁵ Amanda Dissel, “Report on Correctional Services Tour to Denmark, Holland and Britain,” Centre for the Study of Violence and Reconciliation (1995).

⁴⁵⁶ African National Congress, “Press Statement of Transformation Forum on Correctional Services,” Pretoria, Mar. 1 (1996).

⁴⁵⁷ Giffard, *Out of Step?*, 35.

Netherlands and the forum collapsed.⁴⁵⁸ With the collapse of the forum, idealistic reformers who clung to hopes for a prison system modeled after “more communitarian continental European notions” were upstaged by Minister Mzimela and his plans for American-style prisons.⁴⁵⁹

While the members of the would-be Transformation Forum had toured Western Europe in 1995, Minister Mzimela had traveled to the U.S. That year Minister Mzimela went to the U.S. to attend the American Corrections Association conference and visit various prisons to, as he put it, “find solutions to overcrowding, poor building design and lack of programmes in our prisons.”⁴⁶⁰ He visited the U.S. and U.K. with senior Correctional Services officials again in 1997 and, according to accounts, the 1997 trip confirmed his ideas that private prisons would be a cost-effective option for South Africa.⁴⁶¹ Mzimela and his staff delegation returned from these trips with two clear recommendations for South Africa: the privatization of prisons and the adoption

⁴⁵⁸ Van Zyl Smit et al., 195.

⁴⁵⁹ See *ibid.*

⁴⁶⁰ *Hansard*, “Minister: Business/Private Trips,” Interpellations, Questions, and Replies, Vol. 11, col 741, Feb. 21 – Nov. 7, 1996.

⁴⁶¹ Goyer, *Prison Privatisation in South Africa*. See also Kenter and Prior, “Globalization of Private Prisons,” 97.

of American-style super-maximum security (“supermax”) prisons.⁴⁶² As we shall see, he was a particularly strong proponent of private prisons.⁴⁶³ He played an enormous role in determining the direction that prison reform would take in South Africa, and he was eager to pattern the country’s system after the United States.

Minister Mzimela wasted little time before opening a new high-security CMax prison in Pretoria in September 1997. The prison was described as a forerunner to the super-maximum prisons, with prisoners being kept locked up in a cell for 23 hours a day, with only one hour of exercise per day. Only minimal Constitutional rights were to be allowed, with all meals served inside cells, only three noncontact visits per month, and prisoners handcuffed at all times when moving around outside cells.⁴⁶⁴ Minister Mzimela had kept the CMax prison a secret from even top Department officials until a week before it was put into operation, reportedly out of fear that it might provoke protests or halt the

⁴⁶² Amanda Dissel and Stephen Ellis, “Reform and Stasis: Transformation in South African Prisons,” *Critique Internationale* 16 (2002).

⁴⁶³ *Ibid.*

⁴⁶⁴ *Hansard*, “Parole and Correctional Supervision Amendment Bill,” Second Reading Debate, col 5525, Oct. 27, 1997. See also Marion Edmunds, “CMax Prison Hatched in Secret,” *Mail & Guardian*, Nov. 14, 1997.

project.⁴⁶⁵ Afterward Mzimela said that he could not risk discussing the project before implementation, stating, “If you think what you are doing is good, you act first and apologize later. The reason why we could not develop the mine-shaft prison idea was that we said it first. We learned from that.”⁴⁶⁶ Mzimela was referring to a controversial plan to house prisoners down defunct mine-shafts. He had let the plan slip at a press conference several months earlier, and was met with enough backlash that the project could not go forward.⁴⁶⁷ Indeed, CMax drew criticism from human rights groups when it was revealed, drawing charges that the 23-hour lockdowns were solitary confinement, a contravention of international human rights conventions. Mzimela denied that this was solitary confinement, instead calling it “high security.”⁴⁶⁸ While human rights groups may have been upset by the opening of the CMax prison, politicians from all parties were quick to praise Mzimela during parliamentary sessions for being tough on crime and assuring against prison escapes.

⁴⁶⁵ Edmunds, “CMax Prison Hatched in Secret.”

⁴⁶⁶ Ibid.

⁴⁶⁷ “South Africa: Plans to Turn Disused Mines into Prisons,” AP Archive, Mar. 6, 1997.

⁴⁶⁸ Edmunds, “CMax Prison Hatched in Secret.”

The similarities between the CMax prison—and the super-maximum prisons that followed in its wake—and US maximum and super-maximum facilities was no accident. As Buntman and Munthing write in their study of the adoption of super-maximum facilities in South Africa, “The two South African supermaximum security facilities were strongly modeled on U.S. supermaximum security facilities.”⁴⁶⁹ They continue:

Then minister Mzimela spent part of his years in exile (early 1960s through early 1990s) in the United States, where he met up with his future advisors, Golz Wessman and Sishi Mthabela. When Ebongweni [the super-maximum prison at Kokstad] was still at a conceptual stage, both Wessman and Mthabela returned to the United States on a study tour, including to a supermaximum security facility in Colorado. Once the idea for Ebongweni was approved, a team including architects was also dispatched to the United States to study supermaximum-security prisons; Ebongweni was ultimately modeled on Marion, a supermaximum prison in Illinois.^{470 471}

⁴⁶⁹ Fran Buntman and Lukas Muntingh, “Supermaximum Prisons in South Africa,” in *The Globalization of Supermax Prisons*, ed. Jeffrey Ian Ross (New Brunswick: Rutgers, 2013). On Supermax being borrowed from US prisons, see also: Marion Edmunds, “CMax Prison Hatched in Secret.”

⁴⁷⁰ Buntman and Muntingh, “Supermaximum Prisons in South Africa.” Buntman and Muntingh’s account is based on interviews with F.J. Venter, a staff officer in the commissioner’s office at the time the Department of Correctional Services began the move to super-maximum facilities and Golz Wessman, advisor to Minister Mzimela.

⁴⁷¹ The Marion super-maximum prison in Illinois was the first super-maximum prison in the world. The super-maximum security level began after two prison guards were killed in 1983. The prison went into “permanent lockdown” for the next 23 years, with prisoners being confined to their cells for the majority of the day. See Stephen C. Richards, “USP Marion: The First Federal Supermax,” *The Prison Journal*, 88(1) (2008): 6-22.

While the move to construct super-maximum prisons was largely driven by Minister Mzimela and his advisors, the broader shift toward tough-on-crime criminal procedure and sentencing legislation was a more communal effort, with support from across the political spectrum. This adoption of a “War on Crime,” driven from the highest levels of the ANC, is the focus of the next section.

B. Perceptions of a ‘crime wave’

The debate over a post-apartheid “crime wave” – its existence, its size, its cause and its implications – was, and remains, hotly contested. But without a doubt, nearly immediately after taking power, the ANC government faced increased pressure to deal with what press was reporting as a “crime wave.” Whatever the ANC’s position on the appropriate response to crime before taking power and during the transition period, it was now compelled to respond with decisive action. According to the typical narrative, the transition to democracy led to an increase in crime, with some press reports going so far as to call it a “descent into barbarism.”⁴⁷² An in-depth discussion of whether and to what

⁴⁷² D. Cassere, “A Harrowing Week Listening to the Pain of Our Crime Ravaged City,” *Cape Times*, Aug. 23, 1996, cited in Gail Super, *Governing through Crime*, 19. Cassere writes: “At one stage, right after our first democratic elections, we were the envy of the world ... if you have been following the Crime Line stories this week you will know that people are being raped, mugged, murdered, hijacked and burgled. They are screaming

extent crime increased after the transition from apartheid lies outside the scope of this chapter. Nevertheless, several caveats about the post-apartheid crime wave narrative are worth noting.

First, apartheid statistics did not include the Bantustans, thus resulting in an unknown amount of unrecorded crime during apartheid. In the same vein, crime in Black townships (which had low police resources) went greatly undercounted.⁴⁷³ Thus post-apartheid crime statistics included vast locations that were previously unaccounted for, making comparisons between apartheid and post-apartheid crime rates dubious at best. Similarly, the Institute for Security Studies, among others, has argued that South Africa's spiraling crime rate may be a statistical illusion, the product of improved reporting.⁴⁷⁴ ISS's 2002 study of

for the death penalty to be reinstated and some have even suggested resorting to more old-fashioned methods, such as hanging, drawing and quartering and whipping with the cat o' nine tails ... As the country descends into barbarism, so the people call for barbaric solutions ... The streets are filthy, transport is dodgy, many areas are not safe to go to at all, people are ripped off by business as a matter of course, even before the muggers can get to them, the unemployed and homeless have taken over public areas and people are taking the law into their own hands in the absence of justice. Our peacekeepers are demotivated because as soon as they arrest someone he or she is out on bail."

⁴⁷³ Super, *Governing through Crime*, 19. See also Mark Shaw, "Crime in Transition" in *Policing the Transformation: Further Issues in South Africa's Crime Debate*, ed. Mark Shaw, Lala Camerer, Duxita Mistry, Sarah Oppler, Lukas Muntigh (Pretoria: Institute for Security Studies: 1997).

⁴⁷⁴ Ted Leggett, Institute for Security Studies, "Improved Crime Reporting: Is South Africa's Crime Wave a Statistical Illusion?" *SA Crime Quarterly* 1 (2002).

police statistics found that commonly underreported crimes were on the increase after 1994, but those most likely to be reported (murder, car theft, and business burglary) declined between 1994 and 2001.⁴⁷⁵

Second, social theorist Gail Super has written at length about how official statistics show a rise in crimes such as murder, housebreaking, and robbery dating back to the mid-1980s, with a dramatic rise in official crime statistics in the 1980s.⁴⁷⁶ Such data refutes the notion that it was the transition to democracy that caused an increase in crime, and instead pushes the timeline back, locating some causes of increased crime in the late apartheid era. Finally, as Super has highlighted, there was an increase in two types of crimes beginning in the early 1990s that reflected a shift in the patterns of victimization: 1) attacks on ‘civilians in their own homes’ (ie. white senior citizen victims); and 2) car hijacking and cash-in-transit heists.⁴⁷⁷ Khehla Shubane dates the first use of car hijackings back to the 1980s – a tactic used by “comtsotsis” who argued that they were advancing

⁴⁷⁵ Ibid.

⁴⁷⁶ Super, *Governing through Crime*, 26 (citing Mark Shaw, “‘Partners in Crime’?: Crime, Political Transition and Changing Forms of Policing Control,” *Transition Series*, Research Report no 39, June [Johannesburg: Centre for Policy Studies: 1995]).

⁴⁷⁷ Super, *Governing through Crime*, 27 (citing Department of Law and Order, Annual Report of the Commissioner of the South African Police, 1 January 1993-31 December 1993, RP 5-1994 (1994), 104).

the goals of struggle.⁴⁷⁸ It is no wonder that home invasions and carjackings would draw more attention than other types of crimes, so this may have contributed to the sense of a dramatic rise in crime.

Indeed, whether there was an overall increase in crime or not, popular perceptions about crime and the government's ability to control it *did* change between 1994 (when the ANC was elected to power) and 1995. Whatever the reality of crime, these *perceptions* demanded a response from the government. A 1994 Human Sciences Research Council survey found that 75 percent of South Africans believed that government had crime largely under control. By early 1995, more South Africans believed that government had little or no control over crime than believed the contrary.⁴⁷⁹ When President Nelson Mandela gave an extended address at the opening of parliament in mid-February 1995, he was compelled to address the problem of crime at length, as I will expand upon in the next section.⁴⁸⁰

⁴⁷⁸ Khehla Shubane, "A Question of Balance: Crime-Fighting in a New Democracy," in *Crime Wave* ed. Jonny Steinberg (Johannesburg: Wits University Press, 2001) (cited in Super, *Governing through Crime*, 27).

⁴⁷⁹ Rod Alence and Gideon Pimstone, HSRC Election Research Task Group, "Crime and the 1999 Election: Perceptions of Voters," *Nedbank ISS Crime Index*, 3 (1999).

⁴⁸⁰ "Address by President Nelson Mandela on Occasion of Opening of Parliament," Cape Town, Feb. 17, 1995.

By 1997, reports of South Africa's "crime wave" filled national and international media. Consensus said that the crime wave was bad for business and tourism, thereby threatening prospects for international investment and economic growth. In the first half of 1997, South Africa's four largest banks faced a wave of robberies; almost 300 banks were robbed, nearly three for each day the banks operated.⁴⁸¹ In an unprecedented move, Nedcor announced that it would close nine of its branches in central Johannesburg, "in response to the reputation earned by the country's main commercial hub as a popular weekend robbing ground."⁴⁸² The Council of South African banks reported that the bank industry would spend about R376 million to protect bank branches and cash-in-transit operations, but maintained that private security expenditure would not do anything to abate crime rates. For that, the Council called for "a far more diligent, less corrupt, law-enforcement system."⁴⁸³

⁴⁸¹ "Focus on South Africa: Surge in Armed Robberies Propel Banks to Action," *The Wall Street Journal Europe*, Jun. 10 (1997), p. 24.

⁴⁸² *Ibid.*

⁴⁸³ *Ibid.*

In a response to public demands for decisive action,⁴⁸⁴ the government named Meyer Kahn, the head of South African Breweries Ltd., one of South Africa's largest industrial conglomerates, as new chief executive of the national police force. The New York Police Department's former chief Bill Bratton, notorious for implementing "broken windows" policing, had offered his services, but the government declined.⁴⁸⁵ Kahn's appointment as chief executive of the South African Police Service (SAPS) resulted, as van Zyl Smit writes, in "the importation of many familiar managerial credos. The SAPS was introduced to 'policing by objectives' and 'performance-based indicators' intended to increase the efficiency of this intractable bureaucracy. [T]he latest managerial techniques that South African big business had adopted from its western counterparts were deployed—with limited success—towards the goal of improving policing capacity."⁴⁸⁶

⁴⁸⁴ Ibid. See also COSATU statement on the Appointment of Meyer Kahn, May 26, 1997, <http://www.cosatu.org.za/docs/pr/1997/pr0526a.html> ("Whilst we welcome Mr Kahn, he should also bear in mind that managing an institution for profit is different from managing an institution which deals with the delivery of services to the communities. We also note the fact that the South African Breweries (SAB) has not always been at the forefront for the respect of workers rights.").

⁴⁸⁵ "Beer Cop," *The Economist*, May 29, 1997.

⁴⁸⁶ Van Zyl Smit and van der Spuy, "Importing Criminological Ideas," 189.

When it came to prisons and criminal reform legislation, proponents of private prisons and new super-maximum security technologies—including officials in the Department of Correctional Services—drew a straight, causal line from the post-transition crime wave to the need for more prisons and ‘modern’ technology. In this framing, the transition to democratic rule precipitated a crime wave, which led to overcrowded prisons and a need for more prisons, which would lead to a budget crisis, which led to the solution of public-private sector partnerships for constructing new prisons. This is the narrative favored by, for example, Goltz Wessmann, Special Advisor to the Minister of Corrections:

A dramatic increase in the crime rate severely overcrowded prisons. This led to a chain reaction because as more prison space was required, constant staff shortages emerged due to poorly designed prisons, which in turn resulted in more prison escapes and therefore increased pressure from the community. An increase in staff and prison space meant higher budgets, which was not available and still is not. Alternatives had to be found and the Minister turned to the Private Sector, who jumped at the opportunity to participate in the process.⁴⁸⁷

However, there is reason to doubt this “chain reaction.” In the next section, I argue that the plan to move toward public-private partnerships in prison construction existed earlier, and that it was not a direct outgrowth of a rising crime rate. Although crime was a serious problem during the transition period,

⁴⁸⁷ Goltz Wessmann, *A Strategic Planning Guide for the South African Department of Correctional Services on the Implementation of New Management Philosophies*, MBA Thesis, Stellenbosch University (2003), 2.

public-private partnerships in prisons were part of a larger development strategy. When government officials declared a “war on crime” and passed legislation to help fight that war, there were larger socio-economic objectives at hand beyond just decreasing crime rates.

C. Declaring a ‘War on Crime’

In February 1995 South Africa’s first democratic and non-racial parliament was new and still finding its way – its first members had been sworn in just nine months before. President Mandela delivered an address to open the parliamentary session in which he outlined the central problems facing the country and the work that lay ahead. The government faced monumental tasks: creating and staffing institutions; attempting to “bring the government to the people” by opening up national and provincial legislatures to scrutiny and accountability; drafting and passing legislation; rooting out corruption; building infrastructure for upcoming local elections; transforming the judiciary; creating a budget that would balance fiscal discipline with the need to provide basic infrastructure for millions who were previously un-served.⁴⁸⁸ The tasks were

⁴⁸⁸ “Address by President Nelson Mandela on Occasion of Opening of Parliament,” Cape Town, Feb. 17, 1995.

enormous and, Mandela wished to reiterate, resources were not. Already the ANC government was focused on budgetary and economic policies that privileged deficit reduction, foreign direct investment, and privatization; at the same time, this would require a tamping down of popular expectations about the government's ability to directly provide for its citizens.⁴⁸⁹

President Mandela asked people to lower their expectations for what the government could deliver because the government did not have "a big bag full of money."⁴⁹⁰ Instead, given binding contractual obligations and carry over expenditure, the government had "extremely limited resources to address the many and urgent needs of our people." Mandela urged people to rid themselves of the "culture of entitlement which leads to the expectation that the government must promptly deliver whatever it is that we demand, and result in some people refusing to meet their obligations such as rent and service payments or engaging in other unacceptable actions such as the forcible occupation of houses." At the same time, the government would continue to "ensure the creation of an

⁴⁸⁹ Ross Dunn, "South Africa's First Post-Apartheid Budget Favors Gradual Change," *Christian Science Monitor*, June 24, 1994; Michael Nowak and Luca Antonio Ricci, eds., *Post-Apartheid South Africa: The First Ten Years* (Washington, DC: International Monetary Fund, 2005); Hein Marais, *South Africa: Limits to Change* (London: Zed, 1998).

⁴⁹⁰ "Address by President Nelson Mandela on Occasion of Opening of Parliament."

investor-friendly climate” and continue its commitment to fiscal discipline and reducing the budget deficit.

Near the middle of his address, President Mandela turned to what he portrayed as related problems with the potential to interrupt the government’s progress on many fronts: anarchy and crime. Mandela condemned “the attempt by some in our country to introduce anarchy into our society.”⁴⁹¹ He continued, “I speak of those who engage in such totally unacceptable practices as the murder of police officers, the taking of hostages, riots, looting, the forcible occupation of public buildings, blocking of public highways, vandalization of public and private property and so on. Some of those who have initiated and participated in such activities have misread freedom to mean license.”⁴⁹² Mandela warned such elements that his government and the masses who put them in office were not afraid of struggle; “we are, after all, a product of confrontation and struggle.”⁴⁹³ In doing so, he framed his opposition as enemies of the government and the people, and made it clear that his government would battle and defeat them. “In the same vein,” he continued:

⁴⁹¹ Ibid.

⁴⁹² Ibid.

⁴⁹³ Ibid.

[W]e must address the question of crime. The situation cannot be tolerated in which our country continues to be engulfed by the crime wave which includes murder, crimes against women and children, drug trafficking, armed robbery, fraud and theft. We must take the war to the criminals and no longer allow the situation in which we are mere sitting ducks of those in our society who, for whatever reason, are bent to engage in criminal and anti-social activities.⁴⁹⁴

Mandela explained that the Minister of Safety and Security, the National Commissioner of the Police Service, and the security organs as a whole had already been instructed to take all necessary measures to bring down crime levels. But he also stressed that the matter of safety and security should not be left to law enforcement alone. The police would need the full and active support of communities, and Mandela lauded the police-community fora that had already been established as important to increasing the capacity of the country to deal with the problem of crime.⁴⁹⁵ Already crime and crime control were high on the agenda, and President Mandela had declared a war on crime. As we shall see, the concept of a “war on crime” introduced by President Mandela would become a familiar refrain from Cabinet members and members of parliament.

⁴⁹⁴ Ibid.

⁴⁹⁵ Community police fora had already become a statutory requirement, enshrined in both the interim Constitution and the South African Police Service Act 1995 (Section 212 of the interim Constitution; ss. 18 and 19 of the South African Police Service Act). See van Zyl Smit and van der Spuy, “Importing Criminological Ideas,” 188.

The phrase “war on crime” will be familiar to many readers, particularly those in the U.S. who have heard it echo for decades. It followed alongside President Johnson’s “war on poverty” and was a forerunner to the “wars” on drugs and terror. Indeed, the notion of a “war on crime” originated with President Johnson in the mid-1960s.⁴⁹⁶ His Omnibus Crime Control and Safe Streets Act of 1968 increased federal funding and involvement in state and local law enforcement. President Nixon famously reiterated the ‘war on crime’ rhetoric in his 1970 State of the Union address. Nixon said there would be no increases in the forthcoming federal budget, save for one area – law enforcement agencies, and specifically federal spending to assist local law enforcement. He asserted, “We must declare and win the war against the criminal elements which increasingly threaten our cities, our homes and our lives.”⁴⁹⁷ Addressing the members of the legislature in the audience, he added: “I doubt if there are many members of this Congress who live more than a few blocks from here who would dare leave their cars in the Capitol Garage and walk home alone tonight.”

⁴⁹⁶ See Lyndon B. Johnson, “Special Message to the Congress on Crime and Law Enforcement,” Mar. 9, 1966 (“The front-line soldier in the war on crime is the local law enforcement officer;” “The war on crime will be waged by our children and our children’s children.”) See Elizabeth K. Hinton, *From Social Welfare to Social Control: Federal War in American Cities, 1968-1988*, Ph.D. dissertation, Columbia University Department of History (2013).

⁴⁹⁷ Associated Press, “Nixon Declares War on Crime, Pollution,” *The Miami News*, Jan. 22, 1970.

Playing on visceral fears, Nixon urged Congress to pass anticrime legislation that would give the executive “new and stronger weapons” in the fight against crime.

As the next section shows, South Africa’s war on crime did not entail a massive spending outlay but instead involved new “public-private partnerships” and tougher criminal procedure and sentencing legislation. Rather than justifying huge budgets for policing and prisons, the post-apartheid war on crime justified austerity, a focus on creating secure conditions for foreign investment, and experiments in privatization. Although department ministers and parliamentarians called for larger policing and corrections budgets, it was nonetheless clear that the private sector would have a large role to play. Indeed, Minister Mzimela moved fastest of all. As we shall see, when he presented his budgets to parliament, he stated that he had anticipated that there would not be sufficient public funds, so he had taken the initiative to bring the private sector on board.

III. Fighting the ‘War on Crime’: Post-apartheid criminal justice legislation and parliamentary debates

After the Transformation Forum collapsed in late 1996, Minister Mzimela was freed to pursue his vision for an American-style prison system with little distraction or interference. Still, his department needed budget approval and

some of his proposals required legislation—for that, he needed to work with parliament. This section will examine parliamentary debates about criminal justice reform legislation and appropriations for policing and prisons. These texts reveal much about the level of debate and its terms, but especially about the level of consensus. Debates over appropriations also show how prisons—and the budget for them—fit into broader, neoliberal economic development priorities. In the first five years after the end of formal apartheid, the parliament passed a wave of legislation reforming the criminal justice system. In this section, I will examine two types of parliamentary debates: appropriation debates tied to specific departments (e.g. corrections, safety and security) and debates over proposed legislation (e.g. the Correction Services Amendment Act and Criminal Law Amendment Act of 1997). The debates show how a focus on austerity, combined with loud calls for a stepped up war on crime, would see departments across the justice system turning toward privatization. This privatization took different forms across various departments—for policing and the courts, this meant a push for “community policing” and “community fora” to handle and resolve disputes within communities, rather than relying on state

bureaucracies.⁴⁹⁸ For correctional services, this meant “public-private partnerships” to build and maintain prisons.

A. 1996 budget debates: Police, courts, and prisons

i. Police

In May 1996, the Minister for Safety and Security, Sydney Mufamadi, described the budget he had proposed and expressed a strong need for the country to deal with crime. He noted that high levels of crime were “not uncommon for a society in transition.” Crime had become “the common enemy of all citizens of South Africa, so it is not an overstatement to say that we are fighting a war against crime.”⁴⁹⁹ Mufamadi used the metaphor of waging a war on crime repeatedly, and pointed out that the Cabinet had “reaffirmed its belief that crime poses a serious threat to our democracy itself” by adopting a National Crime Prevention Strategy the previous week.⁵⁰⁰ He highlighted the importance of this war against crime, stressing its financial costs. Although the exact figures

⁴⁹⁸ On community involvement in rural policing units, see “Address by President Nelson Mandela to the Summit on Rural Safety and Security,” Midrand, Oct. 10, 1998. See also South African Police Service, *National Rural Safety Strategy*.

⁴⁹⁹ *Hansard*, “Appropriation Bill,” Debate on Vote no 30—SA Police Service, Vols. 9-10, col 1850, May 31, 1996.

⁵⁰⁰ *Ibid.*, 1851.

were disputed, the South African Police Service had estimated the value of commercial crime reported in 1995 at R2.6 billion, with some in the private sector claiming the true figure was five times as high.⁵⁰¹ Mufamadi expressed gratitude that the private sector had stepped in to help the government in waging the war on crime. A consortium called Business Against Crime had paid for an international management consultancy to assist 100 of the country's poorest-performing police stations. "This," Mufamadi declared, "is an example of the kind of public-private sector partnership that is essential if we are to wage this war successfully."⁵⁰²

In the parliamentary debate that ensued, there was little disagreement over what was at stake. Opposition party parliamentarians and the ANC alike were clear that crime was a test of the ANC's ability to govern, the new democracy's ability to function, and the economy's potential to expand. What is striking is the language of the debate, both here and in debates in the following weeks about appropriations for the court system and prisons. There is an indisputable U.S. influence, with references to New York-style policing, U.S. city

⁵⁰¹ Ibid.

⁵⁰² Ibid., 1857.

curfew policies,⁵⁰³ former New York Police Chief William Bratton, and more. As one official remarked, “My initial feeling is that it looks very much like the American system. I am just wondering whether the [honorable] Minister got his inspiration from *LA Law*.”⁵⁰⁴

This influence resonated across the political spectrum – from the Freedom Front (FF), National Party (NP), and African Christian Democratic Party (ACDP) on the right, to the Democratic Party (DP) in the middle, to the ANC, and to the Pan African Congress (PAC) on the left. For example, MP Andre Fourie of the NP stated:

A lot has been written about the so-called New York option. Perhaps we should seriously consider the New York option, as opposed to the Washington option, and create an anticrime culture in the hearts and minds of every single South African. New York, once the crime capital of the United States of America, through the perseverance of newly-elected mayor Rudolf Giuliani, who fought with vigour any attempt to cut the budget of the police, and with his police chief William Bratton pursuing crime aggressively, saw crime dropping by 11% in 1994 and 17% in 1995.

⁵⁰³ MP D M Bakker: “Certain cities in the United States of America, in an effort to combat crime, have introduced a teenage curfew in terms of which teenagers are not allowed on the streets after a certain time at night. I do not regard this as the answer and believe that a teenage curfew would be against the nature of our Constitution. However, it illustrates creative thinking in an effort to combat crime. These are the types of practical measures that are now necessary in our country to address crime.” *Hansard*, “Appropriation Bill,” Debate on Vote no 19 – Justice, Vols. 9-10, col 2923, Jun. 13, 1996.

⁵⁰⁴ *Ibid.*, 2874.

In contrast, Washington mayor Marion Barry, with a lukewarm approach, campaigning with promises of giving conjugal visits to convicts and more exit money on their release, is trailing far behind in combating crime.

The question is: What is the philosophy and approach of the Minister? Is he going to opt aggressively for the New York option or is he going to stick to the Washington recipe? We say, and we would like to advise him, that if he wants to be totally committed to eradicating crime in South Africa, let him opt for the New York option. [Interjections.] It is no good for the Minister to say that he has declared war on crime when he is not prepared to shoot in that war. [Laughter.]⁵⁰⁵

Notably, the references to “New York” and “Washington” options were not fleshed out with any specific recommendations for what the Minister could be doing differently to be more in line with each approach. The two options were rhetorical devices used to ask whether the Minister and his party would be tough or soft on crime. The takeaway was that the Minister must have the guts and political will to ask for a robust budget for the police service, and demonstrate that he would not be soft. Tying the fight against crime to prospects for economic development, MP Fourie stated: “[The Minister] will have to prove to the international community, potential investors, the bankers of the world and potential tourists that South Africa can become a sound and safe country to come to and invest in.”⁵⁰⁶

⁵⁰⁵ *Hansard*, “Appropriation Bill,” Debate on Vote no 30—SA Police Service, Vols. 9-10, col 1865, May 31, 1996.

⁵⁰⁶ *Ibid.*, 1866.

ii. Courts

Two weeks later a debate over court system appropriations showed the difficult tension between the challenge to focus on a “rising crime wave” while also making budget cuts. ANC MP Fatima Hajaig’s comments are indicative of the way in which many members framed the problem of crime (heavily couched in concerns for business investment and economic growth) and the problem of a lack of funding to deal with it:

As we all know, the most challenging and formidable problem facing us in our country is the stranglehold crime has on our people and on the growth of our economy. Figures put forward by Nedcor in a recent study are devastating. A staggering R31 billion per year is lost through crime.

... [U]nless crime is addressed in a meaningful way, nothing, but nothing, will grow in terms of our economy and providing a better life for all our people.

We all recognize that we need to combat crime. It therefore seems illogical that State Expenditure has cut the Justice budget by more than R500 million. This means that more or less 1,400 posts which are sorely needed in the Justice Department have to be shelved. I must point out that if we are serious about crime and serious about entrenching the rule of law in South Africa, we need to increase the budgets of departments which are involved in minimizing crime.⁵⁰⁷

MP Hajaig went on to discuss two related solutions for addressing this problem, namely, increasing the legitimacy of community policing and establishing a

⁵⁰⁷ *Hansard*, “Appropriation Bill,” Debate on Vote no 19—Justice, Vols. 9-10, col 2914, Jun. 13, 1996.

system of lay judicial participation to “link up with a community law-and-order system.”⁵⁰⁸ In one of the few mentions of rural areas in the appropriation debates on criminal justice, Hajaig argued that efforts to enhance access to justice would have to take a “rural bias,” as those areas were previously neglected.⁵⁰⁹ She pointed out that traditional or customary courts in rural areas had suffered a degree of illegitimacy in the past because they had been abused by “repressive tribal authorities.” Yet, such courts had several advantages, including opportunity for mediation, informal inquisitorial procedures (rather than a public trial with a win-or-lose result), and low running costs. With this in mind, she proposed that “a conscious program of reconstruction to restore legitimacy should be undertaken. These courts can be adapted to meet the new challenges of a constitutional State and a human-rights culture by serving as lay community courts for the rural sector of our society.”⁵¹⁰

iii. Prisons

In June 1996, Minister Mzimela of the Department of Correctional Services would have his turn to present his budget to parliament. The most striking thing

⁵⁰⁸ Ibid.

⁵⁰⁹ Ibid., 2915.

⁵¹⁰ Ibid., 2915-6.

about the budget discussion is how far along the move to public-private partnerships in prison construction and management had come in the short period since Mzimela had assumed leadership. Mzimela began by pointing out that the country's prisons were highly overcrowded and that the department was under budget. The department's budget catered for 97,000 inmates and 33,000 probationers while the projected number of inmates for 1996 was 125,000, along with 47,000 probationers.⁵¹¹ While the department was already bracing for another year of overcrowding, Commissioner Fivaz of the Department of Safety and Security had announced just days before that he had "identified some 10,000 criminals" to be arrested in the next 30 days. If convicted at previous rates, 60-70% of those would be found guilty and sent to prison.⁵¹² While the sweep of arrests never happened,⁵¹³ the move toward private prisons to deal with overcrowding and budget shortfalls did.

⁵¹¹ *Hansard*, "Appropriation Bill," Debate on Vote no 10—Correctional Services, Vol. 9-10, col 3662, Jun. 21, 1996.

⁵¹² *Ibid.*

⁵¹³ Commissioner Fivaz's promise to arrest the 10,000 criminals within 30 days fell flat. Safety and Security secretary Azhar Cachalia criticized the announcement as "ill-conceived ... media hype." Another senior player told the *Mail & Guardian* that "because the 10 000 weren't caught, and could not even be identified, it was a disaster, leading the public to believe that the whole excellent 12-month plan—of which it was really only a small component—was a failure. It had the exact opposite of its intended effect: it

Indeed, cost was a huge factor in decisions about how to reform the prison system the country had inherited from apartheid. Given the need for drastic change in other areas of the economy such as housing, education, and healthcare, prisons were low on the list of budgetary priorities and received a relatively small budget.⁵¹⁴ Meanwhile, prison overcrowding was a pressing concern.⁵¹⁵ In August 1992, Human Rights Watch found that Pollsmoor Prison in Cape Town held 6,631 people in a space designed to accommodate 4,598—an overcrowding of 48 percent.⁵¹⁶ Overcrowding was even worse in Pollsmoor’s maximum security section, which had an overcrowding of 97 percent.⁵¹⁷ Although the government undertook several large-scale amnesty and mass release efforts, this did not solve the problem of crowding. The Correctional Services Department saw a need to embark on a rapid prison-building program to alleviate overcrowding.⁵¹⁸ Faced with these problems and an inadequate corrections

demoralised the public and the police alike.” See “Craig Kotze, Police Commissioner George Fivaz’s Communications Adviser,” *Mail & Guardian*, Aug. 2 (1996).

⁵¹⁴ Giffard, *Out of Step?*, 46.

⁵¹⁵ *Ibid.*, 21.

⁵¹⁶ *Ibid.* See also Africa Watch Prison Project, *Prison Conditions in South Africa* (1994).

⁵¹⁷ Giffard, *Out of Step?*.

⁵¹⁸ Sloth-Nielsen, *Overview of Policy Developments*, 14-15.

budget, it is unsurprising that private-sector alternatives were appealing to department officials and policymakers.

Against the backdrop of needing to house, feed, provide with medical care, and supervise the targets of Fivaz's sweep on top of an already overstretched budget, Minister Mzimela revealed that the department had already approached the private sector. He stated: "Against this background of insufficient funds and rising numbers in our prisons, we have taken the initiative of looking for alternative ways of providing suitable accommodation to inmates. We approached the private sector and discussed with them measures which would lead them to finance, design, construct and maintain new facilities, and lease them to the Government over an agreed period. This would enable the Government to provide up-to-date facilities without getting into too much debt."⁵¹⁹ His main argument in favor of bringing the private sector in was that it would be cost effective, and would allow the department to avoid asking for billions of dollars for capital projects. He also noted that the department would be able to offer things like "workshops and even factories for inmates to be

⁵¹⁹ *Hansard*, "Appropriation Bill," Debate on Vote no 10—Correctional Services, Vol. 9-10, col 3663, Jun. 21, 1996.

trained and to work productively in” – what he posed as rehabilitative activities that the government would not be able to finance.

The government had already begun a pilot program of privately-run juvenile prisons. Mzimela explained that the Department of Correctional Services had approached the private sector and asked, not for a loan, but “an outright donation” to fund a pilot project. A program called the Private Sector Initiative contributed R50 million to build the first juvenile detention center financed entirely by the private sector. According to Mzimela, the project was meant to demonstrate three things: 1) that facilities could be planned and constructed within a period of 15 months, as opposed to previous practices of seven years; 2) that facilities could provide education, training and counseling with the aim of rehabilitation; and 3) that there could be a healthy relationship between the Government and the private sector.⁵²⁰ Mzimela went on to announce that the first youth detention center financed entirely by the private sector would be opened in Newcastle in September 1996, with the process of admitting the young people already underway. The building had already been built, an education curriculum and staffing plan had been developed, admissions had begun—all within a very short period of time. By Mzimela’s own 15-month timeline, the

⁵²⁰ Ibid., 3663-4.

Private Sector Initiative began less than a year after he assumed the head of the Department of Correctional Services, and before the Transformation Forum had an opportunity to begin its work or chart a course for South Africa's new prison system.

Carl Niehaus, the Chair of the Portfolio Committee on Correctional Services and Chair of the Transformation Forum, spoke immediately after Minister Mzimela and raised concerns about the privatization model that he had announced.⁵²¹ He was concerned that the proposal for private financing and construction of prisons was not clearly accommodated in the current budget and that it would prove too costly. He pointed out that the private sector borrows at a higher interest rate than the government, and that this cost would have to be covered by the rent that the government would pay. The Department of Finance had also expressed strong concerns, asking questions about the details of the plan which the Department of Correctional Services apparently had not contemplated. Niehaus said he had a Department of Finance document that asked questions about the duration of the required head lease, the prevailing inflation rate over a period of time, and the effective costs of government borrowing, averaged over time. The Department of Finance document concluded

⁵²¹ Ibid., 3677.

that the proposal was “too costly and hence unacceptable” and requested further negotiations.⁵²² Notably, there was no discussion of the incentive perversion that privatization would cause.

By November 1996, the Department of Correctional Services and the Department of Public Works had secured Cabinet approval for a joint venture with the private sector to build and operate private prisons.⁵²³ The program was called Asset Procurement and Operating Partnership Systems (APOPS) and was announced to the public in April 1997.⁵²⁴ The press release by Minister Mzimela stated that the new APOPS prisons would ensure that the Department of Correctional Services could house offenders arrested under the National Crime Prevention Strategy, which was “gaining more momentum every day.”⁵²⁵ He also highlighted the potential of the APOPS prisons to create jobs, anticipating that they would “create thousands of new jobs as well as other opportunities.”⁵²⁶

⁵²² Ibid., 3678.

⁵²³ *Hansard*, “Prisoners Placed with Private Agencies,” Interpellations, Questions, and Replies, vol. 16, col 975, May 19, 1997.

⁵²⁴ Press Release by the Minister of Correctional Services, Dr. Sipo Mzimela, “Seven New APOPS Prisons for Correctional Services,” April 15 (1997), reprinted in *Ibid.*

⁵²⁵ *Ibid.*

⁵²⁶ *Ibid.*

The press statement also included an addendum with more details about the envisaged features of the new APOPS super-maximum prisons and an invitation for companies to bid for the contracts, with construction of all seven prisons expected to begin before the end of the year.⁵²⁷

B. 1997 Criminal Justice Legislation

i. The Parole and Correctional Supervision Amendment Act

In mid-1997, a package of bills was introduced to make criminal justice punishments harsher and to give the government more ammunition in its “war on crime.” The Parole and Correctional Supervision Amendment Bill, the Correctional Services Amendment Bill and the Criminal Law Amendment Bill all came up for their second reading debate in the last week in October and first week of November 1997. As with the previous appropriation debates, the “tough on crime” sentiment was shared across the political spectrum, and there was near unanimous strong support for all three bills. The Parole and Correctional Supervision Amendment Bill made it more difficult to obtain parole and required that prisoners serve at least half of their sentences before they could be considered for parole. The bill’s premise was similar to “truth in sentencing”

⁵²⁷ Ibid.

laws first adopted in the United States (by some states as early as 1984, and federally in 1994) and in Australia in 1989. The bill did away with the “credit system” which allowed for shorter sentences based on good behavior; since it had been used to advantage only white inmates in the past, the abolishment of the system was presented as a move toward “equality” and “equity” and away from “discriminatory” parole practices.⁵²⁸

Given the extent of the overcrowding problem in the country’s prisons, one might have expected the parliament to move toward shortening sentences, rather than lengthening them. Yet Minister Mzimela began the debate with a sentiment that resonated throughout everyone’s remarks: “We are sending a message to those who want to commit crime, but we are also assuring the South African people that once people have been convicted of crimes, they are going to serve their time.”⁵²⁹ Nearly every speaker spoke of the need for a “hardline attitude” and the need to send a message that the state was not “soft on criminals.”⁵³⁰ The ACDP opposed the bill, but for the reason that it was not harsh enough. The party’s MP Meshoe began his remarks by reminding all present that

⁵²⁸ *Hansard*, “Parole and Correctional Supervision Amendment Bill,” Second Reading Debate, cols 5513-4, 5522, Oct. 27, 1997.

⁵²⁹ *Ibid.*, 5514.

⁵³⁰ E.g. *Ibid* 5515-6.

the Nedcor Project on Crime, Violence, and Investment had released a report in June which calculated that South Africa lost no less than R18.5 billion to crime every year. Explicitly against this background, he stated that the ACDP strongly opposed parole altogether, and that people convicted of crimes should serve their full sentences.⁵³¹

ii. The Criminal Law Amendment Act & the Criminal Procedure Amendment Act

The Criminal Law Amendment Bill introduced minimum sentences of 5, 7, 10, 15, 20, 25 years and life for certain crimes, including categories of rape, murder, assault, theft, drug-related offences, corruption, and arms dealing. The Minister of Justice framed the bill as responding to public demand for more stringent punishment for convicted offenders, helping to restore confidence in the ability of the criminal justice system to protect the public against crime, and confirming the government's policy which aims to curb the increasing crime rate and protect the community against criminals.⁵³² While the implementation of minimum sentences was portrayed as an emergency measure to address crime rates and the sentences were enacted on a temporary basis, they have been

⁵³¹ *Ibid.*, 5523-4.

⁵³² *Hansard*, "Criminal Law Amendment Bill," Second Reading Debate, Vol. 15, col 6087, Nov. 6, 1997.

continuously extended.⁵³³ As a result, the number of people serving long and life sentences has increased, rising from only 24 percent of the prison population serving a term longer than ten years in 1998 to 48 percent in 2004.⁵³⁴

While the Criminal Law Amendment Act dealt with sentencing, the Criminal Procedure Amendment Bill dealt with the question of bail. The bail legislation made it more difficult to receive bail, a response to public criticisms that arrestees were being released back into communities too easily. In the debate on the bill, the Minister of Justice said that the provisions were comparable to those in other open and democratic societies.⁵³⁵ While many noted that the bail provisions were “drastic measures” and that such laws needed to take the rights of the accused into account, several speakers noted that the harsher bail conditions were a temporary measure, which could be adapted later on once South Africa was no longer in the grips of a crime wave.⁵³⁶ For now, members

⁵³³ Super, *Governing through Crime*, 123.

⁵³⁴ *Ibid.*

⁵³⁵ *Hansard*, “Criminal Procedure Second Amendment Bill,” Second Reading Debate, Vol. 15, cols 6121-4, Nov. 6, 1997.

⁵³⁶ *Ibid.*, 6128 (MP De Lange: “We may find that in five years’ time, when crime has subsided somewhat, and we can actually move more freely in our country, we may have a different set of norms and a different set of values. We then draw the line, in terms of the limitation of rights, where we would not draw it today.”); 6133.

reiterated that South Africa was still in the midst of an “increasing crime wave,” pointing to recent media headlines about crime rates and crimes being committed by people released on bail.⁵³⁷ This bill, along with the others on parole reform and minimum sentencing, was “being sent out with the message that hardened criminals should be placed in prison and kept there.”⁵³⁸

Of course, the bail provision, like the minimum sentencing and parole reform measures, would only exacerbate the Department of Correctional Services’ overcrowding problem. All of these measures were intended to keep people in prison for longer periods, with less opportunity for release. At the close of the debate on the bail provision bill, the Minister of Justice acknowledged as much. He stated that the prisons were very overcrowded and that many people who were awaiting trial—not yet convicted of any crime—were contributing to the overcrowding.⁵³⁹ He described an ongoing project at Mitchells Plain in Cape Town to investigate how many people who had been granted bail had actually paid bail and been released. He stated that “according to the project it has been discovered that over 70% of people to whom bail has been granted have in fact

⁵³⁷ Ibid., 6130, 6132, 6134.

⁵³⁸ Ibid., 6135 (MP Groenewald, NP).

⁵³⁹ Ibid., 6146.

not paid their bail, and are therefore awaiting-trial prisoners at Pollsmoor Prisons. In some instances they are women, and in other instances they are accused of the types of crimes which we would not categorize as serious crimes.”⁵⁴⁰ Although the Minister did not say the reasons for these people not paying bail, one can assume that a reason for many of these people to continue sitting in jail is that they or their families were too poor to bail them out. The Minister stated that there needed to be a better system “which will result in people who do not have to be in prison being kept out of prison, and the creation of space for those who have actually committed serious crime, or who are charged with having committed serious crime, and who in the interests of the safety of the public ought to be kept behind bars until their trial takes place.”⁵⁴¹ He said his department would be looking into this matter with the Department of Correctional Services. In the meantime, however, the problem would remain.

iii. The Correctional Services Amendment Act

The Correctional Services Amendment Act of 1997 amended the 1959 Prisons Act in two key ways: 1) it provided for an inspecting judge to oversee the department and allow for more transparency; and 2) it allowed the Minister of

⁵⁴⁰ Ibid.

⁵⁴¹ Ibid.

Corrections to partner with the private sector to build and manage prisons.⁵⁴² In introducing the debate over the bill in November 1997, Minister Mzimela highlighted several reasons for “bring[ing] the private sector on board in partnership” –he was careful to point out that the government was not privatizing, but was instead entering into a public-private partnership.⁵⁴³ This move was necessary, he argued, to solve the problem of overcrowding; the department simply did not have the financial resources to provide “the kinds of facilities we need.” Those facilities, he said, would be “modern” and would include schools, training schools and vocational schools, skills-training programs and workshops, and counseling –programs that would stretch the department far beyond its budget. He said the department was “convinced that we need people from outside our systems to come in and bring in fresh ideas” and that bringing in the private sector was bringing South Africa into line with “what is done in the rest of the world now.”⁵⁴⁴ Minister Mzimela stressed that this would bring a “transfer of technology from abroad to South Africa, free of charge”

⁵⁴² Republic of South Africa, Correctional Services Amendment Act, No. 102 of 1997, Enacted Dec. 19 (1997).

⁵⁴³ *Hansard*, “Correctional Services Amendment Bill,” Second Reading Debate, Vol. 15, col 6247, Nov. 6, 1997.

⁵⁴⁴ *Ibid.*, 6246-7.

bringing modern skills and modern buildings as well as significant training. He went on: "That means that those who come here from abroad, who have not just the skills but the experience in this field of modern management, will transfer that to us free of charge. From our human vantage point, everything that this project promises is going to be a plus for us."⁵⁴⁵

Although the Cabinet had approved the APOPS procurement process a year ago, the Minister acknowledged that the department now needed legislation so that the program could be properly regulated. He reminded the House that the department had already started providing these new facilities, but that they needed a legal framework within which to work. Inserting a new section in the Prisons Act of 1959 would give the Minister legal authority to "enter into a contract with any private entity to - (a) design; (b) construct; (c) finance; (d) manage and operated, any prison..." While the press release about the APOPS program had called for bids for seven prisons, the number for the initial pilot had now dropped (without explanation) to four. The Minister reiterated that, based on "experiences overseas," these prisons would be better facilities, better managed, and "cost-effective."⁵⁴⁶

⁵⁴⁵ Ibid., 6249.

⁵⁴⁶ Ibid., 6248.

Once again, all the parliamentarians who participated in the debate on the bill offered their support for it. But some raised concerns about irregularities in the tender process; an NP member said that the Committee on Correctional Services had received a letter stated that an ANC Youth League member had an interest in one of the consortia bidding for one of the APOPS contracts.⁵⁴⁷ The FF also expressed concerns about “alleged irregularities in the handling of the tender procedure of the APOPS project.”⁵⁴⁸ The NP was adamant that the entire process of tendering and short-listing should be reopened so that details about the composition of the private consortia could be made public. They were dismayed that when they raised this concern and called for the process to be reopened, they had been told that that would open the government up to legal action—and that “investors have spent a lot of money up to now and they may pack up and leave the country.”⁵⁴⁹

While a thorough investigation of corruption in the tender process lies outside the scope of this chapter, the response from members of the ANC in the debate is interesting for what it reveals about its notions of economic

⁵⁴⁷ Ibid., 6251.

⁵⁴⁸ Ibid., 6256.

⁵⁴⁹ Ibid., 6252.

development and empowerment. ANC MP Bathabile Dlamini stated that the ANC had taken calls to reopen the tendering process very seriously, but questioned whether the NP was raising this issue “because the Department of Public Works issued an instruction demanding of shareholders that a minimum equity of 40% should be given to black people?” “Is it because consortiums are supposed to be led by African people who have been previously disadvantaged? Is it because each of these projects is envisaged to generate R15 million per annum?”⁵⁵⁰ She went on to reference the Freedom Charter: “The ‘verkrampste boer’ thought that the congress of the people in 1955 was mad when it said that the people should share in the country’s wealth. This is the process of restoring wealth to the previously deprived, and the empowerment of black people.”⁵⁵¹ She closed by stating that the process was going to move forward, and needed to do so quickly because “it is our people who are overcrowded in prisons.”⁵⁵² ANC MP Barbara Thompson reiterated this point about the need to move swiftly to ensure black empowerment on two fronts:

At the end of process there were 42 consortia, which were shortlisted to five. Unfortunately, this is not acceptable to the NP, because 40% of the

⁵⁵⁰ Ibid., 6257.

⁵⁵¹ Ibid.

⁵⁵² Ibid., 6258.

consortia are comprised of black people. This exercise is most welcome as this will certainly contribute to the black empowerment. In conclusion, I would like to stress that both the Department of Correctional Services and the Department of Public Works are moving faster than before in implementing the APOPS process. After all, it is mostly our black people that are suffering because of overcrowding in prisons, and naturally the one who is hardest hit feels it most.⁵⁵³

While these arguments serve as handy deflections from the corruption allegations, more relevant here, they also show that members of the ANC saw private prisons as part of a redistributive project and one of racial uplift—ie. partly Black-owned consortia would be enriched while also improving conditions for Black people who were the majority of those crowded in the country's prisons. This may have been a convenient talking point or an actual conception of economic development—or both—but it does chime with the ANC's overall Black Economic Empowerment (BEE) approach, which mandated black representation on private consortia bidding for government contracts, thereby increasing the number of blacks among the millionaire ranks.

Many accounts of the move toward private prisons in South Africa declare that APOPS began with the 1998 Correctional Services Act, which replaced the 1959 Prisons Act entirely and made provision, in one section, for the building

⁵⁵³ Ibid., 6260.

and management of private prisons.⁵⁵⁴ However, as the foregoing account shows, the legislative authority for private sector involvement in prisons came with the Correctional Services Amendment Act of 1997 (which merely amended the 1959 Act), and the process of engaging the private sector came even earlier than that. In 1998, the Correctional Services Act was passed and reiterated the legal framework for the Department's relationship with private contractors. Civil society groups raised concerns about the policy before parliament, pointing out that the proposal did not have a provision for any regulation or oversight to ensure that the terms of the public-private partnerships would be implemented properly. Nonetheless, the legal framework was approved as proposed (with no oversight mechanisms) over objections.⁵⁵⁵ I will discuss how that fared (and US involvement) in this chapter's conclusion.

IV. Conclusion

Within just a few years of the parliamentary debates examined above, South Africa would see its first private prisons. The first private prison in post-apartheid South Africa, run by the U.S.-based conglomerate Wackenhut (now

⁵⁵⁴ Republic of South Africa, Correctional Services Act of 1998, Act 111 of 1998, Enacted Nov. 27, 1998.

⁵⁵⁵ Tizina Ramagaga, *Lessons from Prisons*.

GEO Group), opened in Bloemfontein in 2001. The same Wackenhut-led consortium (including their South African partner, Kensani Corrections) opened a second prison the following year at Louis Trichardt in North Province. By 2010, MPs on parliament's correctional services and public works committees were lashing out at Correctional Services Department officials about the costs of the two prisons, which had spiraled beyond all projections.⁵⁵⁶ As we have seen, this cost spiral was not entirely unanticipated, as Carl Niehaus and the Department of Finance had warned about the danger of high interest rates and untenably high costs. The prisons are both very large maximum-security facilities—the Manguang Prison in Bloemfontein is the second largest private prison in the world. The two private facilities were initially projected to cost the government R143 million a year in 2001-2002,⁵⁵⁷ but annual expenditures had swollen to R786 million by 2010.⁵⁵⁸ As the MPs also complained, the cost overruns have been enormous. The per diem rate for the Manguang prison at Bloemfontein increased from the originally contracted R154 to R215.⁵⁵⁹ While these cost spirals stretched

⁵⁵⁶ "Private prisons not working, says Moyane," *Times Live*, Oct. 14, 2010.

⁵⁵⁷ Sloth-Nielsen, *Overview of Policy Developments*, 17 (citing Department of Corrections, *Annual Report 2001-2002*).

⁵⁵⁸ "MPs Slam Brakes on Private Prisons," *Sunday Times*, May 24 (2011).

⁵⁵⁹ Kenter and Prior, "Globalization of Private Prisons," 98.

the country's resources nearly to the breaking point, Geo Group reported a 30 percent profit margin for the Manguang Prison.⁵⁶⁰ In order to pay for the two private prisons, the government has been forced to lay off public sector employees.⁵⁶¹ As Kentor and Prior concluded in their study on the globalization of private prisons: "South Africa's developing government appears to have fallen victim to a contractual obligation that benefitted the private corporation far more than the government."⁵⁶²

Under the terms of the government's contract with the private consortium, the companies designed, constructed, and managed the prisons and the government would pay in installments, eventually taking ownership of the buildings after 25 years.⁵⁶³ This lease-purchase arrangement provided a short-term benefit for the government since the private sector covered the costs upfront, but the government would end up paying far more in the long term.⁵⁶⁴ In 2011, as the Department of Corrections was considering contracts for four

⁵⁶⁰ Ibid.

⁵⁶¹ Ibid.

⁵⁶² Ibid.

⁵⁶³ Sloth-Nielsen, *Overview of Policy Developments*.

⁵⁶⁴ Ibid., 15. See also K. C. Goyer, *Prison Privatisation in South Africa*. By some estimates, the government would have paid almost R16-billion for the two facilities at the end of the 25-year contracts. "MPs Slam Brakes."

more private prisons, MPs of all parties insisted that parliament would not support the plans until the state could show how it would get value for money from the deals.⁵⁶⁵ Many MPs objected to the cost, raising arguments about the relative efficiency of the public and private sectors, but others voiced moral objections. “We are privatising a security facility, which to my mind in principle is wrong,” said ANC MP Salam Abram. He added an objection about this core state function being handed over to others: “A security facility should be controlled by the state, not by a private entity.”⁵⁶⁶ Vincent Smith, chair of the correctional services committee, demanded to know why the government was so keen to delegate its responsibility to private firms: “[F]or some reason [the] government is trying to force this thing through,” he said. “Everybody is kicking and therefore the question that was raised initially—whose agenda are we pushing here?—becomes very critical for me.”⁵⁶⁷ As we saw in the previous section, veiled (and less so) accusations of graft and of undue foreign influence had been buzzing for years.

By October 2011, the Minister of Corrections scrapped all plans for more private prisons. Local and foreign investors, who had awaited a decision on the

⁵⁶⁵ “MPs Slam Brakes.”

⁵⁶⁶ *Ibid.*

⁵⁶⁷ *Ibid.*

tender process since being shortlisted in 2008, were incensed.⁵⁶⁸ The tender procurement process had been initiated in 2003, and the new Correctional Services Minister, Nosiviwe Mapisa Nqakula, inherited it when she took office in 2009. Rather than evaluating the bids, she undertook a review of the entire public-private partnership model and found a number of problems.⁵⁶⁹ Her review found that the model conflicted with policy stipulating that the state could not hand over certain security and custodial operations to third parties. Her objections were not only technical; she also insisted that South Africa needed to find new solutions to dealing with people convicted of crimes besides incarceration.⁵⁷⁰

This chapter has shown the variety of forces that kept the ANC from pursuing that kind of criminal justice model in the first five years of democratic rule. By 2011, the experiment with public-private partnerships in prison construction and maintenance had proven costly and was ended. As the next chapter will discuss in more detail, other types of privatization had also come under fierce scrutiny from civil society groups. Soweto's Anti-Privatisation

⁵⁶⁸ Carolyn Raphaely, "How Can We Escape Prison Overcrowding? Mapisa-Nqakula Under Fire for Cancelling Building Tender," *Saturday Star*, Dec. 24, 2011.

⁵⁶⁹ "SA Cancels Much-Delayed Private Prisons Tender, Reviews PPP Model," *Engineering News*, Oct. 27, 2011.

⁵⁷⁰ *Ibid.*

Forum, for instance, was founded in 2000 and challenged the privatization of water, electricity, and universities under the ANC.⁵⁷¹ However, even though prison privatization ultimately failed, the overall neoliberal approach was embedded in various aspects of South Africa's "war on crime," including the framing of projects like the construction of the super-maximum prison at Kokstad as an instance of black economic empowerment and service delivery. In this way, the post-apartheid "war on crime"—and the harsh criminal justice legislation and public-private prison ventures that it spurred—was an integral part of the move to shrink the state and to shrink expectations of the state when it came to directly meeting the needs of citizens. The fact that prison construction via a private sector tender process could be framed as service delivery exemplifies a neoliberal approach to economic development. As people looked to the government to provide houses, electricity, and clean water, they were met with assurances that the government was indeed meeting their needs—by creating the conditions for trickle-down local economic revitalization.

⁵⁷¹ See Richard Ballard, Adam Habib, and Imraan Valodia, *Voices of Protest: Social Movements in Post-Apartheid South Africa* (2006); Sakhela Buhlungu, *The Anti-Privatisation Forum: A Profile of a Post-Apartheid Social Movement*, A case study for the Globalisation, Marginalisation & New Social Movements in Post-Apartheid South Africa Project, University of KwaZulu-Natal (2004).

Perhaps nowhere else is this more apparent than in the town of Kokstad itself. Thus, we end this chapter where it began, in that town of 50,000 people limning the border of two of South Africa's poorest provinces. Deputy President Mbeki had made his site tour and address in April 1999 and the super-maximum prison was slated to open in early 2000.⁵⁷² Yet the project was delayed and, even after construction was completed in August 2000, the prison could not open. The R500 million prison stood empty until May 2002. The reason Kokstad municipality gave for the delay was that it could not sustain the water and electricity supply to both the high-tech prison and the town.⁵⁷³ Poignantly, the town was struggling to supply water to both the prison and a new low-cost housing development.⁵⁷⁴ Kokstad municipality borrowed R20 million from the central government to upgrade its infrastructure in an attempt to meet the

⁵⁷² When the super-maximum prison project was announced in April 1999, reports indicated that it had a design capacity of 1440 beds and would require a staff of 516 to ensure operations. Republic of South Africa, 1999. Invitation to Tender for the Provision of a Selection Battery and to Select and Train the Entire Staff for the Management and Operation of the New Empangeni Prison and the New Kokstad Super Maximum Prison, Kwa-Zulu/Natal Province. Tender Number RT 959 GP, 1999-08-20. Pretoria: State Tender Board. See also WFM Luyt, "Contemporary Corrections in South Africa After More Than A Decade of Transformation," *Acta Criminologica* 21(2) (2008), 184.

⁵⁷³ Xolisa Vapi, "R500m KwaZulu-Natal Prison Stands Empty," *IOL News*, Mar. 30, 2001.

⁵⁷⁴ *Ibid.* See also Angela Y. Davis, *Are Prisons Obsolete?* (New York: Seven Stories Press, 2003), 102.

demands of both the prison and the residents of 3,000 newly built low-cost houses in town.⁵⁷⁵ Still, the municipality could not afford further upgrades that were needed to supply the prison's state-of-the-art electronic and hydraulic facilities.⁵⁷⁶ The municipality proposed in March 2001 that the Department of Correctional Services and the Department of Public Works take over its loan repayments for three years, so that the town could stabilize its finances. The Kokstad municipal spokesman cited "documented proof of correspondence in which we warned them (the departments) that they should not build a super-max prison in Kokstad," yet the prison had been built over the municipality's objections.⁵⁷⁷ By 2005 the prison was operating far below capacity, with a "skeleton staff" and sections closed off and in need of expensive upgrades.⁵⁷⁸ Before its opening and for many years, the prison would be criticized as a "white elephant."⁵⁷⁹ Kokstad residents would continue to experience intermittent water

⁵⁷⁵ Vapi, "R500m KwaZulu-Natal Prison Stands Empty."

⁵⁷⁶ Ibid.

⁵⁷⁷ Ibid.

⁵⁷⁸ WFM Luyt, "Contemporary Corrections in South Africa After More Than A Decade of Transformation," *Acta Criminologica* 21(2) (2008), 184.

⁵⁷⁹ Vernon Mchunu, "Mbeki to Open High Security 'White Elephant,'" *IOL News*, May 22, 2002.

shortages and periods when they were forced to drink unpurified water.⁵⁸⁰ At times the town's hospital had to operate without water.⁵⁸¹ Rather than living up to hopes for "service delivery," the super-maximum prison project had become a direct competitor for scarce essential resources, threatening the well-being of the town's residents. Far from delivering on the promises of the Freedom Charter, the prison stood as a reminder of the broken promises of the country's transition.

⁵⁸⁰ Kamva Mokoena, "Kokstad on the Boil Over Water Crisis," *Sowetan*, Jul. 18, 2007; Republic of South Africa Department of Water Affairs, *Reconciliation Strategy for Kokstad Water Supply Scheme Area – Greater Kokstad Local Municipality, Contract WP 9712*, Sep. 2009, https://www6.dwa.gov.za/iwrrp/DSS/UserFiles/IWRRP/Documents/KZ_DC43_KZN433_Koksta_F.pdf; Luyt, "Contemporary Corrections," 184.

⁵⁸¹ Mokoena, "Kokstad on the Boil."

CHAPTER FIVE:
Rights Beyond the Urban-Rural Divide: South Africa's Landless People's
Movement and the Battle for Post-Apartheid Democracy

When a series of urban land occupations in South Africa garnered media attention around July 2001 – most notably at the Bredell farm on the outskirts of Johannesburg⁵⁸² – President Thabo Mbeki was quick to deflect attention away from not only his government's failure on land reform, but from the very issue of unequal land distribution itself. In fact, he declared that “the problem in South Africa is homelessness, not land.”⁵⁸³ Speculation over the possibility of Zimbabwe-style land expropriation in South Africa's future had government officials scrambling to dispel investor fears. The Bredell occupation and similar occupations near Cape Town and Port Elizabeth were thus construed as outcomes of failed housing and ‘basic services’ (water, electricity, etc.) delivery. Those occupying land were portrayed as homeless, not landless, actors; they were acknowledged as having land needs insofar as they needed land for

⁵⁸² Thousands of individuals moved onto the unoccupied Bredell farm in July 2001 when a local Pan Africanist Congress (PAC) ward councilor sold land illegally at R25 per lot. Over 100 people were arrested over the course of the occupation. An editorial in the *Sunday Independent* lamented an “all-too-quick reversion to the *kragdadigheid* (oppressive power) of the past.” Though some of the land was bought by entrepreneurs who wanted to start small businesses, the neediest were township tenants unable to pay rents of R200 to R300 per month for a small room. Laurence Schlemmer, “The real housing story,” *Focus* (23), Sep. 2001.

⁵⁸³ *Ibid.*

building homes, but not necessarily for other purposes. Their relationship with urban land was thus mediated through a right to housing lens, but did not consist of a direct right to land.

Yet squatters facing eviction from urban high-rises in Johannesburg's Hillbrow and Berea districts and others contemplating occupations of vacant state-owned land near shack settlements such as Protea South persisted in calling themselves "landless" rather than homeless or poor. As members of the Landless People's Movement (LPM), these urban residents were articulating land rights claims rooted in historical land theft which did not fit easily within the government's rigid separation of urban *housing* policy and rural *land* policy. The creation of this landless subjectivity and its explosive confrontations with state power lie at the heart of this chapter.

At the core of the LPM's definition of "landless" lay a rejection of South Africa's "rural-urban divide." The country's urban and rural spaces—and the boundary between them—have been constituted through centuries of power struggles, policies, and shifting theoretical justifications.⁵⁸⁴ Historically, these politicized urban-rural distinctions have alienated the poor and landless from

⁵⁸⁴ For more on the role of theoretical explanations and justifications for urban-rural division, see chapter one.

power-holders and, more relevant to the arena of struggle, have divided landless actors among themselves. By defining “landless” as a population which knows no rural and urban bounds, the Landless People’s Movement challenged the constitution of the country’s urban-rural divide, opening up possibilities for linkages among seemingly disparate struggles for land, employment, housing, HIV treatment, basic services, and more. Through their organizing practices and demands, LPM members revealed that urban and rural spaces – and experiences of urban and rural poverty – were far more linked than a politicized dichotomy would allow.

As this chapter will examine in depth, the ANC government propped up the urban-rural divide through a separation between urban housing and rural land policy, and thus sustained a certain truncated conception of rights. The ANC government’s bolstering of urban-rural division allowed it to avoid a fundamental shift in property relations and carried deep implications for rights and entitlement in post-apartheid South Africa. Through this move, the government was able to avoid the issue of land rights by denying the problem of landlessness itself. In fact, through a limitation within the country’s Constitution, it could deny any problems that could not be solved by the market. As Michael Neocosmos has observed, resources such as housing, land, water, and electricity

“are provided as ‘human rights’ in the South African constitution, although it is quickly added that such provision is contingent on the state having the financial and administrative capacity to do so. As a result, legal arguments revolve around the ‘reasonableness’ of such provision in specific circumstances. Political issues are in this manner turned into legal ones.”⁵⁸⁵

A contradiction thus emerged between the state’s conception of rights as “deliverables” (along with the passive subjectivity this implied and entailed for its citizens)⁵⁸⁶ and the LPM’s conception of rights as something to be defined and demanded through popular struggle and ultimately to be won, not given. The subjectivity associated with the latter conception of rights, that of the “landless,” was deeply politicized.⁵⁸⁷ The state’s conception entailed the death of the subject as constituted by popular anti-apartheid struggle documents such as the Freedom Charter (which held that the people shall govern, the land shall be

⁵⁸⁵ Michael Neocosmos, “Development, Social Citizenship and Human Rights: Rethinking the Political Core of an Emancipatory Project in Africa,” Presented at Centre for Civil Society seminar, University of KwaZulu-Natal, Jun. 2, 2006.

⁵⁸⁶ See chapter three for background on the World Bank’s role in promoting “service delivery” and a framing of citizen-recipients as “customers.”

⁵⁸⁷ For more on institutionalized vs. politicized concepts of rights and the critiques of power which each entail, see Raj Patel, “Transgressing Rights: *Via Campesina’s* Call for Food Sovereignty,” *Feminist Economics* 13(1) (2007); Neocosmos, “Development, Social Citizenship.”

shared by all who work it, etc.).⁵⁸⁸ Propping up the urban-rural divide meant propping up a certain truncated conception of rights – rights to houses that could be “delivered” but not rights to land, which would require a complete restructuring of the distribution of wealth and privilege, a distribution that was largely left untouched during the transition to democracy.

Thus the LPM’s No Land! No Vote! campaign during the 2004 national elections was significant not least because the “hard-won right to vote” had been integral to legitimating the transition from one conception of rights (and its accompanying subjectivity) to the other – from a struggle for liberation to a time of rights given from above. As I will explore, the LPM made it clear with this campaign that any democracy which granted the right to vote but denied rights to land (and the problem of landlessness itself) was a democracy at odds with their conception of themselves not as passive recipients of rights but as people still struggling to give weight to the demands of liberation struggle.

In South Africa, where land dispossession had long been associated with a denial of citizenship rights and political control, access to land now shaped the

⁵⁸⁸ For a strong critique of the Freedom Charter and its troubled role in popular struggle see Console Tleane, “Is There Any Future in the Past? A Critique of the Freedom Charter in the Era of Neoliberalism,” in *Articulations: A Harold Wolpe Memorial Lecture Collection*, ed. Amanda Alexander (Durban/Trenton: Centre for Civil Society/Africa World Press, 2006).

very possibility of democracy in the country. For many in the dispossessed majority, it was assumed that the advent of democracy and broadened political control could only be facilitated by a widening of access to land. In this way, the “land question” and the “national question” were bound together. Therefore, as we shall see, some of those who were still denied land came to question the legitimacy of South Africa’s democratic transition. Their questioning constituted a challenge to the reigning silences around property relations that threatened to void human rights and democracy of content.

This chapter includes a range of secondary and primary sources. In addition to newspaper articles, speeches, LPM publications and press statements, research reports, and secondary literature, the chapter draws on interviews I conducted with 35 Landless People’s Movement members and organizers between 2003 and 2006. The urban component of the interviews was conducted in Johannesburg and its surrounding townships. I conducted interviews in areas where LPM activity was particularly intense, including the townships of Protea South in Soweto, Eikenhof, and Thembelihle, and in the township of Orange Farm, where it was less robust. In inner-city Johannesburg, I interviewed LPM members in the neighborhoods of Hillbrow and Berea. For the rural component, I interviewed farm workers near the rural town of Ingogo in northern KwaZulu-

Natal, located about 60 miles from Newcastle. Ingogo was home to the LPM's national organizer at the time, Mangaliso Kubheka, and so was selected as the rural basis for the study because of the level of LPM involvement and activity surrounding Kubheka's presence.⁵⁸⁹

I. Defining a 'landless subjectivity' in post-apartheid South Africa

A. Background on the LPM

In 2003, the strength of the demands of landless people led land researcher Wellington Thwala, among others, to predict that land distribution "will either be resolved through a fundamental restructuring of the government's land reform program, or it will be resolved by a fundamental restructuring of property relations by the people themselves."⁵⁹⁰ Throughout the 1990s, most were optimistic that land reform could be achieved through governmental policy. The role of land sector non-governmental organizations (NGOs) quickly shifted from supporting opposition struggle to carrying out the technical work of information dissemination, capacity-building, legal support, research, mediation, and other forms of intervention aimed at identifying and closing the legal and

⁵⁸⁹ For more details on these interviews, see chapter one.

⁵⁹⁰ Wellington Thwala, "Land and Agrarian Reform in South Africa," National Land Committee (2003), 1.

bureaucratic gaps in the new land reform programs.⁵⁹¹ After the ANC came to power in 1994, the role of the landless was merely to complete the necessary organizational and bureaucratic requirements to “place themselves in the relevant queue, and then wait for the promised land.”⁵⁹² Landless communities filed restitution claims with the Department of Land Affairs or made applications for land through new reform programs.⁵⁹³

The impetus for the Landless People’s Movement grew in the late 1990s as the slow pace of land reform was combined with growing unemployment and rising food costs.⁵⁹⁴ These factors worsened socio-economic conditions for urban and rural poor. However, as Ann Eveleth and Andile Mngxitama have observed, rural land restitution claimants and labour tenants on white-owned farms lost their patience most quickly; they were particularly frustrated by the worsening conditions on white commercial farms, on-going evictions from farms (which the

⁵⁹¹ Ann Eveleth and Andile Mngxitama. 2003. “The Struggles of South Africa’s Landless,” *Development Update*, September (2003), 18; See also Andile Mngxitama, “The Taming of Land Resistance: Lessons from the National Land Committee,” *Journal of Asian and African Studies* 41(1-2) (2006), 39-69; Ntsebeza and Hall, *The Land Question in South Africa*; Atuahene, *We Want What's Ours*; Walker, *Landmarked*.

⁵⁹² Eveleth and Mngxitama, “The Struggles of South Africa’s Landless.”

⁵⁹³ For more details on the restitution process, see Atuahene, *We Want What's Ours*; Walker, *Landmarked*.

⁵⁹⁴ Eveleth and Mngxitama, “The Struggles of South Africa’s Landless.”

state declined to act upon), and continuing farm violence and human rights abuses by white farmers. In the months before the July 23-24, 2001 national meeting of landless people that led to the birth of the LPM, such frustrations increasingly took the form of land occupations by landless groups in various stages of self-organization. Disparate groups of labour tenants, loosely linked through the National Land Committee's national network, began to realize that they shared common concerns.⁵⁹⁵

Though the LPM began as a rural-based movement, it spread rapidly into the urban center of Johannesburg and then throughout Gauteng province during 2002. Informal settlements surrounding Johannesburg were facing a new wave of forced removals. As rent levels rose, people increasingly faced evictions carried out by government-contracted private security forces in red overalls dubbed "Red Ants" (Wozani Security). When asked to compare the situations faced by urban and rural landless, then LPM Gauteng regional chairperson Maureen Mnisi zeroed in on evictions: "I think everywhere they are fighting for land. Some of the problems are the same. It differs, but the thing is that for the

⁵⁹⁵ The National Land Committee (NLC) would continue to provide support in the form of informal use of office space, access to funders and the media, etc. Such involvement with the LPM was contentious, however, and ultimately fractured the NLC network in 2004-05. For more on the relationship between the NLC and LPM, see Ntsebeza and Hall, "Introduction," in Ntsebeza and Hall, *The Land Question in South Africa*.

eviction, people are crying everywhere.”⁵⁹⁶ The LPM’s daily efforts were thus largely defensive, focused on preventing evictions from rural farms and urban settlements and apartment complexes. In 2004, the LPM counted roughly 90 percent of its membership base in rural areas (with strongholds in the Wakkerstroom area of Mpumalanga, the Free State, and the Eastern Cape), though strong branches were also formed in informal settlement areas of Johannesburg—including Orange Farm, Protea South, Eikenhof, Thembelihle and several others—and in the inner-city flats of Hillbrow and Berea. In interviews, LPM leadership found it difficult to draw distinct boundaries between urban and rural membership, since some rural land claimants lived in urban areas (often subsidized by the pension grants of relatives living in rural areas).

This organizing across urban, rural, and peri-urban areas was unique among post-apartheid South African social movements at the time and rare in the country’s history, as evidenced by the urban biases of anti-apartheid struggles such as the United Democratic Front (UDF).⁵⁹⁷ The apparent lack of

⁵⁹⁶ Maureen Mnisi, Interview by author, Johannesburg, August 8, 2003.

⁵⁹⁷ Gillian Hart and Ari Sitas touch briefly on rural-urban connections within the labour movement between 1973 and the early 1990s and on the violence of the hostel system in Gauteng (associated with ‘the presence of the rural in the urban’). Gillian Hart and Ari Sitas, “Beyond the Urban-Rural Divide: Linking Land, Labour, and Livelihoods,”

urban-rural linkages within social movements – and the lack of attention paid by academics and policymakers to the importance of creating such linkages – is far from natural or inevitable. It is instead indicative of more fundamental biases that had their roots under segregation and apartheid and that persisted after 1994, as the next section will discuss.

*B. Law and rights along the urban-rural divide: Housing, land, and security*⁵⁹⁸

Apartheid's strict separation between urban and rural, along with the ANC's urban organizational bias, helped ensure that urban and rural issues remained separate during the constitutional negotiation process of the early 1990s. Negotiations over land and property rights took place separately from the broader economic policy debates of the constitutional negotiations – as "one of

Transformation 56 (2004), 31-38. For more on the ANC's urban organizational bias and its effects on land reform strategy see Mamdani, *Citizen and Subject*.

⁵⁹⁸ A full analysis of post-apartheid land and housing policy lies outside the scope of this chapter; I have focused instead on competing conceptions of rights and their implications for South Africa's democracy. For a fuller sense of the history and politics of land in South Africa see, among many other sources, Ben Cousins, "Reforming Communal Land Tenure in South Africa – Why the Draft Communal Land Rights Bill is Not the Answer," *ESR Review* 3(3) (2002). Stephen Greenberg, "Post-Apartheid Development, Landlessness and the Reproduction of Exclusion in South Africa," Centre for Civil Society Research Report no. 17 (2004); Levin and Weiner, "No More Tears;" Mngxitama, "The Taming of Land Resistance"; Ntsebeza and Hall (2007); Thwala "Land and Agrarian Reform in South Africa;" Cheryl Walker, "The Limits to Land Reform: Rethinking 'the Land Question,'" *Journal of Southern African Studies* 31(4) (2005), 805-24.

several parallel ‘specialist’ streams.”⁵⁹⁹ However, as we saw in chapter three, the World Bank was heavily involved in promoting market-based approaches to both land redistribution and urban housing and utilities provision.

At the World Bank’s urging, the ANC government adopted a market-based approach to land redistribution, based on the “willing buyer-willing seller” principle. This approach has been rationalized on the basis of maintaining efficiency in the agricultural sector and retaining investor confidence. Critics argue that efficiency and equity are not—and cannot be—achieved simultaneously when it comes to land redistribution, and thus maintain that the landless poor cannot find redress through the market.⁶⁰⁰ As Stephen Greenberg has argued, any reliance upon markets will be skewed against the poor, since markets respond to effective demand, or the ability to pay for commodities at prevailing prices.⁶⁰¹ Resources will continue to flow towards those who are able to pay for them, thus ensuring the continued build-up of resources by this small

⁵⁹⁹ Walker, “The Limits to Land Reform,” 815; Marais, *Limits to Change*.

⁶⁰⁰ Thwala, “Land and Agrarian Reform in South Africa,” 13.

⁶⁰¹ Greenberg, “Post-Apartheid Development,” 2; Ruth Hall, “Transforming Rural South Africa? Taking Stock of Land Reform,” in *The Land Question in South Africa*, ed. Ntsebeza and Hall, 87-106; Edward Lahiff, “‘Willing Buyer, Willing Seller’: South Africa’s Failed Experiment in Market-Led Agrarian Reform,” *Third World Quarterly* 28(8) (2007), 1577-1597; Haroon Akram-Lodhi, “Land, Markets and Neoliberal Enclosure: An Agrarian Political Economy Perspective,” *Third World Quarterly* 28(8) (2007), 1437-1456.

minority. Even though the state may assist people in buying land and starting agricultural production, it is unlikely that effective demand would be generated or that these new landholders would ever be able to compete with large-scale owners within the market.⁶⁰² Greenberg, Lahiff, and others have argued that a market-led development model cannot work in a context with such extreme inequality. In South Africa, the market-based approach maintained existing white commercial farmers while attempting to promote a class of black commercial farmers (with little success). Thus it failed to meet the needs of subsistence farmers and others who wished to access land outside of an agribusiness framework.⁶⁰³

Crucially, the market-based approach also elided the history of land theft, flattening questions of justice and redress. The descendants of colonizer and colonized were portrayed as two equal players confronting each other before the market. As former LPM Gauteng regional chair Maureen Mnisi stated: “The government in 1994, it promised people about land reform and land redistribution. But in his constitution, he put the Property Act in which there’s a ‘willing buyer-willing seller’ clause. And he made the people to lose their rights

⁶⁰² Greenberg, “Post-Apartheid Development,” 3.

⁶⁰³ Gumede, *Thabo Mbeki*, 78. See also, Lahiff, “‘Willing Buyer, Willing Seller;’” Akram-Lodhi, “Land, Markets and Neoliberal Enclosure.”

because they can't pay. Most of the people they are unemployed ... instead of making a land reform they say you must buy. So you can even see the Freedom Charter when they say the land shall belong to those people who work it, but now it's not that. The land shall belong to the people who buy it. And because we don't have the money to buy the land, we are getting more suffering about that."⁶⁰⁴

The division between urban housing rights and rural land rights persisted in a series of policies after 1994. The contrast between housing and land rights was highlighted when the Prevention of Illegal Squatting Act 52 of 1951 was replaced by the Prevention of Illegal Evictions and Unlawful Occupation of Land Act (PIE) in 1998. Under the former apartheid-era act, black Africans in urban areas had no formal housing or land rights, and the government was allowed to evict them arbitrarily to settler camps. Though the act was applied infrequently in the years immediately following the democratic transition, it was not repealed and replaced with PIE until 1998. The new act, rather than focusing solely on "illegal squatting," sought to protect the property of landowners and protect illegal occupants from eviction without due notice and a court order. However, PIE also reinforced the fact that, as Andre van der Walt writes, informal housing

⁶⁰⁴ Maureen Mnisi, Interview by author, Johannesburg, August 8, 2003.

rights were “not allowed to actually compete with the inviolable right of a landowner. [The legal system’s largely negative attitude towards informal housing rights] illustrates the supremacy of landownership vis-à-vis informal housing rights in terms of the dominant theory of land rights.”⁶⁰⁵

PIE also created “a framework for evictions rather than an end to evictions.”⁶⁰⁶ If the state considered it necessary in some way for the public good, then those living in informal settlements could be evicted through a legal process. In January 2002, thousands of residents had their shacks demolished during their removal from Mandelaville in Diepkloof, Soweto. They were moved to the Roodepoort Durban Deep hostel to make way for a multimillion-rand development plan.⁶⁰⁷ Other communities were evicted to make way for new cultural districts, such as Newtown in Johannesburg, to promote new tourist areas, or to push shacks further from major highways and thus out of sight. Residents were often moved from informal settlements or townships onto state-

⁶⁰⁵ Andre van der Walt, “Informal Housing and the Environment: Land Rights in Transition,” in UNISA VerLoren van Themaat Centre for Public Law Studies (Environmental Law Division), *South Africa in Transition: Urban and Rural Perspectives on Squatting and Informal Settlement in Environmental Context* (Pretoria: UNISA, 1992), 68.

⁶⁰⁶ Greenberg, “Post-Apartheid Development.”

⁶⁰⁷ Baldwin Ndaba, “Residents cheer squatters’ eviction,” *The Star*, Jan. 8, 2002.

owned land left over from apartheid zoning.⁶⁰⁸ These sites were usually remote areas, further from health facilities, jobs, schools, and transportation.

Long-awaited tenure security legislation for rural areas was only passed in February 2004, and the Communal Land Rights Bill was criticized by many in the land sector as being antithetical to rural democratization.⁶⁰⁹ Passed just months before the April 2004 general election, the CLRB bolstered the ANC's position with rural traditional authorities, but exemplified for many in the LPM the growing distance between the ANC and landless poor populations. The legislation gave chiefs in former apartheid "homelands" the responsibility of administering land communally, with the intended result of extending tenure security to a third of South Africans. (As Mamdani has highlighted, the ANC and other urban-based parties have long been loath to challenge rural hierarchies, as traditional authorities were often relied upon to deliver rural votes).⁶¹⁰ Critics argued that it was undemocratic to give such power to un-elected chiefs, since rural communities and individuals would have no choice over their land rights or land administration arrangements. They also argued that stark gender

⁶⁰⁸ Greenberg, "Post-Apartheid Development."

⁶⁰⁹ Ntsebeza, "Rural Governance;" Cousins, "Reforming Communal Land Tenure;" SAPA, "Land Rights Bill 'Deeply Flawed,'" *Mail & Guardian*, Nov. 11, 2003.

⁶¹⁰ Mamdani, *Citizen and Subject*.

inequalities were likely to be exacerbated; the land rights of rural women were likely to be undermined by placing their administration in the hands of mostly male chiefs. The bill stated that 30 per cent of elected traditional councilors must be women, but there were no sanctions described for enforcing this percentage.

The LPM waged a campaign against the CLRБ prior to its adoption. The movement criticized the lack of consultation with rural communities throughout the years of the government's drafting process.⁶¹¹ The bill was not widely disseminated to those communities which would be most affected by its provisions; instead, consultative workshops held by the government were targeted at organizations of rural traditional authorities. In a November 2003 submission to parliament, the LPM complained: "From our perspective only traditional leaders were consulted. The people invited to consultation meetings were the National House of Traditional Leaders, the Provincial Houses of Traditional Leaders, the Coalition of Traditional Leaders, Contralesa, and the Ingonyama Trust Board."⁶¹² The movement went on to detail the principles of land tenure reform policy they deemed essential:

- (i) it must be the product of a thorough consultation with the

⁶¹¹ Landless People's Movement, "Submission to the Portfolio Committee for Agriculture and Land Affairs on the Communal Land Rights Bill," Nov. 2003.

⁶¹² *Ibid.*, 1.

- affected communities
- (ii) it must provide for democratic institutions to allocate, administer, and control communal land
 - (iii) 'democratic' means that institutions must be elected by both men and women of the affected community and must be accountable and transparent
 - (iv) it must redistribute land beyond the 13 per cent allocated to black people by the previous regime
 - (v) land allocation and access must be equal for both men and women
 - (vi) it must address the institutions of traditional leadership created by apartheid.⁶¹³

The LPM concluded their submission in no uncertain terms: "The LPM cannot endorse the bill. In fact we reject the current bill outrightly."⁶¹⁴ Such an explicit call for rural democratization was a sharp departure from the previous course of national social movements in South Africa.

Policies regarding rural farm dwellers in the first decade of ANC rule were characterized by neglect. The rural agricultural sector was arguably the most shielded from post-apartheid reforms and conditions for farmworkers remained, on the whole, abysmal. The power relations established under segregation and apartheid—in no small part through the convict labor schemes described in chapter two—continued to shape the experiences of farm laborers. South Africa's seven million farm dwellers, or 15 percent of the population,

⁶¹³ Ibid.

⁶¹⁴ Ibid.

continued to face arbitrary eviction, brutal assault, murder, and denial of burial rights.⁶¹⁵ There remained too few government inspectors to ensure meaningful checks on labor violations.⁶¹⁶

Farmworkers and their families were still at constant risk of eviction at the farmer's will; while their land tenure rights were technically protected under the Extension of Security of Tenure Act of 1997, these legal protections did little to change the precarity of farmdwellers' existence on white-owned farms. Farmers were now required to give notice of eviction, but many evicted workers complained that they did not receive a notice or that they could not read it. In the first ten years of democratic rule, nearly 950,000 farm workers and dependents were evicted from white-owned farms—200,000 more than were evicted during the previous decade of apartheid rule and more than the total number of people

⁶¹⁵ Human Rights Watch, *Unequal protection: The state response to violence on South African farms* (New York: Human Rights Watch, 2001); Mngxitama, "The Taming of Land Resistance;" Author interviews, 2003. For a more recent account, see Human Rights Watch, *Ripe with Abuse: Human Rights Conditions in South Africa's Fruit and Wine Industries* (New York: Human Rights Watch, 2011).

⁶¹⁶ As of March 2011, the Western Cape province had 107 labor inspectors, responsible not only for checking over 6,000 farms but also all other workplaces in the province. As Human Rights Watch has noted, "an agreement between the Department of Labour, Agri South Africa—the main farmers' association—and other parties that requires labor inspectors to give farmers notice of inspections undermines the inspectors' capacity to identify violations." Human Rights Watch, "South Africa: Farmworkers' Dismal, Dangerous Lives."

who had benefited under all aspects of the official land reform program since it began.⁶¹⁷ Seventy-seven percent of the evictees were women and children related to deceased or retired farm laborers.⁶¹⁸ In areas such as Wakkerstroom, Mpumalanga and Ingogo, KwaZulu-Natal, LPM members fought for the release of impounded cattle, set fires and destroyed fences to undermine white authority and profit, performed burials against the will of farmers (who refused interment rights because that would allow families the right to subsequently return or remain on familial land⁶¹⁹), fended off eviction, pursued land restitution claims, and more.

Meanwhile attacks on white farmers overshadowed other types of violence taking place on farms, such as evictions of labor tenants and violence against farmworkers. Media reports of South Africa's "crime wave" were not limited to cities; violence against white farmers also received a great deal of

⁶¹⁷ Marc Wegerif, Bev Russell and Irma Grundling, *Still Searching for Security: The Reality of Farmdweller Evictions in South Africa*. (Polokwane: Nkuzi Development Association, 2005); See also Human Rights Watch, "South Africa: Farmworkers' Dismal, Dangerous Lives: Workers Protected by Law, But Not in the Fields," Aug. 23, 2011.

⁶¹⁸ Wegerif et al., *Still Searching for Security*; See also Lahiff, "'Willing Buyer, Willing Seller,'" "Victims of Illegal Evictions Forced to Squeeze into Shanty Towns in South Africa," *IRIN Africa*, Jan. 13, 2006.

⁶¹⁹ Colette Braeckman, "South Africa: Whose Land?" *Le Monde Diplomatique*, Sep. 15, 2003.

media attention.⁶²⁰ By October 1997, a delegation led by the South African Agricultural Union (SAAU) had demanded a meeting with President Mandela to address what news outlets called “the continuing slaughter of white farmers.”⁶²¹ The previous week over 600 farmers had gathered in Bultfontein in Free State province to protest the murder of four farmers in their region in the past three weeks and the death of roughly 250 farmers countrywide since the 1994 elections.⁶²² Farmers threatened to “form vigilante groups, sack farm workers, set up roadblocks and withhold taxes to force the government to act upon their grievances.”⁶²³ The farmers threatened vigilante action if Mandela did not respond with “concrete results.” The SAAU delegation sought Mandela’s approval for a plan they had developed called “Management Programme for Platteland (Rural) Security.”⁶²⁴ As a result of the SAAU’s demands for action, a task team of Joint Security Staff was convened to visit all provinces and assess

⁶²⁰ See e.g., Suzanne Daley, “South African Farmers Reach for Their Guns,” *New York Times*, Jul. 17, 1998.

⁶²¹ “S. African Farmers Turn to Mandela for Crime Solution,” *Dow Jones*, Oct. 14, 1997.

⁶²² *Ibid.*

⁶²³ “S. Africa’s Farmers Grateful for Decline in Attacks,” *Dow Jones*, Feb. 11, 1998. See also “S. African Farmers Turn to Mandela for Crime Solution,” *Dow Jones*, Oct. 14, 1997.

⁶²⁴ *Ibid.*

the problem.⁶²⁵ By July 1998, the *New York Times* carried a story with the headline “South African Farmers Reach for Their Guns,” which reported that: “Attacks on white farmers have been mounting. In the past four years, nearly 500 farmers have been killed. Since January there have been 371 attacks on farms, resulting in 75 deaths.”⁶²⁶

The ANC’s response was an extension of the “war on crime” approach described in chapter four. While much of the “war on crime” was focused on cities, rural areas were also targeted—with a privatized solution to safety and security. In October 1998, President Mandela convened a Rural Safety Summit to address the violence on farms, but the primary focus was violence against white farmers. Mandela began his address on the first day of the summit by stating that “this is first and foremost a summit for action against crime, in particular the killings and violence against members of the farming community.”⁶²⁷ He reassured the farmers there was no conspiracy to run them all off their land. And besides, “There is in the first place no force in this country which has the capacity

⁶²⁵ Martin Schonteich and Jonny Steinberg, “The Problem and the State’s Response,” *Attacks on Farms and Smallholdings: An Evaluation of the Rural Protection Plan*.

⁶²⁶ Suzanne Daley, “South African Farmers Reach for Their Guns,” *New York Times*, Jul. 17 (1998).

⁶²⁷ Address by President Nelson Mandela to the Summit on Rural Safety and Security, Midrand, Oct. 10, 1998.

to do that.”⁶²⁸ He stated that in addition to the immediate human suffering that came with violence against members of the farming community, the lack of security and stability in the rural and farming community also posed serious disruption to the economy: “It threatens to bring reduced growth or production, loss of wages and profits and in time unemployment. It brings the spectre of deepening poverty, and potential social instability and upheaval.”⁶²⁹

President Mandela spoke of the efforts that the government had made in the previous few years to address crime, highlighting the tough-on-crime provisions of the 1997 Criminal Law Amendment Act and Criminal Procedure Amendment Act described in the last chapter: “In order to strengthen the hands of judicial officers we have tightened the laws on bail, on parole and on organised crime and increased minimum sentences for serious crimes.”⁶³⁰ He stated that, in addition to these efforts, communities had a crucial role to play. Similar to the community policing strategies being promoted in urban areas, Mandela proposed community involvement in the rural commando system: “There are many ways in which members of the public could be part of or

⁶²⁸ Ibid.

⁶²⁹ Ibid.

⁶³⁰ Ibid. See chapter four.

reinforce our men and women in uniform. One example is the low level of participation in the commando system. I am therefore giving instructions to the Minister of Defence to immediately investigate mechanisms to ensure maximum participation in the commando system..."⁶³¹

The Rural Safety Summit would culminate in the creation of a Rural Safety Plan, which had two main pillars: 1) home and hearth protection; and 2) area bound reaction forces (commando units).⁶³² Mandela's encouragement to community members to join the commando units combined old and new policing strategies. The commando units were at once a revival of apartheid-era patrols and in-line with the "community policing" strategy that South Africa had adopted in its urban areas as part of its move toward a neoliberal privatization of policing efforts.⁶³³ As the *New York Times* wrote of the Rural Safety Plan, "Actually, it is a dusted-off apartheid-era idea – training and arming civilians as army commandos ready to respond to the Communist threat. Only these days, the threat is crime."⁶³⁴ A 2001 investigation of the commando system by Human

⁶³¹ Ibid.

⁶³² South African Police Service, "Historical Overview," National Rural Safety Strategy, 3.

⁶³³ See chapter four.

⁶³⁴ Daley, "South African Farmers Reach for Their Guns."

Rights Watch revealed sharp racial divisions in the composition of the commando units. Commando units were seen as catering to and being composed of white farmers, while Community Policing Forums (CPFs), begun in the early 1990s and enshrined in the 1995 South African Police Service Act, were seen as directed at the black community.⁶³⁵ The Rural Safety Plan thus did little to address violence against farm laborers, and instead addressed violence against farm owners through a privatization of police efforts and renewal of commando units. Meanwhile, land redistribution remained elusive.

C. Urban and rural in post-apartheid civil society

The LPM could have gone the route of a completely rural social movement given its beginnings in the rural bases of National Land Committee affiliates. However, the movement spread to an urban constituency when the connection between urban and rural evictions (attributed, in part, to the insecurity of tenure in both spaces) was recognized. Urban land issues (portrayed by the government as problems of housing shortages) were highlighted by the Bredell occupation and other urban occupations of its kind. In

⁶³⁵ Human Rights Watch, *Unequal Protection: The State Response to Violent Crime on South African Farms*, Aug. 2001 (in “The Rural Protection Plan in Practice” section).

this vein, the burgeoning LPM was able to make the link between the sources of urban and rural poverty as shared outcomes of historical land dispossession.

The LPM was effective at drawing links between land and other sources of poverty stemming from macro-economic policies, especially in urban areas. According to a study conducted by Bongani Xezwi, an LPM member at the time living in Protea South, Soweto, the vast majority of urban Gauteng province members interviewed (87 percent of 90 interviewees) clearly understood that the LPM's primary aim was to struggle for land, but at least 50 percent of respondents also understood that the LPM was fighting for other basic needs for the landless. Almost all respondents (96 percent) believed that the LPM would still need to struggle after getting land, indicating a widespread understanding of the links between land and other struggles for basic needs. Xezwi also found a variety in types of land demands. Ninety-six percent of those surveyed needed land for housing, but a full 66 percent of this urban constituency also needed land for farming. Fifty-seven percent also wanted land for business purposes, and 64 per cent for community services.⁶³⁶ The LPM created space for the diverse experiences of individuals occupying over-crowded apartments in downtown

⁶³⁶ Bongani Xezwi, "The Landless People's Movement," Centre for Civil Society Research and Analysis Skills Strengthening Programme (RASSP) 1(10) (2005), 1-25.

Johannesburg, living in informal settlements surrounding the city, working on rural farms, and commuting between urban and rural areas.⁶³⁷

This organizing across urban, rural and peri-urban areas was unique among post-apartheid South African social movements of the period. The lack of urban-rural linkages in civic struggles—and the lack of attention paid by academics and policymakers to the importance of creating such linkages—was far from natural or inevitable. Instead it was indicative of more fundamental biases formed during segregation and apartheid and that persisted years after.⁶³⁸ As researcher Cecilia Tacoli writes, “The division between ‘urban’ and ‘rural’ policies is based on the assumption that the physical distinction between the two areas is self-explanatory and uncontroversial.”⁶³⁹ These assumptions cannot accurately be made in any context, and are especially troublesome in the South

⁶³⁷ In the same period, urban landlessness became an increasing focus of Latin American landless movements as well. Brazil’s Movimento dos Trabalhadores (which participated in exchanges with the LPM) works primarily in the countryside, but has also formed “rurban” settlements (*assentamentos rurbanos*) in the *favelas*. Similarly, Mexico’s Unión Nacional de Organizaciones Regionales Campesinas Autónomas (UNORCA) has organized street vendors and transport carriers in some urban settings. Annette Aurélie Desmarais, *La Vía Campesina: Globalization and the Power of Peasants* (London: Pluto Press, 2007), 27.

⁶³⁸ For more on the urban-rural divide in South African historiography, see chapter one.

⁶³⁹ Cecilia Tacoli, “Bridging the Divide: Rural-Urban Interactions and Livelihood Strategies,” Gatekeeper Series (SA77) (London: International Institute for Environment and Development, 1998), 4.

African case where physical distinctions were politically re-engineered. Economics, modes of governance, and the urban-rural divide were so linked under apartheid that it would be difficult to tease them apart or make substantive change in one area alone.

This carries implications for how we think about dispossession. At the heart of urban-biased economic policy and analysis lies the assumption that dispossession from the land is a natural historical precursor to capitalist development, “an inevitable part of the creation of an urban, industrial working class.”⁶⁴⁰ The on-going interconnections between rural and urban areas become obscured as the rural is associated with a “pre-modern” way of life, hardly considered a hotbed for effective anti-capitalist resistance. Such a naturalized conception of dispossession has grave implications for how we understand, not only the relationship between urban and rural spaces, but also the continued reproduction of economic relationships and political power. As Gillian Hart argues, dispossession (and, conversely, the retention of access to land) must be understood as an ongoing process that continues to shape the conditions of

⁶⁴⁰ Hart and Sitas, “Beyond the Urban-Rural Divide,” 35.

reproduction of labor and to infuse people's understandings of themselves as political actors.⁶⁴¹

Dichotomous conceptions of urban and rural areas, and their accompanying assumptions about capitalist development, have undermined much intellectual work, particularly on social movements. As Hart and Sitas argue, most researchers have pursued "the land question," "the labour question," and "the question of livelihoods" (or "non-formal employment") in isolation. Post-1994 labor studies became heavily focused on metropolitan areas, ignoring the persistence of migrancy and instead focusing on black workers "as a class of brand new wage-earners and stake-holders. In other words, as a collective *tabula rasa* without a history rooted in prior struggles and negotiations across different socio-spatial arenas of practice. As a consequence of such representations, this research lost track of enduring and changing urban-rural interconnections."⁶⁴²

D. The 'landless subject'

⁶⁴¹ Gillian Hart, 'Linking Land, Labour, and Livelihood Struggles', *South African Labour Bulletin* 23(6) (2002), 28.

⁶⁴² Hart and Sitas, "Beyond the Urban-Rural Divide," 33.

The dichotomous conceptions of urban and rural that characterized academic analysis and policy were not overtly challenged by the broad range of post-apartheid social movements.⁶⁴³ Given this, the LPM's definition of landlessness and its ability to organize (however unevenly) across urban and rural areas constituted a significant turn. Andile Mngxitama, former land rights coordinator of the National Land Committee and activist with the LPM, described the position thus:

We define landless as all people with land needs, and we do not make a distinction of whether people need land for housing or farming. However, it is clear to us that the majority of landless are people who want land for building livelihoods. What we have also discovered is that the 'rural-urban divide' is actually false. Many workers in the urban centers can no longer hope to find work in industry, so to feed themselves and their families are increasingly looking to produce on land. So you will find in our definition of 'landless' people who have made land claims, and those who have made requests for land through government processes. The concept 'landless' is also about what kind of society we desire. We understand that on land rest many processes that go deep in understanding how people live and relate to each other and to nature. So defining oneself as landless implies that you are calling for fundamental change in relations in the broader society.⁶⁴⁴

⁶⁴³ The apparent lack of urban-rural linkages in movements such as the Anti-Eviction Campaign, the Anti-Privatisation Forum, and others may be a partial result of the urban bias of social movement researchers. No doubt many movement members based in urban areas have strong rural connections—which likely have profound effects on how they conceive of their struggles—but such connections rarely formed the subject of research inquiry. Nonetheless, these movements were overwhelmingly urban-focused in their membership and demands.

⁶⁴⁴ Andile Mngxitama, Interview with Sean Jacobs, *Brasil de Fato*, December 1, 2003, <http://ccs.ukzn.ac.za/default.asp?3,28,10,742>.

By declaring the rural-urban divide “false,” the LPM also discarded the range of dichotomies and substitutions that had immiserated the majority of South Africans under apartheid and democracy alike. Rather than seeking incorporation into the ANC’s capitalist project, landless activists identified the roots of that project in the geography of apartheid and its accompanying modes of wealth production and identity formation. As the LPM charter stated:

We fought for the end of colonialism and apartheid, and welcomed the birth of a new South Africa. But for us there is nothing new because there is still no land, no services and no growth in our areas. We will no longer sit back and watch as the wealth builds up in the hands of a tiny urban elite, while on the edges of the cities, in the small towns and in the countryside, we continue to suffer and starve.⁶⁴⁵

Political subjectivities are hardly a given; not all—or even most—of South Africa’s dispossessed readily declare themselves “landless.” In a country where the vast majority of the black African population was dispossessed of land, where forced removals and evictions re-engineered the economic, social, and political landscape throughout the 20th century, and where such evictions and removals persisted, choosing to define oneself as landless rather than homeless, unemployed, or poor was an expression of broader emancipatory aspirations.

⁶⁴⁵ Landless People’s Movement, “Charter,” Oct. 2001, http://www.liberationafrique.org/imprimersans.php3?id_article=127&nom_site=Lib%E9ration%20Afrique&url_site=http://www.liberationafrique.org.

With this definition, the LPM identified persistent poverty as a result of both the economic policies of the current ANC-led government *and* apartheid-era inequalities and historical dispossession. According to Gillian Hart: “What makes this redefinition of the land question potentially very powerful is its grounding in pervasive histories and memories of racialised dispossession. This in turn makes it possible to frame demands for redistributive social and economic justice in terms of citizenship rights rather than welfare handouts.”⁶⁴⁶ Claims rooted in a sense of dispossession lent themselves to demands for redistributive justice and citizenship rights imbued with practical significance. The LPM tended to focus less on individual ANC councilors or city managers and more on the national government and the interests it represented. As one LPM leader from the Thembelihle settlement told a meeting in July 2002, “When it comes to development, the government only consults *amabourgeois*. If you don’t have work, you are an eyesore to them. The whole system is stinking – it’s about the oppression of the majority by a minority.”⁶⁴⁷

II. We won’t buy our land back: The landless confront the market

⁶⁴⁶ Hart, “Linking Land, Labour.”

⁶⁴⁷ Landless People’s Movement, Press Statement. Jul. 4, 2002.

After four years of LPM demands for a national land summit, the government convened such a summit in July 2005.⁶⁴⁸ The summit was touted as a platform for a large variety of land reform “stakeholders” – here, the Landless People’s Movement was one among many called upon for input. These included seven political parties (ranging from the Azanian People’s Organization, the Inkatha Freedom Party, and the ANC to the New National Party), academics, Latin American and African country representatives, the World Bank, a range of land NGOs, the Department of Land Affairs, and white agri-business. White farmers were assured that their views would be taken into consideration; “We can assure them,” said Director General of Agriculture Masiphula Mbongwa. “They must be frank, fearless and open about their views.”⁶⁴⁹ Still, the LPM’s demands came through clearly; at one point, they prevented the World Bank representative from making his speech.

⁶⁴⁸ South African Community Party (SACP), part of the tri-partite alliance with the ANC and Congress of South African Trade Unions (COSATU), held a Red October campaign, in partnership with the LPM, in 2004, and demanded a land summit. There was vigorous debate within the LPM about whether to partner on the Red October campaign, but many saw it as a way to get higher profile for their demands. The convening of the land summit several months later may be evidence of this.

⁶⁴⁹ Amy Musgrave, “White farmers must be ‘fearless’ about views,” *Mail & Guardian*. Jul. 29, 2005.

The LPM took aim at the market-led approach to land reform in its memorandum of demands to the summit:

The 28-million poor & landless black majority of South Africa are poor and landless today mainly because of our land was stolen from us through centuries of brutal and violent wars and laws of dispossession that began in 1652 and continued throughout colonialism and apartheid. Our ancestors fought valiantly against this theft and we fought to end apartheid so that this land would be returned to us. *We are not willing to buy back our stolen land! We are not willing buyers!* Today, more than 80% of the land of our ancestors remains in the hands of less than 60,000 white farmers who inherited the land from this colonial and apartheid theft. *We do not care whether they are willing to sell it back to us or not – we demand that our land be returned to us!* The market-led land reform model that the post-apartheid government copied from the World Bank has not worked anywhere in the world! In South Africa, it is an insult to our ancestors that we must buy back our stolen land! The entire South Africa ‘land market’ on which our stolen land is bought and sold at price determined by the beneficiaries of apartheid is nothing but a continuation of apartheid. We demand that the state and the landless organise to *‘take back the land’* that was stolen from us!⁶⁵⁰

The summit marked the first time the ANC government openly called the ‘willing buyer-willing seller’ program into question. Commentators were quick to highlight the ANC’s promises at the summit to revisit the policy; scholar Patrick Bond declared that the summit “was, at least rhetorically, the death knell for the commodification strategy of willing seller-willing buyer.”⁶⁵¹

⁶⁵⁰ Landless People’s Movement, “Memorandum of Demands to the National Land Summit Held in Johannesburg on 27-31 July, 2005,” 2005. Original emphasis.

⁶⁵¹ Patrick Bond, “Dragging SA’s Land Debate from the Neoliberal Quicksand,” *ZNet*, Aug. 29, 2005.

Yet, in the months that followed, LPM activists recognized that this “promise to revisit” did not signal a break in the prevailing approach to land reform. Paul Tikoane, an LPM activist based in Gauteng and the Free State, pointed to President Mbeki’s speech before Parliament in February 2006:

The president said actually they have to review the willing seller-willing buyer. But now, I still have a concern about that: ‘to review it in the international norms’. ... He doesn’t say the government must review the willing seller-willing buyer. He says within international norms. So it looks like we must review it in relation to the situation happening internationally. To me that is a problem. ... In some areas it’s okay to work with international people and so forth. And there are some other areas where you don’t want to hear what some other people are saying about. When you talk about the land, this land belongs to *us*. It’s our land. So we must not ask somebody from somewhere, ‘must I divide this kitchen of mine?’. That’s where my problem is.⁶⁵²

Indeed, international interests seemed never to have been far from sight. As Patrick Bond observed, the “Zimbabwe” factor may have come into play in the government’s decision to revisit the policy, though not in terms of quelling investor fears of Zimbabwe-style land takeovers. Now the “instability” caused by a lack of redistribution seemed more immediate.⁶⁵³

As time went on, it became clear that “reviewing” the market-led approach would not actually mean departing from that approach anytime soon,

⁶⁵² Paul Tikoane, Interview by author, Brixton, Johannesburg, May 25, 2006.

⁶⁵³ Patrick Bond, “Dragging SA’s Land Debate.”

or alienating foreign investors and speculators. There were quieter signs, however, that the LPM's demands struck a chord with some within the ruling ANC. According to Tikoane:

Even at the end [of the summit] the [Land] Minister, Thoko Didiza, came to us again, just outside there discussing and feeling very free about the LPM now. And saying, exactly, I think the LPM is really the right movement in this country because of the history that the ANC was involved in. It was a problem what happened in CODESA.⁶⁵⁴ In CODESA it was actually three things which the ANC didn't agree with the National Party there. It was the land issue, it was education, and the third one was labour. It was those three issues where they did not agree. The ANC didn't agree with the National Party when they were in discussions in CODESA at Kempton Park. ... It was just a compromise there. So, now Thoko is saying exactly that—that it was this thing, the property clause, that was a problem, and they [the ANC] see it afterwards.⁶⁵⁵

Researcher Stephen Greenberg has recounted similar interactions:

At a meeting between Gauteng's agriculture MEC and the LPM, the SACP, the Homeless People's Federation and other organisations in October 2004, the MEC said 'the people must rewrite the laws with their feet,' suggesting that small-scale occupations of unused land for agriculture purposes would change the dynamic of landowning and assist the government to restructure laws.⁶⁵⁶

⁶⁵⁴ Convention for a Democratic South Africa (CODESA), the forum for negotiating the transition from apartheid, began in December 1991.

⁶⁵⁵ Tikoane interview, 2006.

⁶⁵⁶ Stephen Greenberg, "Urban Food Politics, Welfare and Resistance: A Case Study of the Southern Johannesburg Metro," Centre for Civil Society grant report, May 2006.

Due in part to the presence of the LPM, there was a growing sense that South Africa's problems stemmed from mass dispossession and the on-going effects of unequal land distribution. Any "promises to re-visit" which did not fundamentally re-orient approaches to land reform remained problematic in the eyes of those who declared themselves landless. Similarly, any democratic project in South Africa that asked for votes but that had not proven itself to be a legitimate break from its predecessor was one that the landless refused.

III. No Land! No Vote!: The 'landless subject' confronts ballot box democracy

In 2004, South Africa held its second national election after the democratic transition. Most adults had clear memories of casting a vote for the first time in the election that would bring Nelson Mandela to power just ten years before. Therefore the LPM's calls to boycott the elections and to occupy land instead, as part of a "No Land! No Vote!" campaign, were deeply controversial. The LPM argued that South Africa had achieved only a "ballot box" democracy with the shift from apartheid. The state had systematically transformed a revolutionary politics into a technical, liberal democratic process in which politics was reduced to voting.⁶⁵⁷ Yet voting would not satisfy the needs of those who expected

⁶⁵⁷ See Neocosmos, "Development, Social Citizenship," 5.

democracy to entail an end to political and economic exclusion. The LPM issued demands that it argued would give teeth to the democratic project: a moratorium on all evictions and immediate delivery of land to the landless.

Maureen Mnisi of the Protea South settlement wrote a letter to the editor of the *Mail & Guardian* in response to the editorial page's criticism of the No Land! No Vote! campaign in early November 2003. Her letter, which the paper declined to print, summarized the LPM's conception of the campaign, underscoring the sentiment that democracy under the ANC did not constitute the political change struggled for under apartheid:

The impression given [by your editorial] is that the LPM is irresponsible to a point of disenfranchising the landless majority. We need not be reminded that we struggled for the vote during apartheid. It was us who bore the brunt of the apartheid repression here in South Africa. But we did not struggle for the vote so that we may be treated worse than dogs. It is the landless who voted for our government since 1994 in every election, but we have to ask this, why are we still landless and homeless ten years into our democracy? Is this the democracy we suffered so many years for? As if that is not enough, we are being told to 'register where we live,' but we are facing forced removals.... We demand respect and our full citizenship rights.⁶⁵⁸

The No Land! No Vote! campaign constituted the LPM's most pro-active strategy to date. With the No Land! No Vote! campaign, LPM members took matters of

⁶⁵⁸ Maureen Mnisi, Unpublished letter to the editor of the *Mail & Guardian*, in author's possession, Oct. 2003.

land reform into their own hands, in a very public show of force. Prior to this campaign, the proactive strategies carried out by some landless on a local level had not been recognized by the general public as a coherent line of attack. LPM members in parts of Mpumalanga, KwaZulu-Natal, and elsewhere had been carrying out burials against the will of farm owners, while others were re-opening closed access roads.⁶⁵⁹ Still, the No Land! No Vote! campaign was widely criticized by the media as a reactionary strategy which crudely neglected the hard-won right to vote. Most critics focused their attentions on the LPM's boycott of the vote, rather than on the actions the movement intended to carry out in lieu of voting. Land occupations were a significant worry to many, but this threat was not new; the LPM had been threatening a wave of land occupations around the 2004 elections for some time. Pairing land occupations with a boycott of the vote was a new element of the campaign—and a sharper critique of South Africa's new democracy.

A. From rural to urban and back

The progression of the No Land! No Vote! campaign between urban and rural areas followed the trend of the LPM as a whole; the impetus was found in rural areas but only transformed into a national campaign through the actions of

⁶⁵⁹ Landless People's Movement, 'Submission to the Portfolio Committee for Agriculture and Land Affairs,' 2.

urban areas (with more media exposure and ease of communication). The No Land! No Vote! campaign was pursued most strongly by LPM members facing direct attacks either on farms (in Mpumalanga, North-West, and, to a lesser extent, KwaZulu-Natal) or from government-led removals (as in Johannesburg). The idea for the No Land! No Vote! Campaign began among rural farm workers in Mpumalanga province, but urban LPM members in Johannesburg brought visibility to the campaign. Gauteng province was the first to officially launch the campaign, with a march to the Union Building in Pretoria in November 2003.

LPM members in Johannesburg argued that politicians were unresponsive to the needs of communities facing eviction, and said they were not willing to lend their vote to a government that was forcibly removing them from their homes. As Sisi Zulu of Orange Farm stated:

For us, it's like we've been applying and applying, begging, having meetings and meetings, spending a lot of money to say, 'Government, we do want to speak to you.' But it's like there's no action. We don't get any answers. We fax them, even march to our councilors. We didn't even get any response. So that's why we are telling ourselves that during the elections, LPM is going to take back their land. We are saying, 'no land, no vote' because where people will be voting is a land that is being rented by somebody, so that building is being rented, even the land on it is being rented. So we don't see any necessity to vote if you don't have a place to stay. Because it's like you are chaining yourself again to another government that is going to promise and do nothing. We say: no land, no vote.⁶⁶⁰

⁶⁶⁰ Sisi Zulu, Interview by author, Braamfontein, Johannesburg, August 24, 2003.

Maureen Mnisi of Protea South described the government as not only unresponsive, but antagonistic:

We've been writing those letters to the government and we're marching, trying to show them that is what we want. The only thing: there's no results that we're getting. You get guns and laws, is what we get. So is that an answer from our government? It's guns and laws, just putting to the poor people. When you fight, they resist instead of replying. And then they put those forces to shoot you and they put the bulldozer to destroy your shack and you don't have any say, but you have to listen to what they think because there's a gun. They fight, you know.⁶⁶¹

The evolution of the LPM's increasingly radical tactics is evident, as both women describe attempts to work first through governmental channels by requesting meetings with councilors, sending letters and faxes, and marching to politicians' offices. Nevertheless, LPM members engaged the government on the land issue more often through eviction processes than through discussion meetings in government offices—which gave the impression that the government was more an adversary than an ally.

The No Land! No Vote! campaign took hold unevenly across rural constituencies. Still, there were several rural actions around the campaign. The North-West province branch had at least four actions. The Eastern Cape and

⁶⁶¹ Mnisi interview.

Mpumalanga branches (also composed of mostly rural membership) had their first actions in February 2004, including a continuous sit-in at the Umtata offices of the Department of Land Affairs. On March 4, one month before the elections, more than 300 members of the LPM marched to their premier's office in the Eastern Cape provincial capital of Bisho. Upon arrival, they declared that the government had seven days to respond to their ultimatum: "Give us land, or we will take over farms forcefully on April 14."⁶⁶² LPM members traveled to Bisho from across the province, gathering from Umtata, Uitenhage, Port Elizabeth, Bizana and Grahamstown.

The common complaint of LPM members, urban and rural alike, was that this was "not the democracy we struggled for."⁶⁶³ As Sylvia Matshoba of Protea South explains:

Mbeki said to us on TV, I still remember, said 'I am going to make your lives better.' Electricity. Even water. Nothing of that sort is happening. It seems maybe he was speaking to someone else. We used to fight with them, for this ANC to be in government today. But all the grassroots, left with nothing. We lost our children here fighting for this democratic government. We lost our daughters. We lost our sons. We lost our children for this democracy. They fought for this democracy, this democracy to be today. But what did we get: nothing. Just left with tears. Because our children, we used to tell them 'The Boers are going to shoot

⁶⁶² SAPA, "South Africa: Threats of Election Day Land Occupation," *Afrika.no*. Mar. 4, 2004.

⁶⁶³ Interviews by author, August 2003.

you!'. They said 'All the children that are being shot, mama, they are also human beings. Their mothers and fathers loved them like you love me. So if I die there, I will die like a soldier. I'll be fighting for my country because this is our country. We must fight for it'. They fought for it, but they got nothing. Other people that fight for this land, they didn't get anything.⁶⁶⁴

Matshoba and others expressed a dual sentiment of dashed expectations. They referred to specific promises made by the ANC—land, housing, electricity, water—which had not been followed through upon during the previous decade. But they also described a more profound expectation of what 'democracy' itself might bring.

The ANC's response to the No Land! No Vote! campaign evolved dramatically over the course of several months from a position of disregard to one of strict denunciation. Upon the LPM's national launch of the No Land! No Vote! campaign in November 2003, officials in the ANC government discounted the LPM as a "fringe" group which could not seriously affect voter turn-out, the electability of the ANC, or the overall integrity of the elections.⁶⁶⁵ The ANC never expressed worry in these respects, but it began to react sharply to the LPM's threats of land occupations. The party also denied the LPM's charges that it had failed in the land reform process.

⁶⁶⁴ Sylvia Matshoba, Interview by author, Protea South, Johannesburg, Aug. 10, 2003.

⁶⁶⁵ Rapule Tabane, "Movements Split on Vote," *AllAfrica.com*, Oct. 31, 2003.

In a press statement released just six weeks before the election and in response to the No Land! No Vote! campaign the ANC maintained that it had not strayed from its land reform commitments as adopted in 1994.⁶⁶⁶ The party stated that it “has made significant progress over the last ten years in ensuring the progressive redistribution and restitution of land.” The ANC further expressed its intolerance of the LPM’s plans to occupy land and the movement’s characterization of official land reform policy:

South Africans will not tolerate hooliganism that is only aimed at misleading people and creating chaos and discord. Those with designs to deliberately flout the law and occupy land illegally will be met with the full might of the law. South Africa is a constitutional democracy that enshrines the right to demonstrate and freedom of expression, but such rights do not include a right to perpetuate lies, violate the law and act in a manner calculated to polarize society.... The ANC indeed respects the right of the Landless People’s Movement to choose to forgo their right to vote, but will not tolerate any act calculated at intimidating people and stopping them from exercising their right to vote.... If the LPM has legitimate concerns regarding the land restitution process, these can and should be dealt with through the appropriate government departments.⁶⁶⁷

The government cracked down harshly on No Land! No Vote! campaign protests. On election day, 57 LPM members were arrested in the settlement of Thembelihle for attempting to hold a protest. The LPM members were arrested

⁶⁶⁶ African National Congress, “ANC Keeps to Land Reform Commitments,” Press Statement, Mar. 4, 2004.

⁶⁶⁷ Ibid.

as they disembarked from their bus in Thembelihle, and thus were prevented from holding their demonstration. They were charged in terms of the Electoral Code of Conduct and the 1993 Prohibition of Illegal Gathering Act.⁶⁶⁸ Activists were held in jail over night and four of them were subjected to physical and psychological abuse by members of the police's Crime Intelligence Unit.⁶⁶⁹ Their case dragged on in court for over two years, and was only dropped in July 2006. The majority of those arrested came from the LPM strongholds of Thembelihle and Protea South. The court battle took its toll on the movement's Johannesburg leadership. As Bongani Xezwi of Protea South observed, the LPM became equated with arrests and court battles in Thembelihle and Protea South. This, according to Xezwi, resulted in significant de-mobilization of the movement.⁶⁷⁰

And yet the No Land! No Vote! campaign remained as evidence of how much the LPM's radical position owed to its bridging of the rural-urban divide. In its early months as an exclusively rural initiative, the LPM was limited by its dependency upon the National Land Committee and its affiliated NGOs. The

⁶⁶⁸ See Landless People's Movement, "LPM Members Arrested on Election Day," Press Release, Apr. 17, 2004.

⁶⁶⁹ See Anti-Privatisation Forum, "LPM Activists Tortured and Detained," Press Release, Apr. 29, 2004.

⁶⁷⁰ Bongani Xezwi, Interview by author, Johannesburg, May 28, 2006.

careful positioning of these NGOs as mediators between the government and the rural landless and their role as service providers hindered the development of a more radical ideology. In addition, since the NGOs work in cooperation with all aspects of rural societies, including traditional leadership, the democratization of rural authority had not been a central concern. The links between land distribution and the poverty and mass unemployment perpetuated by the ANC's macro-economic policies were amplified by joining forces with urban landless. From this mix came a searing critique of South African democracy which drew its fire from urban and rural experiences alike. In lifting cries of "No Land! No Vote!" the LPM criticized the government in radical terms that would not have been foreseen without the process of invalidating the urban-rural divide.

III. Conclusion

From 2005 on, it became unpopular to write about the Landless People's Movement in the present tense. Beginning in 2004, commentators took to writing about its implosion, collapse, and decline. Yet, in their focus on turmoil in the national executive committee, fraught relationships with donors, and a sharp decrease in media presence, observers overlooked persistent local-level activity. In interviews in 2006, some LPM members described their aims for the

movement. In a May 2006 interview, Paul Tikoane described his hopes for future LPM action, highlighting urban-rural ties. Based in Welkom in the Free State, Tikoane had been a member of the LPM since the World Summit on Sustainable Development (WSSD) in 2002. Tikoane was once a miner in Anglo-American's Free State mines, and spoke with devastating insight about the impact of the mining system, particularly in terms of the spread of HIV. Before joining the LPM, Tikoane was an ANC councilor from 1995-2000. He was elected into the national leadership of the LPM, and moved into the Brixton, Johannesburg office, doing construction work by day (when jobs were available) and attending LPM meetings in the evenings. His ties to Welkom remained strong. There he had been working with others to coordinate a joint campaign between the LPM and the mineworkers' union to confront Anglo-American about their labor practices and land holdings. Tikoane spoke of the need to urgently re-launch the urban branches of the LPM, and spoke with just as much force about his family's claim to the Tikoane River.⁶⁷¹

Along with Tikoane's plans for a partnership between landless and unionized mineworkers, other LPM members in Gauteng contemplated proactive strategies around HIV and treatment access. The LPM's Hillbrow branch

⁶⁷¹ Paul Tikoane, Interview by author, Brixton, Johannesburg, May 25, 2006.

fell apart after a key leader died of AIDS in 2004, and many other members fell sick or were otherwise affected by HIV and AIDS. Speaking in 2006, LPM youth activist Bongani Xezwi conceded that the LPM was at a weak point, but likened the LPM's problems to those of other South African social movements overwhelmed by donor funding and demands and by overly-bureaucratic national structures which did not always maintain strong ties to the grassroots.⁶⁷² LPM activists in Gauteng (the area hardest hit by in-fighting associated with the demise of the NLC, donor-movement tensions, and arrests) were trying new ways to become independent of donor funding. Members who had the means were now asked to make monthly donations to a transportation fund. Though it would mean much less funding in the short term, they saw it as a sustainable way of generating funds.

Still, the LPM never rebounded to the same level of organization. Other organizations sought to organize in a similar vein, including the Alliance of Land and Agrarian Reform Movements (ALARM), which was founded around the 2005 Land Summit. ALARM did not have the same level of activity and local organizing as the LPM had, as it was intended to be an alliance of local

⁶⁷² The LPM has been funded by Oxfam-Belgium and War on Want. Activists complained of signs of the movement 'being run from Europe' when, for example, the LPM was forced to hold national elections following funders' demands (rather than at a time chosen by the movement).

movements. From 2005, the Abahlali baseMjondolo (shackdwellers) movement began organizing in Durban and the Anti-Eviction Campaign continued in the Western Cape. These organizations borrowed and adapted some of the LPM's slogans—"No Land! No House! No Vote!"—and sought to draw connections between land, housing, and service delivery issues. The epilogue discusses the trajectory of these organizing efforts in more detail.

Though the LPM was relatively short-lived, it left some lessons for researchers and historians that are potentially quite profound. The movement's efforts to bridge urban and rural constituencies challenged researchers to pay attention to how the urban-rural divide might constrain their own work. Indeed, historical and contemporary urban-based struggles around evictions, electricity, housing, water and other 'basic services' may owe much of their strength to strong personal connections to family, friends, and livelihoods in rural areas. As researchers, our urban biases may prevent us from asking or writing about such connections across the 'urban-rural divide' and how they fueled and shaped political activity. Urban shack dwellers and flat dwellers may very well conceive of themselves as being engaged in struggles for land, but commentators may unwittingly fall into the same trap as policymakers who consider these to be 'housing' struggles or 'service delivery' protests. In doing so, we dampen the

dynamism of such struggles, silencing an entire range of motivations and activities. No doubt many academics and policymakers will continue to reinscribe urban-rural division, defining differential access to rights, citizenship, and “the good life” based on naturalized dichotomies. Among the many lessons of the Landless People’s Movement is the argument that prospects for South African democracy – in the Mbeki years and beyond – may rest on the landless’ refusal to be divided among themselves.

CHAPTER SIX

Epilogue

Ten years into ANC rule, the Landless People's Movement declared South Africa's democracy null and void. The LPM demanded a deepening of South African democracy based on liberation from the effects of historical dispossession and market-based macro-economic policy alike. Until such freedom came, the movement refused to validate what they deemed a "ballot box democracy." This dissertation has examined some of the historical reasons that the lack of economic redistribution seemed to threaten the very premise of South Africa's experiment in democracy. I have sought to deconstruct the historical relationship between land dispossession, citizenship, and politics in South Africa. In later chapters, I have shown why the country's leadership has been unable, or unwilling, to reckon with this history.

Land dispossession was intimately linked with legal status over the course of colonialism and apartheid. Forced removals and the creation of fictional 'homelands' not only dispossessed black Africans of land, but also citizenship.⁶⁷³ Once stripped of land and citizenship, one's presence in urban areas was criminalized. Under apartheid pass and vagrancy laws, gaining entry to cities

⁶⁷³ See chapter one for a fuller discussion of the link between land dispossession, forced removals, and citizenship.

depended upon having a labor contract and being able to show proof of it on demand. As described in chapter two, those picked up on pass law violations—as an estimated 20 million black men were between 1920 and 1980⁶⁷⁴—were often ordered to work on white-owned farms as punishment. It is not difficult to understand why, in the expectations of many, a democratic transition needed to untangle this knot.

However, for reasons discussed in earlier chapters, the ANC government adopted a neoliberal approach to development that foreclosed a large role for the state in directly redistributing land and other economic resources. South Africans who were once dispossessed of land and relegated to poverty now also were dispossessed of their claims for redistribution. South Africa's neoliberal democracy required that they give up their claims as dispossessed, landless subjects and instead compelled them to look to the market to 'deliver' services and jobs. The government would be an "enabler" of market forces and, rather than redistribute land and wealth, it would enter into "public-private partnerships for service delivery." For local economic development, this might mean a new super-maximum prison compound and promises of jobs and skills

⁶⁷⁴ William Worger, *Convict Labour, Industrialists and the State*, 68.

development, as it did in Kokstad.⁶⁷⁵ For the water supply in Soweto townships, this meant the government contracting with a French company to install pre-paid water meters.⁶⁷⁶ For urban landless, it meant awaiting ‘housing delivery’ and facing eviction and demolition of one’s informal housing settlement in the meantime; it did not mean land redistribution. In each case, one’s relationship with the state was meant to be closer to customer than citizen.⁶⁷⁷ And for those who resisted, their status was increasingly close to criminal. This became widely apparent when the dynamics underpinning South Africa’s dispossessed democracy played out in a devastating confrontation on August 16, 2012.

* * *

In the Rustenberg area of North West Province, less than two hours’ drive from Pretoria and Johannesburg, a handful of corporations run the world’s two largest platinum mines and the world’s largest platinum refinery. About 70 percent of the world’s platinum—used in jewelry and vehicle catalytic converters—originates here. Platinum mining began in 1929 and, as in the gold industry, mining companies relied on contractors to recruit cheap, disposable

⁶⁷⁵ See chapter five.

⁶⁷⁶ See chapter three.

⁶⁷⁷ See chapter three for a discussion of how this relationship was conceptualized at the World Bank in the 1970s and 1980s.

labor from Lesotho, Mozambique, Swaziland, and the Bantustans.⁶⁷⁸ Under the conditions of their labor contracts, black African mineworkers were allowed to stay only for their specified term of employment; at the end, they were required to return home to renew their contract. Their stay was temporary, at the will of their employer.⁶⁷⁹ Just as South African agricultural development was subsidized by apartheid laws regarding labor and movement,⁶⁸⁰ the mining companies “harnessed the services of the state to shape labor supply conditions to their advantage.”⁶⁸¹

⁶⁷⁸ See, e.g., Jonathan Crush and Clarence Tshitereke, “Contesting Migrancy: The Foreign Labor Debate in Post-1994 South Africa,” *Africa Today*, 48(3) (2001): 49-70. Jonathan Crush, Alan Jeeves, and David Yudelman, *South Africa’s Labour Empire: A History of Black Migrancy to the Gold Mines* (Cape Town: David Philip, 1991); Tshidiso Maloka, “Mines and Labour Migrants in Southern Africa,” *Journal of Historical Sociology*, 10(2) (1997): 213-224; Gay Seidman and Jonny Steinberg, *Gold-mining’s Labor Markets: Legacies of the Past, Challenges of the Future*, Labor Studies Research Report No. 6 (Johannesburg: Sociology of Work Unit, Univ. of Witwatersrand, 1995).

⁶⁷⁹ As Crush and Tshitereke write, “Miners were encapsulated in massive single-sex barracks and forced to work in degrading and inhumane conditions. At the end of a contract they returned home and, if not physically maimed or crippled with lung disease, earned the ‘privilege’ of another contract. A lifetime of work in South Africa never qualified a single miner for permanent residence.” Crush and Tshitereke, “Contesting Migrancy,” 50.

⁶⁸⁰ See chapter two.

⁶⁸¹ Truth and Reconciliation Commission, *Final Report, 29 October 1998*, Volume 4, Chapter 2, Section 63 (1998), cited in Crush and Tshitereke, “Contesting Migrancy,” 51.

After 1994, the South African government took some steps to transform the migrant labor system and conditions on mines, including legislation such as the Labour Relations Act and the Mineral and Petroleum Resources Development Act, but the system remains largely intact.⁶⁸² Mines employ few locals and still rely heavily on contract labor from afar.⁶⁸³ Most mineworkers migrate from the Eastern Cape, South Africa's poorest province, and send remittances home to their families.⁶⁸⁴ Workers live in shacks in the Nkaneng informal settlement or in the backyards of homes in Marikana West township.⁶⁸⁵

⁶⁸² As Kally Forrest writes, "Mines now have to accommodate the Labour Relations Act, but employers see the Act as giving legitimacy to brokers, who become the primary employer. Many retrenched gold miners and low-skilled young workers register with contractors. Young workers, in particular, are recruited by the unregistered "bakkie brigade," who pay as little as R60 a day and may demand a R150 registration fee. Workers recruited in this way enter very short-term work, making union recruitment impossible." Kally Forrest, "Marikana Was Not Just About Migrant Labour," *Mail & Guardian*, Sep. 13, 2013.

⁶⁸³ Bench Marks Foundation, "Communities in the Platinum Minefields: A Review of Platinum Mining in the Bojanala District of the North West Province," Policy Gap 6 (Johannesburg: Bench Marks Foundation, 2012); Luke Sinwell, Thapelo Lekgowa, Botsang Mmope, Bongani Xezwi, "Introduction: Encounters in Marikana," in Peter Alexander, Thapelo Lekgowa, Botsang Mmope, Luke Sinwell, Bongani Xezwi, *Marikana: Voices from South Africa's Mining Massacre* (Athens: Ohio University Press, 2013), 17.

⁶⁸⁴ Luke Sinwell, Thapelo Lekgowa, Botsang Mmope, Bongani Xezwi, "Introduction: Encounters in Marikana," in Alexander et al., 17.

⁶⁸⁵ *Ibid.*

The circuit of migrancy, distinguished by dispossession and cheap labor, looks much the same as it did in previous eras.

During the platinum boom between 2000 and 2008, mining companies were able to restore old mines and hire more workers. The population of informal settlements outside Rustenburg and Kroondal grew quickly.⁶⁸⁶ When the Lonmin mining company successfully applied for a new-order mining license with the Department of Minerals in 2006, the company agreed, under the Mineral and Petroleum Resources Development Act, to build 5,500 houses for its workers in Marikana within five years.⁶⁸⁷ Yet Lonmin only managed to build three show houses, and blamed its failure on the 2008 financial crisis.⁶⁸⁸ However, observers noted several realities that undercut Lonmin's argument about being cash-strapped. For one, Lonmin had accepted a \$150-million loan from the World Bank's International Finance Corporation in 2007, in part for a "comprehensive,

⁶⁸⁶ Paul Hendler and Tony Wolfson, "The Planning and 'Unplanning' of Urban Space 1913 to 2013: Privatised Urban Development and the Role of Municipal Governments," Paper presented at the "Land Divided: Land and South African Society in 2013, in Comparative Perspective" conference, University of Cape Town, Mar. 24-27, 2013, 24.

⁶⁸⁷ See, e.g., "Lonmin Housing Commitments Scrutinised," *The Citizen*, Sep. 16, 2014.

⁶⁸⁸ "Marikana: Loan Undermines Lonmin's Arguments, Says Academic," *Mail & Guardian*, Nov. 7, 2014.

large-scale community and local economic development” program.⁶⁸⁹ Two, while Lonmin workers made increasingly insistent demands about the need to raise wages and deliver on housing promises, the company opted to meet its Black Economic Empowerment (BEE) targets instead.⁶⁹⁰ Lonmin pleaded that it was too poor to meet wage demands, but the company paid hundreds of millions of rands in dividends to its empowerment partners, including (current South African Deputy President) Cyril Ramaphosa’s Shanduka Group.⁶⁹¹ Meanwhile, sections of Marikana township that Lonmin had previously built went for weeks without electricity and living conditions remained abysmal.⁶⁹²

On August 16, 2012, these problems came to a head in the bloodiest massacre by South African police since the apartheid era. Thousands of workers at Lonmin’s Marikana Shaft had gone on strike to demand higher wages. In the days before August 16, the strikers gathered at the top of a small hill near the mining compound and demanded that Lonmin management come and negotiate

⁶⁸⁹ Ibid.

⁶⁹⁰ For more on BEE, see chapter one.

⁶⁹¹ Craig McKune, “Lonmin Gives Ramaphosa Priority Over Workers,” *Mail & Guardian*, Oct. 3, 2014.

⁶⁹² Bench Marks Foundation, “Communities in the Platinum Minefields.”

with them.⁶⁹³ After four days, police moved in, encircled the hill with barbed wire, and attempted to disperse and arrest the strikers. The scene quickly turned violent and the police opened fire, killing 34 miners and injuring 78 others. The Marikana Massacre drew international headlines and comparisons with the Sharpeville Massacre of 1960, where South African police shot into a crowd of pass law protestors, killing 69.⁶⁹⁴ As South African author Mark Gevisser wrote, “Both massacres represent thresholds. After Sharpeville, the state clamped down as never before, banning the liberation movement and forcing them into exile and underground; the African National Congress responded by turning to armed struggle. The consequences of Marikana might be less dramatic, but the massacre will nonetheless come to draw a similar line between one era and another, with the suggestion of innocence lost at the crossing. There will be pre-Marikana and post-Marikana, just as there was pre- and post-Sharpeville.”⁶⁹⁵

⁶⁹³ See, e.g., Stuart Wilson, “Life After Marikana,” *Daily Maverick*, Nov. 26, 2014; Alexander et al., *Marikana*.

⁶⁹⁴ Mark Gevisser, “South Africa’s ‘Marikana Moment,’” *The Nation*, Sep. 19, 2012; David Smith, “Marikana Mine Shootings Revive Bitter Days of Soweto and Sharpeville,” *The Guardian*, Sept. 7, 2012; Peter Alexander, “Analysis and Conclusion,” in Alexander et al., *Marikana*.

⁶⁹⁵ Gevisser, “South Africa’s ‘Marikana Moment.’”

Immediately, government officials labeled the strike as “illegal” and “criminal.”⁶⁹⁶ Police Commissioner Riah Phiyega said that police “shouldn’t be sorry” about the shooting.⁶⁹⁷ Two hundred and seventy-nine miners were arrested and jailed on charges of public violence, illegal gathering, possession of dangerous weapons and intimidation.⁶⁹⁸ In a move that shocked legal experts and the public, prosecutors also charged the striking miners with the murder of their 34 co-workers under the “common purpose” doctrine.⁶⁹⁹ The prosecutors argued that the protestors were complicit in the killings—even though the miners had been shot dead by police—because they were arrested at the crime

⁶⁹⁶ This characterization began earlier in the strike. On the eve of the massacre, Cyril Ramaphosa, who sat on Lonmin’s board, sent a series of emails to Lonmin management and government ministries. Following a number of casualties after the strike began, Ramaphosa wrote to Lonmin’s chief commercial officer: “The terrible events that have unfolded cannot be described as a labour dispute. They are plainly dastardly criminal and must be characterized as such ... There needs to be concomitant action to address this situation.” David Smith, “Lonmin Emails Paint ANC Elder as a Born-Again Robber Baron,” *The Guardian*, Oct. 24, 2012.

⁶⁹⁷ SAPA, “Cops ‘Shouldn’t Be Sorry’ About Marikana Shooting,” *Mail & Guardian*, Aug. 20, 2012.

⁶⁹⁸ See, e.g., SAPA, “Charges Dropped Against Marikana Miners,” *IOL News*, Aug. 20, 2014.

⁶⁹⁹ Pierre De Vos, “Marikana: No Common Purpose to Commit Suicide,” *Constitutionally Speaking Blog*, Aug. 30, 2012.

scene with weapons.⁷⁰⁰ The apartheid government had used the law frequently to discourage political demonstrations and secure convictions against march organizers.⁷⁰¹ Legal experts viewed the Marikana murder charges as a politically motivated attempt to stigmatize and intimidate the miners ahead of their bail hearing.⁷⁰² The court provisionally withdrew the murder charges in short order, but it was two years before the rest of the charges were dropped.

Marikana is an extreme example of the crackdown on and criminalization of protest in recent years. Two years earlier, community leader Andries Tatane was killed by police during a service delivery protest in Ficksburg.⁷⁰³ Footage of his death was broadcast on national television, sparking outrage about police brutality. While many commentators make comparisons to the draconian tactics of the apartheid government, we can also locate the roots of this period in the ‘war on crime’ that the ANC launched shortly after coming to power.⁷⁰⁴ In his

⁷⁰⁰ See, e.g., Rohit Kachroo, “South Africa Uses Apartheid-Era Law to Accuse 270 Miners of Murder,” *NBC News*, Aug. 31, 2012.

⁷⁰¹ See, e.g., *ibid.*; De Vos, “Marikana: No Common Purpose to Commit Suicide.”

⁷⁰² De Vos, “Marikana: No Common Purpose to Commit Suicide;” Kachroo, “South Africa Uses Apartheid-Era Law.”

⁷⁰³ “Court Acquits Police Officers in Andries Tatane Case,” *Business Day*, Mar. 28, 2013.

⁷⁰⁴ See chapter four.

presentation to the Marikana Commission about how the South African Police Service might prevent another massacre, researcher Gareth Newman identified some of the main problems as politicization of the police force, the close relationship between the police and Lonmin, and the 'tough on crime' stance adopted by police leadership. As an example he quoted Deputy Minister of Safety & Security Susan Shabangu who had told police members at a 2008 meeting:

You must kill the bastards if they threaten you or the community. You must not worry about the regulations. I want no warning shots. You have one shot and it must be a kill shot. I want to assure ... policemen and women ... that they have permission to kill these criminals. I will not tolerate any pathetic excuses for you not being able to deal with crime. You have been given guns, now use them.⁷⁰⁵

In March 2010, the Minister of Police announced that the police service would re-militarize its rank structure, in line with its approach of "fighting crime and fighting it tough." The step was necessary, he said, to "ensure we win this war ... This is a people's war against criminals."⁷⁰⁶

A study by South Africa's Socio-Economic Rights Institute (SERI) found an "alarming trend" in which the criminal justice system is being used to

⁷⁰⁵ Cited in Gareth Newham, "How Can the South African Police Service Prevent Another Marikana?" *Institute for Security Studies*, Apr. 16, 2014.

⁷⁰⁶ Ibid.

suppress popular dissent.⁷⁰⁷ For instance, in Mitchell's Plain, Cape Town, in February 2014, the police raided a shack settlement, kicking down doors, breaking windows, and arresting four community leaders.⁷⁰⁸ Days before, residents had protested against political parties' attempts to solicit votes in the neighborhood. The protestors argued that it was insulting to electioneer after ignoring peaceful petitions asking for electricity and more water taps.⁷⁰⁹ Mandisi Ngcwanu, secretary of the Siqalo residents' committee, was one of the arrested leaders; he was jailed for a week and charged with public violence (the charges were later dropped for lack of evidence). Of his arrest, detention, and charges, Ngcawangu said, "We are not surprised. We know that these tactics will be used to intimidate us, because we speak on behalf of the community and we protest against the government ignoring us. We were not arrested as criminals, but as leaders of the community."⁷¹⁰

⁷⁰⁷ Michael Clark, Socio-Economic Rights Institute (SERI), *An Anatomy of Dissent & Repression: The Criminal Justice System and the 2011 Thembelihle Protest* (Johannesburg: SERI, 2014); See also Daneel Knoetze, "Criminalising Protest and Dissent," *Ground Up*, Sept. 18, 2014.

⁷⁰⁸ Knoetze, "Criminalising Protest and Dissent."

⁷⁰⁹ *Ibid.*

⁷¹⁰ *Ibid.*

Though the years since Marikana have witnessed the criminalization of dissent, they have also included protests for land inspired by the striking miners. Days after the strike, Durban's Abahlali baseMjondolo (shackdwellers') movement released a statement saying, "The progressive middle classes are struggling to defend the freedom and democracy that they received in 1994. We are still struggling for freedom and democracy to come."⁷¹¹ In March 2013, about a thousand people occupied land in Durban and called it the "Marikana Land Occupation," after the strike. In Cape Town, members of the Western Cape Anti-Eviction Campaign occupied land in Philippi East, naming it Marikana and themselves Abahlali baseMarikana.⁷¹² When the municipality demolished the Cape Town Marikana Land Occupation, the Cape Town High Court declared that the demolitions violated the Constitution.⁷¹³ Abahlali baseMjondolo

⁷¹¹ Abahlali baseMjondolo, "Solidarity with Mine Workers at Marikana Platinum," Aug. 17, 2012, <http://abahlali.org/node/9032/>.

⁷¹² Western Cape Anti-Eviction Campaign Abahlali baseMarikana Press Statement, "By the Time You Read This, Our Homes May Have Already Been Demolished," May 17, 2013, <http://chaoticfront.blogspot.com/2015/02/by-time-you-read-this-our-homes-may.html>.

⁷¹³ *Fischer and Another v Persons whose identities are to the applicants unknown and who have attempted or are threatening to unlawfully occupy ERF 150 (Remaining extent), Philippi; In re: Ramahlele and Others v Fisher and Another*, 2014. High Court of South Africa, Western Cape Division (297/2014); Abahlali baseMjondolo statement, "Marikana Land Occupation Wins Important Victory in Cape Town High Court," Mar. 13, 2014.

welcomed the court victory, saying “We will continue to struggle in the streets, in the communities and in the courts. We will continue to democratize our cities and country from below. We will continue to struggle to ensure that the social value of land is put before its commercial value.”⁷¹⁴

Protests continued in Marikana as well. In May 2014, sixteen people—14 women and two men—were arrested for “public violence” in Mmaditlokwe, near Marikana.⁷¹⁵ They were protesting against blasting at a nearby chrome mine, and argued that the mine should stop blasting until after they had been relocated to new housing. They also wanted the mine to employ local people and provide them services such as electricity and water. The protestors blockaded roads with burning objects and burned down their ward councilor’s house.⁷¹⁶ It would appear that, in Marikana at least, protestors had given up on the government and were turning directly to the mine, a private corporation, to “deliver services.” In this case, the state was present as enforcer—to arrest and jail—but it was not the target of delivery demands. Here, the Marikana residents seemed to have given up on the claims of citizens.

⁷¹⁴ Abahlali baseMjondolo statement, “Marikana Land Occupation Wins Important Victory.”

⁷¹⁵ Molaole Montsho, “Mmaditlokwe Protesters Released,” *IOL News*, May 15, 2014.

⁷¹⁶ *Ibid.*

In South Africa's dispossessed democracy, the stakes remain high and prospects unclear. With this dissertation, I have attempted to think across dividing lines to uncover historical links between issues that are not often considered together: criminal law and agricultural development; land reform and citizenship; international financial institutions and domestic social movements. A decade after the transition from apartheid, the Landless People's Movement insisted that political democracy could not be achieved without rectifying historical and ongoing injustices that dispossessed people of land, economic means, and robust citizenship. Two decades on, those insights and demands persist—in the face of increasing criminalization and persistent inequality—in urban and rural areas and in various registers.

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