

“The seed is mine... Only the land is theirs.”

Social movements, law, and public policy for land and housing in South Africa

11.496 Law, Social Movements, and Public Policy

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Introduction: A search for values

Kas Maine was a sharecropper in the Transvaal region of South Africa who lived from 1894-1985. He lived much of his life as a relatively successful farmer, building relationships with other black farmers, as well as poor and rich white farmers, businessmen, and bureaucrats. Often such alliances were of a collective nature. For example, in the mid-1960s, Maine was part of a group of black farmers resisting a government ordered relocation. The faction called itself Sofasonke, which means, “we all die together.”¹ More broadly speaking, these relationships, characterized by a mix of collaboration and conflict, action inside and outside of the strictures of the law, were necessary to navigate the complex ways in which Apartheid limited his social and economic life. In 2002, when contemporary social historian Charles Van Onselen wrote his exhaustive account of Maine’s life, he prefaced his story as follows:

German historian Meinecke warned us more than half a century ago, that “behind the search for causalities there always lies, directly or indirectly, the search for values.” Contemporary South African values evoke hope and despair in equal measure. Perhaps there could be no other way for we are in the adolescence of our nationhood.²

The “search” — indeed, the struggle — for values was at the forefront of the transition to democracy heralded by the country’s first democratic elections in 1994. The Constitution produced through negotiations between a range of political parties in the three years leading up to the election has been heralded around the world as a model for

¹ Charles Van Onselen, *The Seed Is Mine: The Life of a South African Sharecropper, 1894-1985*, (Johannesburg, South Africa: Jonathan Ball Publishers, 2005), 463.

² *Ibid*, vii.

foregrounding civil *and* socio-economic rights as the basis of South Africa's democratic dispensation.³ Given the foundational history of dispossession from land that characterized the experience of non-whites under colonial and then Afrikaner nationalist rule⁴, the significance of rights to land and housing were lost on very few. The “new” South Africa would be characterized by a fundamental shift in social values.

These rights held and, for many, continue to hold great promise. The campaign slogan of the ruling African National Congress (ANC) — “a better life for all” — seems to sum up this hope. Have these hopes been fulfilled? Formal unemployment is approximately 24%, and the rate of youth unemployment is double this figure.⁵ Half the population lives below the poverty line.⁶ 13.4% of South African households live in informal settlements, on land that they do not officially own.⁷ In short, socio-economic opportunity has not yet become available to all, or even the majority of South Africans in the country's rights-based democratic era.

With respect to the particular issues of access to land and housing, the numbers speak volumes. In 1994, there were approximately 300 informal settlements. In 2009, there were approximately 2,600. These settlements are home to somewhere between 1.1

³ Tshepo Madlingozi, “Post-Apartheid Social Movements and the Quest for the Elusive ‘New’ South Africa,” *Journal of Law and Society*, Vol. 34, No. 1 (2007): 77-8.

⁴ This has been documented in many volumes of history and politics over the past century, but perhaps the first and still most powerful evocation of this experience was published a year after the passage of the Native Lands Act of 1913: Sol Plaatje, *Native Life in South Africa*, (Athens, OH: Ohio University Press, 1996), first published in 1914.

⁵ Abebe Aemro Selassie, “South Africa's Unemployment Puzzle,” *IMFDirect Blog*, April 4, 2011, <http://blog-imfdirect.imf.org/2011/04/04/south-african-unemployment/>

⁶ Madlingozi, “Post-Apartheid Social Movements and the Quest for the Elusive ‘New’ South Africa,” 78.

⁷ Kate Tissington and Lauren Royston, “Urban Reform,” *Business Day*, November 15, 2010.

and 1.4 million households.⁸ This is despite the fact that since 1994, the South African government has built approximately 2.7 million houses.⁹

Amidst — and sometimes because of — these challenges of delivery, a range of interactions between social movements, government institutions, and the courts, have produced profound changes. These are changes in law, public policy, and implementation of arrangements to provide access to land and housing. This paper examines the types of movements, and the strategies that they have utilized to achieve these changes. In the first part of the paper, I employ two particular theoretical frames to understand how this has occurred. The first is the “political opportunity structures” that have a) catalyzed and limited the actions of social movements, and b) been generated by the actions of social movements.¹⁰ The second is the extent to which social movements’ actions in this arena have reinforced or countered the “hegemonic” presence of the state vis-à-vis ordinary citizens, understood through a Foucauldian notion of the state as an agent of “governmentality” that extends beyond the state itself.¹¹

Social movements have used a range of strategies to counter and restructure dominant modes and effects of governance in the arena of land and housing. In the second part of the paper, I examine the basic institutional arrangements for delivery of low-income housing. They are notable for top-down decision making, which supports

⁸ South African National Upgrading Support Program (NUSP) Background document, 2010, <http://upgradingsupport.org/background.html>

⁹ South African Government Information Service, “Housing,” 2012, <http://www.info.gov.za/aboutsa/housing.htm>

¹⁰ Sidney Tarrow, “States and opportunities: The political structuring of social movements,” in *Comparative Perspectives on Social Movements: Political Opportunities, Mobilizing Structures, and Cultural Framings*, ed. Douglas McAdam, et al. (New York: Cambridge University Press, 1996), 42-5.

¹¹ Diana Mitlin, “With and beyond the state — co-production as a route to political influence, power and transformation for grassroots organizations,” *Environment and Urbanization*, 20 (2008), 356.

private sector contractors to build fully serviced, “top-structure” houses. These are located overwhelmingly on the peripheries of cities, reinforcing Apartheid spatial divides.

The strategies that social movements use can be characterized broadly into two categories: contestation of the state and collaboration with the state. In the third part of the paper, I review the primary approaches that social movements in this arena have employed. There is probably no social movement that can be said to fall solely into one camp. Tactics that have been used in the category of contestation include illegal “invasions” of land to access land outside institutional avenues, legal challenges in the courts to change policy, and protests on the street to demand implementation of existing policy. Collaborative tactics include co-production of housing, land tenure, and basic services between community groups and government institutions, as well as self-help. These tactics have also been geared towards a mix of more effective implementation of existing policy, and changing policy.

For the range of social movements, both contestation and collaboration have yielded important successes, but also presented significant pitfalls. In the final part of the paper, I assess how these different strategies of movement action have interacted within the theoretical frameworks of political opportunity structures and hegemony/counter-hegemony. Strategies of contestation, especially in the courts, have put limits on the state’s policy possibilities, which, to a degree, have limited hegemonic overreach. At the same time, these strategies have done little to challenge a political opportunity structure that is still highly state-centered. Strategies of collaboration, especially through co-productive arrangements have introduced significant dangers of co-option and further layering of existing state hegemony. However, these strategies have also presented

possibilities for deep institutional change that re-orient the state away from its most hegemonic tendencies. In turn, this enables the further flourishing of social movement activity as a source of policy change, as well as an institutional mechanism for deeper democratic practice in South Africa.

1. Political opportunities for hegemony and counter-hegemony

Each state has its own particular dimensions and history that delimit political opportunity structures and define the boundaries of hegemony and counter-hegemony. In the case of South Africa, it is instructive to view the current democratic state as very much rooted in a social movement history that precedes its current formal structure: the United Democratic Front (UDF). The UDF was made up of civic organisations, trade unions, and other citizen associations as a broad front against the Apartheid regime. Historian Jeremy Seekings asks whether the UDF was an “organization or a movement.” Given that it was not membership-based, and that linked organizations operated with a high degree of autonomy, he ultimately suggests that in its earlier formation from its inaugural conference in 1983 to 1986 was very much like that of a social movement:

The UDF was not a party, did not have branches, and never allowed for individual or personal membership... Having the form of a front facilitated effective activity over agreed, specific and discrete issues, whilst preserving the formal autonomy of affiliates. Organisations could affiliate even though they disagreed with other affiliates over broad ideals or even over the strategies they used in their individual activities. This loose form represented a choice on the part of the UDF’s founders, an acknowledgment of the fragmentation, vulnerability and diversity of South Africa’s extra-state opposition.¹²

Yet by 1990, when the National Party-led government unbanned the ANC and began negotiations to end Apartheid, the UDF was subsumed. Most structures of the UDF

¹² Jeremy Seekings, *The UDF: A History of the United Democratic Front in South Africa, 1983-1991*, (Cape Town, South Africa: David Philip Publishers, 2000), 15-6.

quickly fell apart despite the argument from some quarters in the leadership that “whilst the ANC would assume ‘national political leadership,’ especially in negotiations with the government, the UDF should continue to coordinate socio-economic struggles, help to build the ANC, and pull the political ‘middle ground’ into support for the ANC.”¹³ As Tshepo Madlingozi has argued, “the hegemony of the ANC and its allies over the national liberation struggle had devastating consequences for ideological and organizational diversity represented by grassroots organizations affiliated to the UDF.”¹⁴ Significant features of this relationship of the ruling party to social movements and organizations have carried through to the democratic era.

It is therefore useful to preface a discussion of political opportunity structures and the very nature of hegemony with the particularities of what we can now think of as prologue. This is despite the fact that movements like the UDF were so central to the story of the anti-Apartheid struggle. Political opportunity structures is a theoretical structure that suggests that policy, institutions and social organizations are involved relationships bound by signals that emerge from their very interactions. Public policy is therefore a key framing device for understanding the nature of these structures, and the concept falls more or less in the purview of political science. Sidney Tarrow suggests four different types of opportunity structures that fall within two broad categories: “proximate opportunity structures” and “state-centered opportunity structures.” The former category focuses on “signals that groups receive from their immediate policy environment or from changes in their resources or capacities.” Within this category there are “policy-specific opportunities” in which public policy telescopes the political

¹³ Ibid, 21.

¹⁴ Madlingozi, *Post-Apartheid Social Movements and the Quest for the Elusive ‘New’ South Africa*, 85.

priorities of collective action, and “group-specific opportunities” in which public policy enables or disables specific strategies of collective action. The latter category focuses on the kinds of state forms that catalyze certain kinds of social movement action. Within this category, Tarrow suggests a view of “cross-sectional statism” in which different state forms enable different degrees of collective action within formal institutions. He also puts forth a view of “dynamic statism” in which “entire political systems undergo changes which modify the environment of social actors sufficiently to influence the initiation, forms, and outcomes of collective action.”¹⁵

Taken together, these four categories offer a reasonably comprehensive view of the kinds of interactions that have taken place between social movements for land and housing and the government in South Africa’s post-Apartheid period. The history of the UDF and the ANC is relevant here insofar as the conditions for especially the “state-centered opportunity structures” that exist now emerged from an earlier time. The formal political party that would become the rulers of the state — the ANC — essentially delimited the nature of “cross-sectional statism” in South Africa. Social movements — embodied and contained within the broad banner of the UDF — could affect policy only insofar as they marshaled support for the formal structures of the state in waiting: the ANC itself. However, the story of land and housing in South Africa also suggests great significance of the “dynamic statist” view. State policies have changed in interaction with social movements, which has, in turn, caused changes in the form and function of both the state and social movements.

We therefore turn to the theoretical notion of hegemony and counter-hegemony to give a frame for understanding exactly what these forms and functions mean. In large

¹⁵ Tarrow, “States and opportunities: The political structuring of social movements,” 42-5.

part, this notion is rooted in alternative ideas about the relationship between the state and civil society, which has drawn special attention in the field of anthropology. As Aradhana Sharma and Akhil Gupta argue, “Anthropology’s focus on particular branches and levels of state institutions enables a disaggregated view of ‘the state’ that shows the multilayered, pluri-centered, and fluid nature of this ensemble that congeals different contradictions. The anthropological project attempts to understand the conditions in which the state successfully represents itself as coherent and singular.”¹⁶ Though political scientists have often constructed the state as distinctly separate from other elements of society, the alternative view suggests the discursive foundations of such a sense of coherence. “Once we see that the boundary between the state and civil society is itself an effect of power, then we can begin to conceptualize ‘the state’ *within* (and not automatically distinct from) other institutional forms through which social relations are lived, such as the family, civil society, and the economy.”¹⁷

One potential effect of social movements, then, is to challenge the extent to which the state gains domain in these other “institutional forms.” This paper will not make an exhaustive definition of all social movements. As the second part will demonstrate, there are a range of movements with different social roots and activist strategies. Still, such collective groupings and the activities that they pursue do expose — if not always challenge — the notion of “the state as the ultimate seat of power.” In this sense, they are a practical social force that highlight the theories first elucidated by Michel Foucault about the “*etatisation* of society.” As Sharma and Gupta put it, this view “enables us to

¹⁶ Aradhana Sharma and Akhil Gupta, “Introduction: Rethinking Theories of the State in an Age of Globalization,” in eds. Sharma and Gupta, *The Anthropology of the State: A Reader*, (Malden, MA: Blackwell Publishing, 2006), 9-10.

¹⁷ *Ibid*, 9.

examine the dispersed institutional and social networks through which rule is coordinated and consolidated, and the roles that ‘non-state’ institutions, communities, and individuals play in the mundane processes of governance.”¹⁸

Though somewhat simplified, this is what I mean by the concepts of hegemony and counter-hegemony. As Rajni Kothari has put it, “The state in the Third World, despite some valiant efforts by dedicated leaders in a few countries, has degenerated into a technocratic machine serving a narrow power group that is kept in power by hordes of security men at the top and a regime of repression and terror at the bottom.”¹⁹ One need not subscribe to extremities of this dystopian view to get a sense of the ramifications of “*etatisation*.” Rather, it allows us to get a sense of the kind of power structures that social movements engage, to varying degrees. They also engage these structures to varying degrees of contestation both as a matter of tactics and as a matter of desired outcome. The latter type of contestation is what I mean by counter-hegemony. That is, counter-hegemonic struggle is aimed at the furthering of what Kothari calls “grassroots politics” which are a vision of a “just society”: “A decentralized order through which the masses are empowered, not decentralization in the sense of some territorial scheme of devolution of functions and resources to lower levels but decentralization in which the people are the center.”²⁰

Taken together, the concepts of a political opportunity structure and hegemony suggest that we can analyze social movements through lenses that require us to:

¹⁸ Ibid.

¹⁹ Rajni Kothari, “Masses, Classes and the State,” in ed. Ponna Wignaraja, *New Social Movements in the South: Empowering the People*, (New Delhi, India: Sage Publications, 1993), 64

²⁰ Ibid, 74.

- a) consider the effect of strategies and tactics on further possibilities of social movement activity,
- b) consider the ways in which social movements alter the “mundane processes of governance” that, in fact, constitute the phenomenon of “*etatisation*,”
- c) consider the extent to which these first two factors amount to a counter-hegemonic process that brings both resources and decisions about these resources much closer to a people-centered order.

The case of South African social movements for land and housing are instructive along these three analytical questions precisely because they do not provide clear-cut answers to any of them.

2. “*A Better Life For All*”: *The Limits of the State*

We first turn to the formal institutional components of the state with respect to land and housing that delimit the political opportunity structures in which social movements operate. These components help us to understand the particular nature of hegemony in this arena, and the ways in which social movements engage in counter-hegemonic practice. South Africa’s state institutions for land and housing exemplify quite well Foucault’s notion of “*etatisation*.” Land and housing are both communal and individual in nature, closely tied to families, and fundamental social ties. In South Africa, the dominant institutions for delivery of housing for the poor, and methods of providing land to the poor are wrapped up in a neoliberal policy formula first introduced in 1996 called Growth Employment and Redistribution (GEAR). Sebastiana Etzo argues that

GEAR exemplified the market-oriented underbelly of the redistributive oratory of the ruling ANC: “While the rhetoric of ‘a better life for all’ reverberates in the ANC’s political discourse, GEAR expresses a market-driven vision of development that values efficiency and relies on growth as its driving force. Development is essentially understood as ‘delivering,’ while local government is the instrument employed to deliver.”²¹

In fact, in the housing sector, we perceive the contours of dominant market-oriented institutional relations promoted throughout much of the developing world: decentralization of formal institutional responsibility, private-sector outsourcing of service provision, and diffuse lines of accountability. There are three main aspects of these arrangements that are relevant for the purposes of this discussion: (1) the top-down, private-contractor delivery of fully-serviced top-structure houses, (2) provision of land on peripheries of cities, and (3) mixed responsibility for implementation between provincial government (houses) and local government (basic services).²²

There are many other characteristics of the institutional arrangements for housing delivery, and that critics of South Africa’s housing policy have enumerated. But these three characteristics are particularly notable for their relationship to the political opportunity structures that shape social movement action. The top-down delivery approach, whereby the state conceives and manages projects, and procures private contractors, is tied to a broader paradigm for service delivery in the country. The “poverty alleviation” discourse is tied closely to this approach. It is this rhetoric that

²¹ Sebastiana Etzo, “The unfinished business of democratization: struggles for services and accountability in South African cities,” *Democratization*, Vol. 17, No. 3 (2010), 565.

²² Mary R. Tomlinson, “From ‘quantity’ to ‘quality’: Restructuring South Africa’s housing policy ten years after,” *International Development Planning Review*, Vol. 28, No. 1 (2006), 91

comprises one angle of the opportunity structure, as such language seems to discount the role of social movements. As AJ Bebbington, et al. have argued, “most social movements say little, *directly* about poverty, and very few social movements emerge on the basis of a poverty discourse.”²³

Such policies make up what Tarrow has called the “proximate opportunity structure,” whereby social movements organize with respect to signals that their constituencies “receive from their immediate policy environment.”²⁴ The poverty discourse characterizes this environment: a view that individuals will receive houses through the individual housing subsidy, first articulated in policy in Reconstruction and Development Program (RDP), and that land title will be similarly individualized. Social movement action is inherently collective, but is interacting with an individualized view of poverty in the land and housing sector: “Notwithstanding the fact that labour market dynamics continue to be the primary source of poverty and inequality in South Africa, these areas of collective consumption have drawn most movement activism.”²⁵

The wrinkle here is that not only are movements responding to the policy environment, but also the bureaucratic structures that implement policy. The dominant policy intervention — fully-serviced top-structure housing delivery — inhibits community-based collective action. The subsidies are administered through provincial government structures, with housing departments that plan housing developments through ward councilors that have little democratic accountability to their purported constituents. Local government is responsible for providing basic services for housing

²³ A.J. Bebbington, D. Mitlin, J. Mogaladi, M. Scurrah, C. Bielich, “Decentring Poverty, Reworking Government: Social Movements and States in the Government of Poverty,” *Journal of Development Studies*, Vol. 46, No. 7 (Aug. 2010), 1304.

²⁴ Tarrow, “States and Opportunities,” 42.

²⁵ Bebbing, et al. “Decentring Poverty, Reworking Government,” 1305.

projects, but do not manage housing projects themselves. This is mixed bureaucratic management strategy of formal decentralization to the local level, but with significant competencies located at higher levels that reduce the potential for influential project planning at the city level, let alone the community level. The clientelist, and, in many cases, overtly corrupt relationships that emerge between ward councilors, local government and provincial government are, in part, a result of the lack of devolution of real decision making power to accountable community structures.²⁶

Further, the most recognized civic movement in formal circles, the South African National Civics Organization (SANCO), itself an outgrowth of UDF structures, is largely perceived to be largely unaccountable to communities. SANCO branches exist in a vast number of informal settlement communities and often validate the actions of ward councilors and higher up local officials. But Richard Pithouse, amongst others, has argued that SANCO's historic relationship to state structures, and especially the ANC, make it an agent of top-down delivery rather than grassroots pressure: "When the ANC opened their offices in Johannesburg after they were unbanned in 1990, a huge banner in the foyer declared, 'Occupy the Cities!' ANC aligned settlement committees were expected to affiliate themselves to the SANCO and were thus brought under direct part control."²⁷

²⁶ Benjamin Bradlow, Joel Bolnick, and Clifford Shearing, "Housing, Institutions, Money: The Failure and Promise of Human Settlements Policy and Practice in South Africa," *Environment and Urbanization*, Vol. 23, No. 1 (2011), 271-2.

²⁷ Richard Pithouse, "A Politics of the Poor: Shack Dwellers' Struggles in Durban," *Journal of Asian and African Studies*, Vol. 43, No. 1 (2008), 70.

Finally, the provision of land on the peripheries of cities reinforces structural exclusion of the poor through spatial divides.²⁸ This means that not only are the poor often being moved from reasonably well-located land where they do not have title, do much less economically viable locations where they do have title. The logic of “banking the unbanked” or “titling the untitled” trumps a logic that would suggest a more holistic sense of inclusion in economic opportunities.

Take together, these three features of the housing delivery apparatus — top-down, individualized delivery, peripheral land, and stratified relationships between scales of government — suggest the contours of the second type of Tarrow’s political opportunity structures: “state-centered opportunity structures.” Social movements have struggled to find space within formal institutions to access their claims, which we can ascribe to the specific brand of “cross-sectional statism” in the South African context.²⁹ But what of the hegemonic “*etatisation*” of society? It is difficult to elucidate this phenomenon without understanding the extent to which social movements have acted within a context of “dynamic statism,” in which specific political opportunities arise precisely because of the interaction between social movements and the state. We have seen the broad contours of state policy and bureaucratic directions and discourses. But the extent of hegemonic influence of Foucauldian “governmentality”³⁰ of land and housing in South Africa is, in many ways, best understood through the character, strategies and tactics of social movements acting in this arena.

²⁸ Marie Huchzermeyer, “The struggle for in situ upgrading of informal settlements: a reflection on cases in Gauteng,” *Development Southern Africa*, Vol. 26, No. 1 (2009), 64.

²⁹ Tarrow, “States and opportunities,” 43-4.

³⁰ Diana Mitlin and David Satterthwaite, “Strategies for grassroots control of international aid,” *Environment and Urbanization*, Vol. 19, No. 2 (2007), 489.

3. “*The dog doesn’t bite while it’s chewing*”: social movement strategies and tactics

A saying of one social movement for land and housing in South Africa, known simply as the Informal Settlement Network (ISN), is an isiZulu phrase: “ayilumi ma ihlafuna.” This translates into a strange but instructive euphemism: “the dog doesn’t bite while it’s chewing.” The slogan is meant to suggest to those participating in the ISN that politicians and officials do not have their proverbial “eye on the ball” and are susceptible to change if the movement is prepared for action.³¹ In a sense, the phrase encapsulates the notion of social movements acting within and to alter political opportunity structures. But for many movements, the ways in which to catch the government in an alternative, counter-hegemonic logic, manifests in both the strategies and the claims that movements make. This paper focuses on two broad categories of strategies: contestation and collaboration. The claims that movements make are much less easily categorized, as they are caught up in the mix of strategies that nearly all movements employ. This mix of strategies itself echoes characteristics of a state that is anything but monolithic or even coherent. As Bebbington, et al. put it, “South African movement organizations have to respond to multiple ideological and pragmatic faces of a state which, within and between different program areas, can be simultaneously neo-liberal and pro-market, developmentalist and redistributive, bureaucratic and regulatory, clientelist and self-interested.”³² Significantly, both types of strategies appear to exhibit tendencies that sometimes reinforce hegemonic *etatization* of society and otherwise advance alternative counter-hegemonic social frameworks.

³¹ *uTshani Buyakhuluma*, Issue 1, February 2011.

³² Bebbington, et al, “Decentring Poverty, Reworking Government,” 1313.

Nearly all social movements in this arena engage in some strategies of contestation. There are three main tactics that are involved in this strategy: street protests, land invasions, and battles in the courts. Street protests, often described in the popular press as “service delivery protests,” are increasingly common in South Africa. These are generally at the community level, sometimes through more widely-coordinated social movements and sometimes not. They often manifest through violent or spectacular displays of anger such as burning of tyres, blocking roads, and sometimes destruction of property. According to Municipal IQ, a municipal government monitoring think tank, the pace has been on the rise since approximately 2004, when President Thabo Mbeki was elected to his second and final term. There were 35 such protests in 2005, but by July 2009, months after the election of current President Jacob Zuma, the number that year had already reach 21.³³ The explanations for these protests have actually been rather diffuse, with some arguing that they are tied to localized political considerations, especially leading up to the local elections in 2010.

But the steady beat of street protest suggests that a deeper social spirit has emerged amongst the urban poor. The demands that surface are generally claim-making on an existing order: ending corruption in housing subsidy allocation, and wider demands that existing programs for delivering houses, services, and land perform better. This complicates a simple view of all protest as counter-hegemonic, for, the stated claims seem to uphold existing paradigms of “governmentality.” But the act of protest as a force for showing discontent with the state also has its own logic and power. As Sebastiana Etzo argues,

³³ Fienie Gobler, “Service delivery protests a ‘warning sign’ for government,” *Mail & Guardian newspaper*, 20 July 2009, accessed 19 May 2012, <http://mg.co.za/article/2009-07-20-servicedelivery-protests-a-warning-sign-for-govt>

The growing popular discontent manifested in the past decade, which reached its peak a few months after Jacob Zuma was elected president of the country in 2009, is framed within the context of a country that successfully transitioned to democracy and built solid democratic institutions. However, the consolidation process is undermined by the tensions and contradictions of a neoliberal strategy that, while favouring the emergence of a black middle class, does not respond adequately to the increasing social and economic inequalities.³⁴

The move to the streets over the past decade is full of mixed messages, many of which appear to uphold the basic logic of existing government programs. But the discontent is a broader challenge. With demands framed firmly within the existing “policy-specific opportunities” of the “proximate opportunity structure” that Tarrow describes, the communities in the streets may indeed be creating a space that generates much more fundamental contests over both power and resources.

Land invasions are a relatively more organized, though often underground form of protest, which are often tied to social movement organization, at least in the post-Apartheid context. Four of the largest and most well-known movements of the last two decades have engaged notably with this strategy: the Landless People’s Movement (LPM), Abahlali baseMjondolo (AbM), the Western Cape Anti-Eviction Campaign (AEC), and the South African Homeless People’s Federation (SAHPF), which is now known as the Federation of the Urban Poor (FEDUP).

We can characterize this tactic in a number of ways, and I want to focus on two, which are relatively complementary. First is what Marie Huchzermeyer has called “human needs-led development.”³⁵ Of course, almost all informal settlements have a history rooted in some kind of land invasion, given that the land on which these settlements lie is not formally titled to the occupants. Land invasion in this frame is a key aspect of how the poor shift relationships that characterize city development. As Richard

³⁴ Etzo, “The unfinished business of democratization,” Vol. 17, No. 3, 565.

³⁵ Huchzermeyer, “The struggle for in situ upgrading of informal settlements,” 62.

Pithouse has described the work of AbM in the context of Durban, “Urban planning has always emerged from the balance of power between city authorities and popular forces.”³⁶ The notion of human-needs led development is therefore a response to the structural inequality that excludes the poor from formalized land and housing.³⁷ Such action is often part of a larger repertoire of direct actions undertaken by social movements, such as reconnecting cut-off water and electricity connections, and the street protests discussed above.³⁸ These are actions that have been undertaken by al This is a “state-centered opportunity structure,” driven by the lack of legitimation by the state of the land occupancy of the poor.

Another way to view land invasion is as a way to drive institutional change through subsequent engagement with authorities. SAHPF/FEDUP has used the tactic of land invasion towards such ends to a large degree. In October 2000, People’s Dialogue, a NGO that worked closely with the FEDUP network, compiled a list of known land invasions undertaken by groups linked to the network. They had occurred in 21 settlements throughout the country, including, in their initial phases (meaning prior to “formalization”), 8,045 families.³⁹ No similar compilation of data on invasions exists for other movements, so it is worth examining the way in which it has occurred, as well as its potential for impacts on both law and policy.

The practice of extralegal invasion of land has been both an outside and inside game. By keeping open the option of invasion, like other social movements, the FEDUP

³⁶ Pithouse, “A Politics of the Poor,” 72.

³⁷ Huchzermeyer, “The struggle for in situ upgrading of informal settlements,” 62.

³⁸ Bebbington, et al, “Decentering Poverty, Reworking Government,” 1313.

³⁹ Ted Baumann, Joel Bolnick and Diana Mitlin, “The age of cities and organizations of the urban poor: the work of the South African Homeless People’s Federation and the People’s Dialogue on Land and Shelter,” International Institute for Environment and Development Working Paper 2 on Poverty Reduction in Urban Areas, 2001, 12.

network uses its methods of organization and housing development to challenge fundamental notions of ownership and property that the state has been unwilling to confront. Negotiation with state authorities on the one hand — a much more dominant strategy for this network — has both counterbalanced *and* been enabled by extralegal invasion. The oral account of Agrinette Hills, an informal settlement leader in Gauteng province, illuminates the experience of invasion:

“We started to plan to invade. On the 19th of March (1997), we had a meeting. I spoke to the people. By then there were 516 members. I asked them if we should wait. All the members said no, we should not wait. I asked the Federation leaders and People’s Dialogue. Mama asked me if I was scared. I said I was only scared of God. Then they said I should do it.

So on the night of the 20th (March) I moved onto the land. My boyfriend said that he should stay behind with the children. So it was just me and the plastic. I put up a plastic. This first night, there were three women and four children. Just us alone. The next day some others came. There were maybe 20 of us. The others, they were scared that the police would come with guns and dogs. Although there were many members they waited to see what would happen.

The council came to see us. They said we should get our things and go to Everton where they have sites. We said that we would not go there because the houses they are too small. Then I told them that I would not go back to a shack. My mother had died in a shack. There was a fire. All the shacks were burnt. I lost my family. Then they were silent. They had nothing to say.”⁴⁰

The story is instructive because it suggests the personal and communal anguish of ordinary people that accompanies this kind of action. Further, it suggests a complex relationship with formal authorities, in this case, at the local level. Negotiation and invasion are in constant interaction as a matter of tactics. Notably, the community did eventually gain tenure to the land and access formal subsidies to build houses.

Engagements between the FEDUP network, People’s Dialogue and the national Department of Land Affairs in the mid to late-1990s were an attempt to reform the fundamental institutions that governed land tenure, so as to make land ownership more flexible for — and accessible to — the poor. The network developed an internal 24-point

⁴⁰ Baumann et al, “The age of cities and organizations of the urban poor,” 11-2.

strategic plan for accessing land, which included various legal and extralegal strategies. Land invasion was considered an option of last resort. This locates a tactic of contestation as part of a broader array of tactics that test the binary of contestation and collaboration, and indeed of hegemony and counter-hegemony.

Further, the Federation began to work with the Department of Land Affairs to test out alternative institutional mechanisms for coping with the lack of availability of tenured land for the poor. Between the years of 1996 and 1997, the FEDUP network and the Department of Land Affairs agreed to use 11 sites to test whether the existing bureaucratic mechanisms for obtaining land title were sufficient for the urban poor communities linked the FEDUP network to actually access tenure. This partnership did not yield many results, which Baumann et al, have described as being due to the persistent inaccessibility of the relevant institutional bureaucracies.⁴¹

Despite these shortcomings of individual actions by communities and social movements in the realm of land invasions, there have been significant policy changes that reflect the kinds of pressure these strategies have brought to bear. The most significant is the “Breaking new Ground” policy released by the Department of Housing in 2004. This policy was the first indication that formal institutions might be ready to shift from the dominant paradigms of housing delivery enumerated above — namely, fully-serviced top-structure houses built by private contractors often on peripheral land. Instead, a more incremental, “in situ” approach to providing land and shelter would be the order of the day.⁴²

⁴¹ Ibid, 11.

⁴² Tomlinson, “From ‘quantity’ to ‘quality’,” 85-7.

But until very recently there has been very little institutional support for implementing this policy. In fact, Huchzermeyer's case study of municipalities in Gauteng province suggests that municipalities have often actively avoided proper implementation of the key Upgrading of Informal Settlements Program (UISP). She attributes this to the pervasiveness of the hegemonic logic of state craft, even and perhaps especially at the local level:

[Municipal officials] deal with informal settlements in the conventional project-linked subsidy approach (based on subsidy eligibility of individual households), resulting in relocation or at best disruptive 'shack shifting' or rollover upgrading, mostly with the displacement of non-qualifiers of the housing subsidy. Thus city officials consciously or unwittingly act as servants of orderly development, global competitiveness and the market, rather than as implementers of the transformative aspects of the Constitution and of progressive policy and legislation that has been developed to ensure the realisation of constitutional rights.⁴³

It is significant that scholars such as Huchzermeyer have cast policy changes like *Breaking New Ground* in the rights-based framework, not only because the changes have quite clearly occurred in a country with a prevalent rights-based dispensation. It is also significant because the difficulties of implementation suggest limitations of the rights-based framework for counter-hegemonic struggle.

We therefore turn to the most clearly articulated site of rights-based struggle. The third contestation-oriented strategy that social movements for land and housing have used is the pursuit of legal challenges in the courts. South Africa's rights-based constitution has provided great opportunity to social movements to bring cases that might challenge the type of policies that exist and the ways in which the policies get implemented. The first major challenge in the arena of land and housing is a Constitutional Court case from the year 2000 called *Government of the Republic of South Africa vs. Grootboom*, which is commonly known simply as "Grootboom." This case was brought by Irene Grootboom

⁴³ Huchzermeyer, "The struggle for in situ upgrading of informal settlements," 65.

and about 900 other members of the Wallacedence informal settlement in Cape Town to challenge the municipality for access to land and housing. The case was premised on the key socio-economic rights provision in this arena: Chapter 2. It states the following:

- (1) Everyone has the right to have access to adequate housing.
- (2) The state must take reasonable legislative and other measures within its available resources, to achieve the progressive realisation of this right.
- (3) No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.

In the case, the Constitutional Court ruled that the municipality should provide temporary housing to the residents. It was hailed as a great victory for organized communities that were able to bring their grievances to the court. However, as Huchzermeyer notes, the notion of “progressive realization” of the right to housing — that the state must commit the financial and institutional resources to achieve the articulated socio-economic rights over time — is hampered by the inadequacy of related rights: “The realisation of the right to housing, in particular the location of such housing, is inextricably tied to fight to land, and is hampered by the constitutional protection of the extremely skewed existing property rights to land.” In the case of Grootboom, the reality of victory was rather limited. Grootboom herself died without a house.⁴⁴

So if the right to housing is often hamstrung by land management policies, what of rights more obviously related to land? A key legal provision that has been used by many communities and social movements to prevent eviction from land whose occupation is not formally recognized is the Prevention of Illegal Eviction Act of 1998. This act is often used to bring municipal governments to court for the routine relocations that characterize a significant aspect of the vulnerability of the urban poor in South

⁴⁴ Marie Huchzermeyer, “Housing rights in South Africa: invasions, evictions, the media and the courts in the cases of Grootboom, Alexandra and Bredell,” *Urban Forum*, Vol. 14, No. 1 (2003), 82-4.

Africa. In cases known as *Alexandra* and *Bredell*, both regarding informal settlement communities in Gauteng province, municipal justification for eviction was on grounds of health and safety. The so-called PIE act enabled communities to challenge the order on the basis that municipalities did not follow proper consultative procedures. The former case was settled out of court and the latter did not support the community's claim.⁴⁵

However, later judgments *have* supported similar claims. A key case is the community of *Harry Gwala settlement v. Ekurhuleni municipality*. The settlement was linked to social movements such as the Landless People's Movement and the Informal Settlement Network, and the case gained great publicity. This time the case was not about eviction per se, but linked eviction with informal settlement upgrading. The settlement was due to be removed because of geotechnical issues involved with the land that led it to be deemed unfit for human habitation. However, provisions for alternative accommodation were not nearby — an element of the PIE act — and the Constitutional Court ruled that in the meantime, the municipality would have to begin upgrading the settlement, first with provision of toilets.⁴⁶

In most legal cases, individual communities or people have been the primary plaintiff. A more recent case pitted a social movement directly against a provincial government: *Abahlali baseMjondolo v. Premier of KwaZulu-Natal* in 2009. This case challenged a 2007 law passed in the province of KwaZulu-Natal, which would have made it much easier for authorities to evict informal settlement dwellers. The law was struck down by the Constitutional Court on the grounds of both the PIE act and the right to

⁴⁵ *Ibid*, 84-5.

⁴⁶ Huchzermeyer, "The struggle for in situ upgrading of informal settlements," 66-9.

housing, which includes a provision against eviction.⁴⁷ Perhaps the greatest significance of this case is the fact that a social movement, and not just a community, was able to bring a case to challenge policy in such a direct manner. The Constitutional Court's resounding decision in favor of AbM further validated the approach.

The challenge of forced eviction, however, remains an everyday reality for informal settlement dwellers. The legal approach has primarily been used to mitigate the most extreme uses of policy to extend the hegemonic, market-based logic of the state in management of land and housing in cities. However, it has not changed the basic equation that continues to exclude the poor and subject them to oppressive and exclusionary rule, which manifests itself most violently in the form of evictions, which continue to take place. Contestation-based approaches have therefore provided important limits to state action, and defined the contours of *etatisation* and hegemonic rule. But the prospects of existing tactics in this strategic category do not, on their own, seem to exhibit the potential to counter this hegemony.

We therefore examine the experience of collaboration as a social movement strategy to change law and policy in such an alternative direction. We can describe collaborative tactics as primarily relationships with authorities to “co-produce” access to land, housing, and services, or what we might regard as “self-help” activities. The kinds of institutional changes that have occurred are the result of lengthy engagements and learning that are not easily understood through snapshots in time. This is very much like the way in which legal victories rarely have a one-to-one translation to transformative policy outcomes.

⁴⁷ Niren Tolsi, “Pooh-sliding Slums Act showdown at Con Court,” <http://www.mg.co.za/article/2009-05-16-poohsliding-slums-act-showdown-at-con-court>, 16 May 2009, accessed 19 May 2012.

The FEDUP network is comprised of primarily women-led savings schemes in every province in the country. At its height in the mid-200s, it included approximately 80,000 active saving members. It now counts about 20,000 active members. Despite its smaller size, its public policy accomplishments and institutional relationships continue to make this a highly relevant movement in the study of social movements for land and housing in South Africa. This network is linked to a wider global network of slum dweller “federations” that also define membership through such savings schemes, called Shack/Slum Dwellers International (SDI), which is active in 33 countries in Africa, Asia and Latin America. The preponderance of emphasis for savings in the South African context has long been on housing, precisely because of the political salience of the right to housing in the specific opportunity structure of this country. Treasurers are elected from within the community to collect and manage money. The savings are collected daily, weekly, monthly, and at intervals in between. Each scheme opens its own bank account, with multiple signatories from within each scheme.

If we consider that three pillars of exclusion of the poor in cities lie in their inability to access financial power, planning and project implementation influence, and political voice, then we should evaluate the extent to which savings has been a tactic to change this equation. Such a “bootstraps” method is not merely self-help, even though it may appear as such. In fact, it is the pillar of a redistributive and sometimes counter-hegemonic strategy. In 1994, not two months after the country’s first democratic election, Housing Minister Joe Slovo met with the FEDUP network and its NGO supporter called People’s Dialogue at a national conference on housing finance. At the meeting, he committed to provide R10 million to initiate a revolving fund to be managed by the

Federation to develop scalable mechanisms for providing affordable housing finance to the poorest of the poor. This mechanism, known as the uTshani Fund was initially managed by staff of People's Dialogue on a daily basis, but with all executive decision-making authority vested in a board made up of a majority of shack dwellers in the Federation. The principles of the uTshani Fund were described in internal documents as follows: "Finance should be made available directly to housing savings schemes and the ground work for the Fund should be undertaken at community level. According, uTshani Fund develops systems which fit with the systems evolved by the savings schemes and not the other way around."⁴⁸

Though Slovo had made a firm and flexible commitment, bureaucratic delays held up the initial flow of money from the government to the uTshani Fund until January 1996. By this point, Slovo had passed away, and the top-down, contractor-driven mechanisms for "service delivery" had taken hold. Despite the delays, the Federation pressured uTshani Fund to begin dispersing the funds in order to begin building houses. This had been a major selling point of the Federation's mobilization strategy in much of the country. But many pledged subsidy funds were not forthcoming. Of the R22,199,779 that had been repaid in loans to uTshani Fund in the year 200, only 51% had been accessed through government subsidy payments.⁴⁹

So the challenges of achieving redistribtional change through the FEDUP network was significant, but remains a mixed picture. At the level of policy, the network's approach of "self-build" housing delivery was one of the key initiatives that produced the People's Housing Process (PHP). This is a program within the Ministry of Housing (now

⁴⁸ Joel Bolnick, "uTshani Buyakhuluma (The grass speaks): People's Dialogue and the South African Homeless People's Federation (1994-6)," *Environment and Urbanization*, Vol. 8, No. 1 (1996), 164-5.

⁴⁹ Baumann, et al. "The age of cities and organizations of the urban poor," 9-11.

Ministry of Human Settlements) to funnel subsidy funds to community-based organizations like the Federation for building houses. This has been the only program to date in a formal institutional setting that has challenged the dominant private contractor-driven approach to housing delivery. To date, the Federation has built over 15,000 houses through such arrangements, which is the largest civil society initiative for house building in the country.⁵⁰

Still, bureaucratic challenges to mainstreaming PHP have persisted to this day. The nature of the specific *etatist* regime in the housing sector is, in fact, elucidated in an early internal government document from 1997. It describes the challenges to mainstreaming PHP in five main areas: 1) “inability of the existing subsidy scheme procedures to disburse subsidies to beneficiaries in a simple and accountable manner,” 2) “lack of appropriate capacity (understanding, recognition, skills, and confidence) at both provincial and local government levels,” 3) “resistance by vested interest groups to supporting people’s housing processes,” 4) “insufficient support for skills acquisition and building of organizational capacity within community-based groups,” and 5) “general and widespread absence of trust and confidence by stakeholders in the ability of people to meet their housing needs.”⁵¹

In order to move beyond the narrow strictures of a housing subsidy system that was clearly insufficient to meet the demands for both redistribution and political voice, the FEDUP network, beginning in 2008, worked to initiate a broader-based movement

⁵⁰ Mark Swilling, “Beyond Cooption and Protest: Reflections on the FEDUP Alternative,” Mirjam Van Donk, Mark Swilling, Edgar Pieterse, Susan Parnell, eds. *Consolidating Developmental Local Government: Lessons From The South African Experience* (Cape Town, South Africa: University of Cape Town Press, 2008), 506.

⁵¹ As quoted in Firoz Khan and Edgar Pieterse, “The Homeless People’s Alliance: Purposive Creation and Ambiguated Realities,” *Case Study for University of KwaZulu-Natal project entitled: Globalisation, Marginalization and New Social Movements in post-Apartheid South Africa* (2004), 20.

called the Informal Settlement Network (ISN). The ISN had a more open architecture than the membership-based FEDUP savings schemes, and included community leadership from informal settlements that came together at city level. Instead of subsidy-based housing development, the ISN worked with communities to put teeth in dormant policy documents like *Breaking New Ground*, which prioritized incremental, in situ development of informal settlements. In Cape Town, the ISN began a set of 20 pilot projects in partnership with the municipality to test such arrangements.⁵²

Such a community-centered approach, which is central to the kinds of negotiations that the ISN pursues in partnership with local government authorities, is inherently collaborative. Significantly, as the Federation and its partners deepen their collaborations with government authorities, especially at the local level, they expose themselves to the ever-present dangers of co-optation and exclusion of other actors that represent the urban poor. At the same time, they may yet hold the potential to open up space for a more inclusionary order that can fundamentally alter the institutions that enable the exclusion that characterizes city development and planning in South Africa today.

4. Finding and transgressing the lines of hegemony and counter-hegemony

Collaborative tactics are sometimes overlooked in studies of counter-hegemonic social movements because they are seen as only reinforcing existing stratifications that exist within an *etatist* opportunity structure. It is worth considering contestation-based strategies in tandem with collaborative strategies in order to get a broader sense of the

⁵² Joel Bolnick and Benjamin Bradlow, “Rather a Better Shack now than Wait Twenty Years for a Formal House” – Shack Dwellers International and Informal Settlement Upgrading in South Africa,” *Trialog*, Vol. 104, No. 1 (2011), 39.

ways in which impacts on law and public policy actually occur through the full range of actions that social movements undertake. The strategic approaches discussed in this paper both yield a mixed picture.

Legal strategies have placed limits on the extent of hegemonic statecraft, by challenging state agencies to enforce existing policy. The opportunity structures of policy, and especially the socio-economic rights contained within the Constitution have become important levers that social movements have used to both access political voice, and achieve outcomes that limit the more oppressive elements of heterogeneously hegemonic state. But still, the fundamental relationships of the state and citizen that characterize this hegemony have not come under sustained challenge through legal strategies. The demand is fundamentally about implementation of existing policy, not reorganization of relationships of government that concern access to land and housing. This is all the more so with respect to the street protests that have increased in scale over the last decade, with the caveat that the use of public space and articulation of grievances may yet hold the potential for a more transformative agenda.

The demands for delivery have not changed the basic equation that the state manages delivery from on high to a supplicant, waiting poor. This therefore calls into question the suggestion by Boaventura de Sousa Santos and César Rodríguez-Garavito that the “victim’s perspective” is so central to “subaltern cosmopolitan politics and legality.” Taking on the challenges of poverty and structural exclusion in the courts articulates communities and social movements as victims seeking redress from a system that from the outset does not include them. Sousa Santos and Rodríguez Garavito’s

articulation of the inadequacy of “participatory exercises in institutional imagination” seems equally applicable in the legal sphere:

By default or design, those doing the imagining are the elites or members of the middle-class with the economic and cultural capital to count as ‘stakeholders.’ Either way, the process is a top-down one in which those at the bottom are either incorporated only once the institutional blueprint has been fully laid out or are not incorporated at all.⁵³

The courts have, in fact, been sites where the poor — as individuals, as part of communities, and as part of social movements — have been stakeholders, able to challenge existing policy but not promote fundamental transformation. Indeed, the provisions of the Constitution, on their face, seem to provide a transformative tool. But the rights-absed framework promotes access to the human need of housing, not the alternative political reality of self-determination in the way that a counter-hegemonic, non-*etatist* view conceives it. In turn, we can even argue that as social movements engage in legal battles they experience the same kind of incorporation against which Sousa Santos and Rodriguez Garavito warn. The “victim’s perspective,” at least as articulated in the courts, is therefore insufficient to build the exact kind of “subaltern cosmopolitan legality” to which a counter-hegemonic process aspires.

What appears to hold great potential — and it is little wonder then that all major social movements in this arena have utilized this tactic — is land invasion. Given that land ownership is such a prevailing mode of *etatist* control in South Africa’s democratic dispensation, this tactic challenges the basic market logic of statecraft and “governmentality.” This is just an activist claim, but one with specific policy implications. As Huchzermeyer has argued, what we can just as well call “people-driven land acquisition” is a method of bringing bureaucratic action much closer to the policies

⁵³ Boaventura de Sousa Santos and Cesar Rodriguez Garavito, “Law, Politics and the Subaltern in Counter-Hegemonic Globalization,” Sousa Santos and Rodriguez Garavito, eds. *Law and Globalization from Below: Towards a Cosmopolitan Legality* (Cambridge, UK: Cambridge University Press, 2005), 8-9.

that may yet hold out a more people-centered promise: incremental, in situ informal settlement upgrading. For Huchzermeyer, this tactic illuminates both the possibilities and challenges of implementing the alternative approaches to delivering land and housing contained within the government's own Breaking New Ground policy.⁵⁴

Though land invasion may appear a relatively extreme tactic, especially if we recall the fear and sacrifice that characterized Agrinette Hills' experience of the tactic, it has much in common with the seemingly more moderate tactics associated with collaboration. For in both cases, the need to demonstrate alternative solutions is a first principle for social movements to utilize their position vis-à-vis the state, law, and public policy to change the nature of all three of these social forces. The "self-help" strategies of the FEDUP network have achieved new policies such as PHP, and appear to present the possibility for further realizing incremental upgrading policies at the local government level. However, the impact has not been fundamentally transformative, at least not yet. At the same time, this network has exposed itself to great dangers of co-optation even in pursuit of a transformative project.

The skeptical view of Sousa Santo and Rodriguez Garavito towards "bootstrapping" casts such activities as "pragmatist" and in the limited mold of "participation." Yet their own articulation of "counter-hegemonic globalization" suggests that "bootstrapping," at least in the institutionally-engaged mold of the FEDUP network may yet hold great potential. As they argue, "The challenge of institutional imagination, therefore, cannot be met but by privileging the excluded as actors and beneficiaries of

⁵⁴ Huchzermeyer, "The struggle for in situ upgrading of informal settlements," 69-70.

new forms of global politics and legality.”⁵⁵ It is not difficult to see the self-help activities of savings and self-building of houses as precisely such a model, given the small but significant policy outcomes that such a strategy has already achieved.

This paper has argued that social movements for land and housing in South Africa have played a large role in channeling popular aspirations for more inclusive access to cities. The strategies of contestation and collaboration have been utilized to varying degrees by different social movements, and have had impacts that are not simply defined through linear “a-to-b” progressions. Rather it is the constant interaction between social movements, law, and public policy that has produced ever-changing political opportunity structures, as well as broader possibilities for a more “people-centered,” counter-hegemonic order. For precisely this reason, it is particularly necessary to not take a snapshot of a social movement action and proclaim on its success or failure. The simultaneous and interlinked processes of state-craft, popular resistance, and generative popular alternatives belie such simple judgment. Experiences of success utilizing law to craft the limits of existing policy also have held the seeds of new policies. Forms of institutional engagement outside of the courts have also had similar impacts. Yet, in both types of experiences, the challenges of limited impact and dangers of co-optation have been equally apparent.

We therefore return to an earlier time, personality and process: that of Kas Maine, the ordinary sharecropper who navigated the Apartheid state that permeated his life in ways both profound and mundane. As Van Onselen has put it, his life and struggle for dignity in a land from which he was persistently dispossessed, in its own small way

⁵⁵ Sousa Santos and Rodriguez Garavito, “Law, Politics, and the Subaltern in Counter-Hegemonic Globalization,” 9.

illuminates a struggle over values that permeates South Africa's history. In fact, it is this history of dispossession from land that continues to drive the organized social struggles of the poor to change the face of government and of city development. This paper has shown how social movements have been engaged in an ongoing process of discovering their own tools to enact their power to achieve a new order for accessing land and housing. Though he was a farmer and not an urban dweller, Maine's understanding of his power vis-à-vis the powerful forces of an *etatist* order is telling for a new generation of "subaltern" poor who now live in South Africa's rights-based constitutional order, still struggling for dignity, land, and a place to call home: "The seed is mine. The ploughshares are mine. The span of oxen is mine. Everything is mine. Only the land is theirs."⁵⁶

⁵⁶ Van Onselen, *The Seed Is Mine*, xvii.

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