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**Article (Accepted version)
(Refereed)**

Original citation:

James, Deborah (2011) *Tenure reformed: planning for redress or progress in South Africa*. [Focaal: journal of global and historical anthropology](#), 61 (Winter). pp. 19-32. ISSN 0920-1297

DOI: [10.3167/fcl.2011.610102](https://doi.org/10.3167/fcl.2011.610102)

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Available in LSE Research Online: January 2013

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Tenure reformed: Planning for redress or progress in South Africa

Deborah James

Abstract: This article explores the contradictory and contested but closely interlocking efforts of NGOs and the state in planning for land reform in South Africa. As government policy has come increasingly to favor the better-off who are potential commercial farmers, so NGO efforts have been directed, correspondingly, to safeguarding the interests of those conceptualized as poor and dispossessed. The article explores the claim that planned “tenure reform” is the best way to provide secure land rights, especially for labourers residing on white farms; illustrates the complex disputes over this claim arising between state and NGO sectors; and argues that we need to go beyond the concept of “neoliberal governmentality” to understand the relationship between these sectors.

Keywords: citizenship, NGOs, land reform, planning, South Africa, the state

Planning “seeks to make the will of the people in some way compatible with efficient control” (Robertson 1984). Whereas such planning was a paradigmatic undertaking of states in the postwar era, the outsourcing of many state functions and the establishment of parallel bureaucracies—often by NGOs—have been seen as both cause and effect of the progressive weakening of states and their functions (Abrams and Weszkalnys, this volume). NGOs have become involved in “planned interventions” (Long 2001), drafting policies and laying out designs that aim to shape the future. Rather than replacing the state, however, they interact with it in the enterprise of planning “to turn an unreliable citizenry into a structured, readily accessible public” (Selznick 1949: 220).

Such outsourcing of state functions has been associated with neoliberalism, and seen as a sign of “neoliberal governmentality” (Ferguson and Gupta 2002). The program of planned intervention described here sounds like an enclosed and self-referential system, and hence evidence of “South African exceptionalism” (Bernstein 1996). But the country’s economy is of course implicated in global trends, and was incorporated into the sphere of global trade and industry during the 1990s on terms that made competing in the world market difficult. This led to a loss of jobs in industry, to the government’s adoption of strict restrictions on state spending, and to its pursuit of an economic restructuring similar to that implemented in many other countries. Some have claimed that South Africa’s new political leaders showed unwarranted enthusiasm in choosing the path of privatization rather than delivering welfare and safeguarding the interests of the poor and marginalized, attributing the failure of all of these to strategies followed by the new elite within the context of the neoliberal global economy, rather than to the complex and particular history of South Africa or to its specific social and legal culture (Bond 2000; Marais 2001).

Seen from this point of view, it seemed clear that poor people in post-1994 South Africa were destined not to enjoy much improvement in their well-being. Ambitious plans for restructuring the ownership of property and redistributing it, under conditions of austerity and without the backup from state welfare programs or the state subsidies that had supported white-owned farming enterprises during the apartheid era, seemed extremely difficult to implement. The World Bank’s “small family farm” model of ownership and production had a formidable influence on the design of South Africa’s land reform program (Hall and Williams 2003; van Zyl, Kirsten, and Binswanger 1996), but critics have pointed to its inappropriateness as a means of addressing poverty, claiming that the World Bank approach would bolster the fortunes of no more than a small nascent middle class (Sender and Johnston 2004). And even where better-off people did become beneficiaries, as was increasingly the

trend toward the end of the 1990s, the chances of their making a good living seemed remote, given that the supportive framework provided by the state marketing boards and state-planned economy of the apartheid era had long been abandoned (Bernstein 2003: 206; Hart 2002: 227–28).

Describing the country as quintessentially “neoliberal,” however, risks oversimplification by giving the impression of an apparently seamless web of intention. Differentiations and disputes between state and non–state actors should be recognized, even while acknowledging how they perform roles with a seemingly unified governmental effect. The movement of personnel (and ideas) from the “third sector” to the state and back again (Lewis 2008a, 2008b), particularly in a post-transitional society such as the new South Africa (James 2002), similarly creates unevenness in the smooth fabric of planned intervention, but does not tear it asunder. South Africa, despite the much-criticized shift from an initially redistributive policy to a more growth-oriented one in the wake of the second democratic elections, has been characterized as having a “distributional regime,” given the importance of state spending and the extent of citizens’ dependence upon it (Seekings and Natrass 2006). Alternatively, it is a regime that achieves “distributional” ends in a quintessentially “neoliberal” manner (James, forthcoming). Market ideologies and self-enrichment combine with government intervention in often unexpected ways, making the blanket term “neoliberal” too homogenizing (see Sanders 2008).

During the South African transition, state/NGO relations have changed considerably. Starting with a welfarist role during apartheid, NGOs were raided for their staff by the transitional government, but in-house disputes often erupted into overt confrontations which paralleled ideological disputes within the ruling ANC, leading many NGO and other activists to resign from their government positions. Seismic changes which saw top ranks of government personnel change while lower-level bureaucrats were retained also played their

part in complicating any simple story that counterposes the state against the third sector. Despite such changes and disputes, both sides have been involved in planning for the new dispensation. Disputes have both blurred the boundaries between state and the NGO sector¹ and sharpened lines of definition within that sector. New kinds of conflict are continually generated, as certain actors align themselves with national policy while others contest it from the local level. At issue have been key questions about the nature of public morality, the division between the public and the private, the entitlements and obligations of citizenship, and who has responsibility for the welfare of the poor.

“An extraordinary degree of planning”

South African blacks were subjected to a “quite extraordinary degree of planning” and legislation during apartheid (Crush and Jeeves 1993), and it was recognized that equivalent efforts would be required in order to undo apartheid’s schemes. The new South African government, mindful of earlier racial divisions and inequalities, has been determined to structure the transfer of farm land across the racial frontier as an organized process, rather than allowing Zimbabwe-style “land grabs”: it proposed a “market-based” acquisition of land to be purchased from “willing sellers” by “willing buyers,” mediated by state officials from the Department of Land Affairs (DLA) (DLA 1997).

The recognition of a need for different categories of policy—*restitution*, *redistribution*, and *tenure reform*—was based on an understanding both of differing needs in the future and of different communities’ divergent past experiences on the land. Members of the human-rights law fraternity and the well-developed NGO sector, as well as a range of outside experts, were consulted to research previous systems of landholding and to help envision how future economic well-being might also be assured.

The succession of iniquitous laws that established separate territories for blacks and robbed them of their existing land rights are well known. They range from the 1913 Natives Land Act, which legislated a distinction between white-owned areas making up over 80 percent of the land area and “reserves” (later “homelands”) which occupied the remaining 13 percent of the land, to the 1936 Native Trust and Land Act, which augmented the area of these homelands in order to accommodate both their existing population and the thousands of people displaced by the infamous “population removals” of the 1950s to the 1970s (SPP 1983). Accompanying the removals were strategies of control that in turn necessitated other laws.² But although the picture of starkly racialized dispossession—black displacement by white settlers, followed by state-endorsed separation of territory—is accurate in its broad outlines, the regional processes were more complex, leaving as many differentiations within the ranks of black landholders as there are factors uniting them. It was of these varied experiences that the designers of policy, through much consulting of experts, attempted to take cognizance when they passed a series of acts after 1994.

The most obvious “beneficiaries” of reform were to be former title-holding landowners relocated to the homelands during apartheid’s “black spot” removals. Their property rights have been more clear-cut and rather easier to assert and retrieve, through restitution, than those of other claimants. As members of the nascent African middle class (Murray 1992), they have also had a greater sense of entitlement, with some simultaneously owning property in cities like Johannesburg. Displacement from both later allowed double compensation in some cases. It is such communities’ highly motivated efforts to reclaim land, well before the demise of apartheid, to which the initial growth of South Africa’s human rights NGOs, especially those concerned with land issues, is partly attributable (Levin 1996, Palmer 2001, Wotshela 2001).

Aimed at people who had never previously had secure claims on landed property, and designed to enable them to purchase farms with the aid of government grants, was a second initiative, *redistribution*. Its intended beneficiaries—mostly residents of the homelands and of white farms—were more likely to belong to the poor and “historically oppressed” (Lahiff 2000). They overlapped somewhat with the beneficiaries of the third subdivision, *tenure reform*, designed to encompass the land needs of both homeland residents and farm-dwellers. While the former were residing under chiefly control and holding land under “customary” tenure, the latter defy easy classification: they include both those who long ago left their homes on South Africa’s white farms and, most important for the present article, those who still reside on them, where *tenure reform* is intended to give them greater residential security. Between these two poles is a range of farm-dwellers expelled from—or voluntarily quitting—the white farms at various moments over the past half-century. Those remaining on the farms, often derogatorily seen as “squatters,” still view themselves as entitled to claim what was theirs by right, or at least to demand greater security where they are.

In sum, state planners and their collaborators in the NGO sector have been cognizant of a range of contextual and historical divergences in the history of land dispossession, and have designed policy categories to accommodate them. Inevitably, however, as with many other policy-makers’ categories imposed on a local populace, the separate kinds of beneficiaries for whom these three subdivisions were originally designed have often been intertwined in practice (Murray 1996, Lahiff 2000). Restitution, aimed at former title-holders who mostly lived *outside the homelands*, has been invoked to reinstate apartheid’s homeland-dwelling victims. Redistribution, aimed at Africans who had never held title to landed property, has served as a means for former title-holders to claim restitution if they

were ineligible for that program because their dispossession occurred before the official 1913 “cut-off date” (see table 1).³

Category	Date	Act	Intention
Restitution	1994	Restitution of Land Rights Act	To provide for the restitution of rights in land to persons or communities dispossessed of such rights after 19 June 1913 as a result of past racially discriminatory laws or practices. To establish a Commission on Restitution of Land Rights (CRLR) and a Land Claims Court
Restitution/ Redistribution/ Tenure Reform	1996	Communal Property Associations Act (CPA)	To enable groups to acquire, hold and manage property as agreed by members and using a written constitution
Tenure Reform	1996	Land Reform (Labour Tenants) Act	To safeguard the rights of labour tenants who had been remunerated for labour primarily by the right to occupy and use land
	1996	Interim Protection of Informal Land Rights Act (IPILRA)	To protect people with informal rights and interests from eviction in the short term, pending more comprehensive tenure legislation (ie CLRA)
	1997	Extension of Security of Tenure Act (ESTA)	To give farm occupants rights of occupation on private land. Establishes steps to be taken before eviction of such people can occur
	2004	Communal Land Rights Act (CLRA)	To provide for legal security of tenure by transferring communal land to communities and provide for its democratic administration by them

0.2 South African Land Reform Legislation

(Source: www.info.gov.za/gazette/acts; Adams 2000)

The general ideological thrust of the land-reform program, then, has encompassed a broad vision of restored rights, sovereignty, and citizenship for the African population, informed by the prevalence of human-rights lawyers and NGO activists in drafting the constitution and in setting up the program itself. At the same time, its detail embodies a series of subdivisions: separating those with more visible and obvious (former) rural land rights from those rural dwellers with few apparent rights of any kind.

Law, property, and citizenship

The restructuring of land ownership was a far-reaching and ambitious exercise. For every scheme devised, post-1994, that failed to deliver the expected benefits, there were planners, lawyers, and NGO activists who developed even more sophisticated designs to remedy past mistakes. They brought considerable energies to bear upon this project: drafting and redrafting legislation, planning and replanning legal systems of ownership, and subjecting existing plans to considered critique. The plans were thus both utopian and carefully drawn, informed by an awareness that African land rights are often overlapping and multiple rather than exclusive and proprietary; that flexible legislation would therefore be needed to adjudicate conflicting claims and ensure that decisions taken would be adhered to; and that legislation alone would not suffice, but that institutions enabling mediation and conflict resolution would be required (Claassens 2000, Cousins 2002).

The connection between land and citizenship was fashioned at the point where law and society intersect. South Africa, ironically, given its “racist and oppressive state,” was home to a liberal social and legal culture that embodied principles contradictory to those which that state enshrined (Chanock 2001: 20). While an increasingly coercive regime was enforcing a racial order in which African customary law, territorial segregation, and the denial of property ownership were tools of subjugation, human-rights lawyers and the NGOs with which they worked hand in glove were using liberal visions of the law, intersecting with ideas on African customary rights, to subvert this. It was partly through the interactions between such lawyers and their dispossessed African clients, in the years leading to South Africa’s transition, that the connections between land ownership and citizenship were forged.

Liberal ideals thus coexisted with a “racial modernist” regime (Bozzoli 2004): the stony immovability of the latter accounted, in part, for the headily utopian character of the former. There were contradictory aspects to the conceptualization of property rights as developed in the course of dialogue between African communities—especially former title-

holders—and the mostly white English-speaking middle-class activists devoted to restoring these rights. In their bid to challenge the state in its removals policy, they had researched the nature of these communities' concepts of land tenure. Their outrage at the apartheid state's infringement of African ownership rights was fed by a Euro-American model of inviolable "private property." Those in this constituency also emphasized egalitarianism: they saw this as deriving from African custom, but the emphasis drew as well upon a tradition in European thought that sees land as a common good for the benefit of all (Hann 1998). The resulting model of ownership was a hybrid, based on African ideas about land-holding which were filtered through two opposing discourses in European thought: one privileging the private dimension of property, while the other stressed the need to secure it for the public good (Hann 1998). This dialogical model of property ownership combined modern, private ideals of landholding and landownership with traditional communal ones, in sometimes contradictory ways.⁴

Given this legacy, the undoing of apartheid required that a unity of territory and government be created where previously there had been division. Land and rights became indissolubly connected in the public mind, partly because of clashes during the 1980s between the state and the people whose property, land, and citizenship rights it was undermining. Restoring land to its former occupiers was seen, by those in the human-rights activist and NGO communities, as both reinstating civil liberties formerly denied and also ensuring the rights of people—especially the most poor and vulnerable—to secure residence in the future. Initially, then, a language of "rights," especially "land rights," rather than one of "property/ownership," was enshrined at the heart of debates about reform. But a second line of argument, increasingly important in the late 1990s and early 2000s, focused on the economic benefits to be gained from secure ownership of property. The two approaches were linked in the early years of the land reform program, which drew many former NGO

officials into state employment. But the government's subsequent shift toward more explicitly neoliberal economic policies has seen it decouple the rights-based approach from the economic, property-oriented one, with a tendency to favor the latter, particularly after the second democratic elections in 1999, when Mbeki replaced Mandela as premier and restaffed the DLA. With this altered direction and the substitution of personnel that accompanied it, a number of former NGO activists and human-rights lawyers, having briefly worked in state employment, rejoined the NGO sector, using legal means to challenge the government and to enforce the more egalitarian vision of the land reform program's priorities. Ironically, having first helped to design the program, they became its sharpest critics.

State, NGOs, and the land question

In the heady and utopian period just after the 1994 election, people whose widely differing experiences of landlessness had been addressed by the specific forms of legislation and planning outlined in Table 1 appeared to be almost indistinguishable from one another. They have subsequently discovered ever more divisive ideological justifications for their divergent positions. At the same time, however, they often find themselves having to work together in a series of uneasy coalitions.

NGOs in South Africa have typically combined loftier concerns with the more humdrum provision of practical assistance. It was during the last two decades of the apartheid regime that these organizations, encouraged not only by the evidence of social problems and the need for essential services but also by the availability of foreign donor funds, began to proliferate. Among the most active of these were a series of land NGOs and

a legal NGO, the Legal Resources Centre (LRC), which played a key role in defending communities threatened with displacement. The expertise of personnel in this sector made them an obvious recruiting ground when, after 1994, the newly oriented DLA was charged with implementing the land reform program. It was the high profile of these former NGO officers that gave this program its initially strongly “rights-oriented” character: a reaction to, but also a result of, the fact that apartheid South Africa had in turn been “quite self-consciously a legal order” in which “nothing was done without legal authorization, from removals to detentions” (Martin Chanock, quoted in Palmer 2001). Despite the novelty of the brief which this department had now undertaken, there were some strong continuities with earlier practice: a preoccupation with law by the dispossessors was being matched by a similar preoccupation in the hands of those now championing, and restoring, the rights of the dispossessed.

A key figure in the transitional moment which brought NGO personnel into the government was human rights lawyer Geoff Budlender, who was recruited from the third sector to serve as Director-General⁵ of Land Affairs under Mandela’s government. Defending the “rights-orientation” and the careful, almost legalistic character of land reform planning, he maintained that “people need rights to be able to hold government to”.⁶ Although admitting that there had been criticisms of the excessively complex new laws, with their endless subclauses inserted “to cope with various eventualities,” he pointed out that the real vindication of the “legal” approach came with the rapid change of direction after the 1999 elections, when he and most of his colleagues were replaced by a new battery of officials hand-picked by Mbeki’s new Minister of Land Affairs, Thoko Didiza:

“It’s true that we over-legislated, but ... people do need firm rights. For example, under the Tenure Security Act, there was a provision which said ‘The Minister may make part of the

farm available for worker ownership.’ There was a dispute over whether the ‘may’ ought to have been ‘shall.’ The legal adviser said we ought to make it ‘may,’ then there was a big fight about it. The ‘shall’ won. And now the new minister has closed down the program. We were right to stick with ‘shall’—the ‘shall’ will make a big difference now that the policy has shifted. One needs a hook, a definite point of reference, and the law can provide this.”⁷

As Budlender and many of his colleagues moved back into the NGO sector after their brief five years in office, they thus found themselves in an anomalous position. Before 1994, the Legal Resources Centre had used its legal muscle to challenge the apartheid state’s intent to shift the African population around the countryside. Now, post-1999, it would be using that muscle to hold the post-apartheid state to the laws its activists had passed while briefly occupying state positions and holding state portfolios. Of these laws, those now seen as most significant were the ones intended to secure especially the most vulnerable parts of the African population within those rural areas to which they had been scattered. It was at this point, after 1999, that activists started directing their energies to safeguarding the informal rights of the landless via “tenure reform.”

Obstacles to achieving the new program’s goals already existed before this change of ministers and their henchmen, however. Since 1994, the DLA had continued to be staffed and run, at lower levels, by administrators inherited from the apartheid regime. It was they who were said to be unwilling to share their new masters’ egalitarian vision of. As Tony Harding, a former member of the Commission for the Restitution of Land Rights, said:

“They had inherited attitudes to these communities and could not conceptualize a different framework, or think that people might behave differently. They believed that our policy was one which was designed to facilitate ‘squatting’, as they called it. They were only interested

in dealing with people who *owned* the land. They had a bias towards title and private property, so they easily understood claims in which people had actually owned property beforehand, but not the ones ... involving former labor tenants and rental tenants who had been removed from the land.”⁸

Harding considers these officials’ reluctance to attend to the more informal rights of “squatters” as an important factor in the program’s much-decried failure to deliver on its initial promises during the first five years of its existence. Other factors cited have been the DLA’s minuscule budget and the fact that its Minister from 1994 to 1999, Derek Hanekom, was a white Afrikaner who was relatively junior in the ANC. The disdain of these apartheid-era administrators for “squatters” and nonlandowners points towards a further continuity of ideology that would be consolidated after Mbeki’s new Minister, Thoko Didiza, took office. Here, several commentators have remarked on a key irony: it was Mandela’s (white) minister, Derek Hanekom, who felt at ease when travelling to the countryside to visit landless communities; while his (black) successor Didiza sympathized less with “the landless” than with those, like her own family, who had been title-holders; she felt more at home among the African middle class or in the company of chiefs and rarely spent any time visiting the rural poor. Referring to the change in leadership and personnel, some analyzed the post-1999 change in the department as one resulting from a “race” conflict. But other commentators, instead of looking at the shift in departmental personnel, referred instead to the changing constituency which the department in its earlier and later incarnations had seen itself as serving, and thus analyzed the conflict as one of “class”.⁹ Whichever of these is more accurate, many people pointed to the parallel between the disregard for the rights and well-being of “squatters,” manifest among apartheid-era bureaucrats in the DLA, and a similar indifference to their plight by those working under the new minister.¹⁰

Landlessness revisited: The case of “tenure reform”

Despite the fierce disagreements between state and NGOs through all these processes, and the intensifying ideological battle over whether “property” or “rights” should prevail, both sides had found unity of purpose in attempting to ameliorate the plight of farm workers—the intended targets of “tenure reform.” At variance with the newly implanted concerns of national policy, much regional effort was focused by NGO and state alike on planning for such people. But personnel in the two sectors, although they have collaborated closely on various cases of tenure reform in the countryside, have nonetheless been driven by divergent motivations.

Broadly speaking, those in the NGOs consider inalienable rights to be more important than the realizable property that state employees prioritize. Recurrent themes can be discerned here. The discourse on rights, as protected and enforced by legal frameworks and as containing the full entitlements of the citizen, echoes the “rights talk” of 1980s social movements against apartheid and the influence of the lawyers who designed the land reform program. In contrast, the emphasis on property—a more material and concrete acquisition—brings with it associations of forward-looking state pragmatism. Those who favor property see the implementation of rights as excessively legalistic and cumbersome; instead they favor the achievement of realistic short-term goals.

The interplay between these contrasting positions can be illustrated by the case of a tenure reform workshop held in November 2003. The purpose of the workshop was to establish some common ground, and a common *modus operandi*, between NGO and state employees operating within eastern Mpumalanga. Workshop participants from both sectors

had frequently been called upon to defend the fragile entitlements of African farm-dwellers against the whites on whose properties they live, and by whom they are in constant danger of being evicted.

The participants in the workshop, employees of both the provincial NGO TRAC-MP (The Rural Action Committee—Mpumalanga) and the regional wing of the DLA, had expended much effort on giving force to the law by protecting farm-dwellers from summary evictions. This usually involved difficult and highly personalized negotiations between individuals—specific farmers and their workers or tenants—whose interests increasingly appeared to be utterly divergent. Although NGO officers and state officials had a common interest in facilitating negotiations like these, they also disagreed on some key principles.

The arguments were played out in the course of a simulation game, in which participants imagined a typical eviction scenario and listed the mediation strategies they would use. The imaginary scenario was as follows: A white farm owner dies. His children, no longer resident there, resolve to sell the farm. The new owner decides to switch to a new farming strategy. There are two groups of workers living on the farm. One has lived there for five years while providing labor under contract, whereas the other has resided on the farm as tenants for almost a century while its members work elsewhere or are unemployed but do not provide labor on the farm. It is the latter group that the farmer wants to evict. Its members, in the simulation game, ask for assistance.

During the discussions about how to solve this made-up problem, the rhetoric used pointed to the source of the disagreement. Fieldworkers from TRAC-MP insisted that no action be taken that would jeopardize the rights of these workers to live on the farm or to graze their cattle there. However impractical this seemed in the light of the imaginary farm owner's determination to pursue eviction, their focus was on maintaining existing rights based on past practice, and on the need to ensure that these not be "downgraded".

State functionaries from the regional DLA, in contrast, had a more pragmatic approach. They seemed to shrug off the importance of past precedent, insisting that future-oriented development was of greater importance. Instead of nostalgically adhering to an unviable way of life, they suggested, it would be better to look forward to a new one. “It is not right to say, just because people have been staying like this for forty years, that this is fine,” said Star Motswege of DLA, pointing to the environmental degradation which would result from allowing overgrazing by workers’ cattle. “Our aim is to improve the situation, to make lives better.”

These debates were fierce, but there was agreement, at least, on the separate but related question of payment. If these imaginary farm-dwellers had no option but to accept resettlement elsewhere, all present agreed that this should not be paid for by the state. Rather, it was the farmer’s moral obligation to do so. “This will be on the shoulders of the farmer completely, not on the shoulders of the government,” said Thomas Ngwenya of TRAC-MP. His government counterparts assented vigorously. All present agreed that to use “public funds” for the purpose of buying land to settle evicted laborers—as members of the right-wing white farmer organization Transvaal Agricultural Union (TAU) had recently suggested to the outrage of all—would be to misuse them. Instead, it should be a white farmer’s obligation to buy land for his evicted workers.

It turned out that the workshop, the debate, and the concurrence over farmers’ moral and financial obligation had been sparked by an actual case. A group of cattle-owning farm dwellers, threatened with eviction, had indeed visited the regional offices of the DLA to seek advice. The DLA had responded by helping tenants use their pooled government grants to buy alternative land, on which they then resettled with their cattle. Some months later these relocated tenants visited the land NGO, voicing their dissatisfaction with the new living arrangements, and particularly with the lack of grazing for their cattle. The NGO officers

were critical of their government counterparts for having failed at the outset to clarify the farm-dwellers' existing rights, and for having moved so swiftly to resolve the case through recourse to mere property ownership. The case, they insisted, ought if necessary to have been taken to court in order to establish the legitimacy of these rights, since only the setting of legal precedents could enable progress in land reform. The government functionaries retaliated that the speedy resolution of the problem had required decisive action rather than allowing the building up of further conflict, and that there would have been little purpose in establishing "rights" in a situation where personal relationships were so fraught.¹¹

What was implicit but not fully explored in these discussions was assumptions about the obligations of white farmers. When participants insisted that farmers bear the costs of buying land to resettle workers off their farms, they were motivated jointly by a wish to save the government money and a conviction that white farmers should not be excused from their moral duty.

Illuminating how land disputes continue to center on expectations about white farmers' obligations were a set of discussions some two years earlier with employees of Limpopo Province's land NGO, Nkuzi. Its successes in settling eviction cases had been few, mostly because conflicts had often progressed too far before the organization was informed. Where success was achieved, the cause of the eviction had been contingent—such as the death of the owner, or the advanced age of the farm worker—rather than based on intractable structural disputes.¹²

Whatever the cause, NGO negotiations often required recourse to warnings of legal action. A farm laborer called Toki Maphosa was threatened with eviction by the Venter family from their farm at Rooipoort, on the grounds, often rehearsed in such cases, that "there cannot be two farmers on the one farm."¹³ The Venters offered to pay Maphosa R15,000 (£1,500) to cede his rights to remain resident on their property and enable him to buy

property elsewhere, in a manner reminiscent of that pursued by the DLA officers at the workshop. The offer of the money was tempting since it would have provided part payment for a house in a planned peri-urban township with services and amenities, but Nkuzi warned him not to accept this financial settlement, primarily because it would have been impossible to avoid selling his cattle had he moved to a township or “agri-village”. With Nkuzi’s advice, Maphosa managed instead to establish his informal right of occupancy and grazing on the land where he had been living.¹⁴ In the resulting agreement, a tenant, regarded by the farm owner as having no more entitlement than a mere “squatter,” emerged as having rights by virtue of his long-standing occupancy. The farm owners fenced off a section of the farm for Maphosa’s use, and he was given legal title to the piece of land, which would be enforceable in any future dispute.

This resolution mirrored precisely the outcome of the discussion described to me by Geoff Budlender over the clause stating that “the Minister may make part of the farm available for worker ownership,” in which the “may” eventually became “shall”. In such cases, even where farmers prove less than amenable to recognizing the tenure rights of their workers, NGO action, with the backing of legislation passed during the early phase of land reform, has forced an acknowledgement of informal land rights. The legislative power of the state was being harnessed by those in the NGOs, apparently to good effect. Such protection of the rights of the landless, operationalized through the combined efforts of state and society, appears to fulfill the utopian promise inherent in the early years of land reform. But to achieve effects that appear – in their policy-like and planning-oriented character - to emanate from the level of the state, the success of such cases relies on a form of outsourcing: private white landowners’ playing some role in recognizing farm workers’ right to continue living on their farms.

Such actions by NGOs amount to an acknowledgment that welfare for the landless and dispossessed ought properly to be secured with the compliance of those private property owners willing—or legally forced—to bear this burden. The irony here is that in an earlier period paternalist dependency, often bitterly resented, lay at the heart of farmer-laborer relationships (van Onselen 1996): it was intended that the end of the apartheid regime would bring equity, a basis for independent citizenship, and hence an escape from such relationships. But for a farm-dweller such as Maphosa, gaining complete freedom from land-based dependence would have meant losing his rights as a rural cattle-owner and becoming an urban or periurban resident, fully responsible for the payment of services such as electricity and water. His rights as a citizen, although in one sense secured, would have been severely circumscribed.

Moving forward again to the 2003 tenure-reform workshop: the disagreements between state and NGO personnel during the simulation game echo a long-standing debate over land and its significance. Focused on broadly defined “rights,” the perspective involves a principled stand based on past practice, however impractical. Short of taking cases to court, itself perceived as a lengthy and often unpredictable process, there are few means to implement these rights, other than appealing to—or attempting to coerce the recognition of—the obligations of white farmers. The “property” perspective, arising more out of pragmatic considerations, uses the rhetoric of future-oriented development and planning. Where the “rights” orientation seems to be motivated by a backward-looking traditionalism in its assertion of tenants’ needs to sustain their cattle herds, the “property” orientation looks forward to modernity and progress in its preference for relocating country-dwellers to towns or urban-style agri-villages. In so doing, however, it proposes to remove such people from the frameworks in which they could rely on others better off than themselves to provide

resources. The state's model of the modern citizen is one who receives and pays for services, not one reliant on the paternalism of power-holders for goodwill.

These attempted solutions to farm-worker landlessness evoke the dichotomous alternatives of herders freely grazing their cattle as they did in the past, or proletarians displaced from the land into quasi-urban settlements. They indicate major discrepancies in how the two sectors visualize their respective roles in satisfying the demands of "the landless." Contrasting the imprecisely defined rural rights based on a customary lifestyle, on the one hand, with definite ownership of circumscribed property on the other, these cases illuminate the conflict between a populace defending customary forms of livelihood and a modernizing state.

Discussion

Is it the case, then, that the South African state has paradoxically assumed a more central and visible role in governance by having many of its responsibilities towards the landless performed—and many of its policy directions contested, and even partly determined—by non-state actors, such as the land and legal NGOs? At a local and provincial level, or when concerning themselves with the practicalities of land access, these NGOs perform the role of a sort of extended civil service, carrying out functions which the DLA has neither the capacity nor the resources to perform on its own. Here, the need to plan for land reform, and the actions considered necessary to implement such planning, provide a basis for cooperation and convergence between the two sectors. It is here that the NGOs are most state-like, in the purely administrative sense. At the national level, in contrast, a split between these two sectors has developed, not only because of state "outsourcing" but also because of rapid

political changes and the accompanying shifts in personnel at the ministerial level. The debate over the nature and extent of landlessness progressively deepened this split. The original, inclusive vision of land rights, as symbolizing and encompassing both the economic well-being and the political entitlements of citizens, provided the means for state and NGOs to merge, both ideologically and practically. But as the difficulties in transforming the status of the landless became increasingly clear, the state began to restrict its focus. Influenced in part by experts at the World Bank, with their emphasis on the economic role of small farmers, it focused its efforts (inasmuch as it made any efforts at all, as the program was increasingly poorly funded) on three specific areas. It restored the property of those who had originally been landed, or paid them compensation for its loss; through redistribution, it newly provided land to those who might in future find gainful employment through its use; and in the case of farm workers it resettled them in quasi-urban agri-villages. This narrowing of focus was simultaneously guaranteed by the restaffing of the department, and especially by the change in its ministerial and directorial personnel. At that moment, from the perspective of those in the human-rights legal fraternity who had moved out of state employ, by ignoring the rights and hence neglecting the welfare of its poorest citizens, the government was failing to achieve one of its crucial functions. The NGOs, destaffed and restaffed in their turn, began to elaborate their moral task as one of ensuring the well-being of the truly landless and dispossessed. When they reverted to a recognition that such welfare could be best assured by holding individual landowners to account for their farm workers' well-being, they were contributing to the outsourcing of state functions. But when they succeeded in pressing their government counterparts into acknowledging their responsibility to provide welfare, they were fulfilling citizens' expectations by performing a role thought to be properly that of the state: acting in the interests of the public good and ensuring—in however distorted a manner—the provision of welfare.

Conclusion

Can it be claimed that land-reform planning in South Africa represents an attempt “to turn an unreliable citizenry into a structured, readily accessible public,” as Selznick claimed for the era of state planning (see also Robertson 1984)? Ferguson and Gupta (2002) indicate that states, in relation to NGOs and civil society, operate in a manner *very different* from “the nation-building logic of the old developmentalist state, which sought to link its citizens into a universalistic national grid.” Instead, the “new political forms that challenge the hegemony of African nation-states,” whether NGOs or social movements, may appear to be “local” or “grassroots,” but in fact have strongly transnational dimensions. Such political forms, they suggest, should be thought of as “integral parts of a transnational apparatus of governmentality” (ibid.: 994). Having made this point, the authors however fail to flesh out a central question raised by their analysis: are we to see such an “apparatus” as following the logic whereby state functions, although outsourced to non-state agents (including individual subjects), nonetheless produce “governmental results” (ibid.: 989)? We are still left with the impression that “neoliberalism” serves as a single explanatory and analytic umbrella under which vastly discrepant phenomena can nonetheless be brought together (see Kipnis 2007, Sanders 2008).

It was mentioned earlier how, despite the much-criticized shift from an initially redistributive policy to a more growth-oriented one in the wake of the second democratic elections, South Africa’s regime has been characterized as “distributional,” given the mediating effects of state spending (Seekings and Nattrass 2006). Both during and since apartheid there has been a strong sense of citizen dependency—and insistence—upon

pensions, child benefits, and the like. The socioeconomic setting is thus one where classically “neoliberal” ideas and practices (here focused on modern property ownership) coexist with expectations of state welfarism, even paternalism (here centered on notions of “rights”) that owe much to South Africa’s past. Such a coexistence requires a more fine-grained analysis of the ways in which state agents and non–state actors interrelate, and diverge.

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Acknowledgments

This article is based on research funded in part by the ESRC of the UK, through a project entitled “Property, community and citizenship in South Africa’s land reform program.”

Opinions expressed are the author’s own. Thanks to all I interviewed, and to the organizers and participants at various workshops where earlier versions of this chapter were presented.

Notes

1. This has been a pattern in respect of other matters such as health and education as well as land (see James 2002).
2. The Bantu Authorities Act of 1951 provided for the imposition of so-called traditional chiefs on the homelands and planned agricultural development (called “betterment”) within the homeland areas, and designed the replanning of villages, the removal of their inhabitants into new residential areas, the culling of their cattle, and the rationalizing of their use of agricultural land.
3. Philip Mbiba of the Commission for the Restitution of Land Rights (CRLR), Nelspruit, 26 January 2001. This subdivision also obscures the intricate interconnections between rural and urban forms of identity which have resulted from South Africa’s exceptionally rapid transition to capitalist industry and agriculture (Bernstein 1996: 41). Many Africans domiciled in the rural and homeland areas have also had experiences as members of the unionized workforce, supporters of urban-based political parties, Christian town-dwellers, and occupiers or even owners of urban property. Whatever tenure rights they possess or property claims they make within their country domiciles must be—but have not been, by the land reform program—assessed in relation to town-based shifts in property relations and residential arrangements which affect them as urban wage-earners (James 2007: 177, 180–84).
4. The model was not a new phenomenon: it had multiple historical precedents, including nineteenth- and twentieth-century disputes between colonial-era chiefs and native administrators over the most appropriate way to conceptualize and legislate African landholding (Chanock 1991).

5. The top civil servant, equivalent to a Permanent Secretary in the UK system of government.
6. Geoff Budlender of LRC, Johannesburg, 16 January 2001.
7. Ibid.
8. Tony Harding, formerly of the Commission for the Restitution of Land Rights (CRLR), Johannesburg, 21 August 2001.
9. "Class, not race, behind Dolny's departure." Howard Barrell, *Daily Mail and Guardian*, 7 January 2000. With swift political changes since the ousting of Mbeki, two further Ministers of Land Affairs were appointed in quick succession.
10. Geoff Budlender of LRC, Johannesburg, 16 January 2001.
11. ESTA workshop, TRAC, Nelspruit, 14 November 2002.
12. Dan Mabokela, Nkuzi, Pietersburg, 22 August 2001.
13. Siphwe Ngomane, Nkuzi, Pretoria, 3 September 2001.
14. In a similar vein, in Mpumalanga, TRAC-MP has succeeded in holding white landowners to their legal obligations, insisting that those who wish to evict a tenant or worker are obliged to provide a "suitable alternative" for resettlement, including access to firewood, building materials, hunting, and harvesting of medicinal plants. TRAC has in one case managed to force a farmer to pay 155,000 rand as compensation for three labor tenant families; the DLA then combined this with government grants to buy them a property for 650,000 rand (Chris Williams, personal communication).

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