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# HOMEOWNERSHIP, LEGAL ADMINISTRATION, AND THE UNCERTAINTIES OF INHERITANCE IN SOUTH AFRICA'S TOWNSHIPS: APARTHEID'S LEGAL SHADOWS

MAXIM BOLT 

## ABSTRACT

Expanded homeownership in Johannesburg's townships offered the prospect of post-apartheid formal inclusion. Yet allocation of title to former rental homes has been characterized by a profound lack of normative consensus regarding ownership or inheritance. In bitter disputes over houses, appeals to law jostle and interweave with claims in a customary register. In much regional scholarship, normative pluralism provides a point of departure for understanding disagreement of this kind. This article proposes an alternative perspective by examining how dissensus is mediated and given shape by a legal-administrative process. Law becomes inchoate in layers of bureaucratic encounter, while contested claims to custom are sharpened at the interface with bureaucracy. In South Africa, taking administration as a starting point reveals the long shadows of apartheid in concrete experiences of the law, in extra-legal understandings, and in the very terms of contestation among kin. Illuminating the little-explored topic of urban property inheritance, the perspective has broader implications for understanding inequality. Inclusion through homeownership is a form of 'adverse incorporation' marked

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by official opacity, diffidence regarding the law, stratifying administrative dualism, and uncertainty about the parameters of ownership and inheritance.

IN SOUTH AFRICA'S HISTORICALLY BLACK URBAN TOWNSHIPS, homeownership stands for transformation. Dwellings rented from the state have been transferred to long-term tenants, creating *en masse* an asset-holding class with stakes in an expanded post-apartheid property system. These "family houses" represent formal socio-economic inclusion. Yet, in a context where housing is scarce, they are frequently the cause of bitter struggles and intra-family conflict, even as they are also held up as cornerstones of ideal kinship. Focusing on Johannesburg, this article asks how such hotly disputed inclusion has been shaped in practice by state legal-administrative process. It examines how this administration process has reproduced apartheid legacies of stratification, a lack of normative consensus about property and inheritance, and distance from state institutions. These have entrenched uncertainty about the very terms of homeownership.

The scale of this housing allocation is substantial. Less remarked on than employment, social grants, or even post-apartheid subsidized housing,<sup>1</sup> the South African state has underwritten economic fortunes through the massive transfer of old public housing stock. A contorted process beginning in the 1980s involved around 750,000 houses; at the end of that decade, around 120,000 were up for transfer just in Greater Soweto, Johannesburg's largest township agglomeration.<sup>2</sup> For black urbanites previously denied property rights on racial grounds, the provision of hundreds of thousands of title deeds represented inclusion: first, as members of a putatively stabilizing middle class, buying their rentals at subsidized rates; then, as citizens of a constitutional order enshrining property rights, receiving free allocations. Ownership also refracts and intensifies precariousness and conflict. Scarce jobs, high levels of debt, and demands from kin render upward mobility fragile.<sup>3</sup> The stakes are high: in a housing shortage, dwellings are shelter and home, sources of rents,<sup>4</sup> vehicles for expansion and growth, commercial bases, and often the sole substantial asset.<sup>5</sup>

1. This is even more extensive and beyond this article's scope (see footnote 5).

2. Erica Emdon, 'Privatization of state housing: With special focus on the Greater Soweto Area', *Urban Forum* 4, 2 (1993), pp. 1–13. There were substantial backlogs: in 2014, 83,628 houses nationwide were yet to be transferred to occupants, and delays have endured. See *City Press*, 'Title deeds: ANC to break its promise', 28 January 2019, <<https://citypress.news24.com/News/title-deeds-anc-to-break-its-promise-20190128>> (28 April 2020).

3. Deborah James, *Money from nothing: Indebtedness and aspiration in South Africa* (Stanford University Press, Palo Alto, CA, 2014).

4. Even if rentiers themselves are not aggressively entrepreneurial. Owen Crankshaw, Alan Gilbert, and Alan Morris, 'Backyard Soweto', *International Journal of Urban and Regional Research* 24, 4 (2000), pp. 841–857.

5. Depending on neighbourhood. They are thus unlike the lost-cost 'RDP' (Reconstruction and Development Programme) houses rolled out to meet post-apartheid needs, which lack

In Africa and beyond, property and inheritance are important yet insufficiently examined dimensions of class formation and reproduction.<sup>6</sup> Urban South Africa offers an illuminating case because apartheid's breakdown has thrown the legal and administrative bedrock of racial and class inequality into particular relief. If many have celebrated the creation of a single formal system, others have stressed that the law's principles are not neutral. The law frames the township house as an asset with an individual exclusive owner, who is succeeded at death by members of a nuclear family. For some, formal inclusion in property markets represents redress and opportunity, but it also offers the means to exclude and cut networks of dependence. In disputes, legal rights jostle with claims in a customary register of collective entitlement to the family home. This article argues that both are understood, invoked, and actualized in relation to bureaucratic procedure.

Grappling with colonial histories and legacies, African studies scholarship has long been preoccupied with normative divergence, including in a rubric of legal pluralism, foregrounding distinctions between custom or claims to culture and non-customary state law.<sup>7</sup> Recent contributions have drawn attention to African bureaucrats' efforts to mediate between sets of principles.<sup>8</sup> This article extends the administrative focus into the underexplored field of urban property inheritance. But it approaches the absence of consensus differently. Its central contribution comes not from taking the formal law/custom divergence as a starting point, but instead from examining how dissensus emerges from incorporation into administration itself.

Legal rules are consequential, yet it is often through concrete experiences of administrative process—labyrinthine and murkier than formal codes—that their effects are felt. In the case of Johannesburg's township houses, procedure is unfamiliar and regulation is patchy, so the weight of official rules and the outcomes of disputes are unpredictable. Many township

township houses' value on the property ladder. See Charlotte Lemanski, 'Moving up the ladder or stuck on the bottom rung? Homeownership as a solution to poverty in urban South Africa', *International Journal of Urban and Regional Research* 35, 1 (2011), pp. 57–77. Moreover, one property valuator whom I shadowed underscored that some old townships are far better market prospects than Johannesburg's 'grey zones'—largely former white working-class areas, where urban decline saw plummeting prices and a withdrawal of mortgage providers.

6. Thomas Piketty, *Capital in the twenty-first century* (Belknap Press, Cambridge, MA, 2014); Roger Southall, '(Middle-) class analysis in Africa: Does it work?', *Review of African Political Economy* 45, 157 (2018), pp. 467–477.

7. For example, Gordon R. Woodman, 'Legal pluralism and the search for justice', *Journal of African Law* 40, 2 (1996), pp. 152–167; John L. Comaroff and Jean Comaroff, 'Criminal justice, cultural justice: The limits of liberalism and the pragmatics of difference in the new South Africa', *American Ethnologist* 31, 2 (2004), pp. 188–204.

8. See Olaf Zenker and Markus Virgil Hoehne, 'Processing the paradox: When the state has to deal with customary law', in Olaf Zenker and Markus Virgil Hoehne (eds), *The state and the paradox of customary law in Africa* (Routledge, London, 2018), pp. 1–40.

residents are left starkly uncertain about their footholds in the property system, unsure of what will happen if they seek protection from the state or keep their distance. The effect has been to throw into question not only who owns houses in the post-apartheid era but also how they do so.

A granular focus on this inchoate dimension of legal administration helps us understand the terms of popular response, affording an answer to this article's research question. How has such sharply disputed inclusion via homeownership been shaped by legal administration? Separate law and government under apartheid moulded patterns of township residence and the meanings ascribed to them. Subsequent opaque reforms and administrative confusion variously reinforce and undermine both legal entitlements and *de facto* arrangements, playing into struggles among kin. The lack of popular normative consensus, including within families and among the state officials who arbitrate, pivots on the widely cited idea of the family house—a place of collective entitlement for the patrilineal descendants of an original householder. Assertions of custom take on particular significance at the interface with law and its bureaucratic processes. They become attempts to keep kin-based claims open, in the face of exclusive official rules, where formalized tenure raises the stakes of recognition.

The research underlying this article tracked the networks bringing together property, inheritance, and the state. During a year's ethnographic fieldwork in 2017, I shadowed officials dealing with the estates of deceased individuals, property valuers, wealth management practitioners, and lawyers. I attended court hearings and followed the progress of particular cases. Throughout the year, I sat in on inheritance-related meetings and mediations, from government offices to Non Governmental Organization consultation rooms to local community support services to audiences in front of magistrates. There was a steady stream of such matters. Typical mornings with state officials would involve upwards of five audiences. These shed light on the patterns of property inheritance disputes, throwing into relief the sheer frequency of cases revolving around family houses. Approximately 50 formal interviews and a larger number of unrecorded informal interviews offered different points of entry into those trends. Complementary perspectives were afforded by those embroiled in family house disputes; older inhabitants of family houses who were weighing up plans for future generations; and younger Sowetans who had grown up in family houses and who now strove for a measure of accumulation. Civil society organizers, community mediators, lawyers, and officials in key government institutions provided wider commentary on the dynamics I observed. With legal NGO ProBono.Org, I presented my research findings to a community event of around 180 participants in Jabulani, Soweto, in order to test them ahead of offering

policy recommendations to government officials and legal experts, whose responses in turn also informed my analysis.

What follows therefore emerges from long-term immersion in inheritance administration and disputes, and relevant policy and legal debates. That immersion affords a distinctive perspective. Understandings of custom are not reducible to engagement with the state. Nevertheless, the article argues that normative differences may be forged in the navigation of legal administration. The next section elaborates on this theoretical contribution and explores its application in the South African context. I then turn in detail to homeownership, inheritance, and persistent systemic stratification, beginning first with a single legal dispute to introduce the terms of contestation and their analytical implications. I show that the notion of the family house—as an ideal, a claim, or even an expectation—has emerged in the shadow of legal bureaucratic experiences. While formal law becomes more inchoate through bureaucratic encounters, a customary register of claims—however contested—is sharpened in layers of engagement with officialdom. Together, they shape property ownership and inheritance as an administrative artefact.

### *Centring legal administration*

Homeownership in Johannesburg's townships reveals the messiness of formal inclusion. Relevant statutory law remains fundamentally grounded in principles that were long cast as European and deliberately excluded the black majority, affecting how it is perceived.<sup>9</sup> In scholarship on Africa, this sense of distance is often cast in a rubric of formal law versus custom. The binary is itself fraught, with customary law classically revealed as a colonial artefact remade through indirect rule.<sup>10</sup> Indeed, it often provides the starting point for nuanced scrutiny of the state's role. 'State' legal pluralism is distinguished from 'deep' legal pluralism (different value frameworks within formal law versus beyond the state's reach).<sup>11</sup> Even the latter is ultimately drawn into state institutional logics. South Africa's constitutional protection of custom,<sup>12</sup> for example, has been interpreted judicially as promoting popular norms and practice, not historically tainted

9. Post-apartheid civil law nevertheless is not monolithic. Statutes and common law jostle with old segregationist rules used to determine new entitlements. Judicial decisions recognize customary principles and read them into interpretations of statute. The result can be varying definitions even of central concepts like 'spouse' and 'dependent'. See Christa Rautenbach, 'Deep legal pluralism in South Africa: Judicial accommodation in non-state law', *Journal of Legal Pluralism and Unofficial Law* 42, 60 (2010), pp. 143–177; Elena Moore, 'Intergenerational family dependence: Contradictions in family policy and law' (CSSR Working Paper 415, University of Cape Town, 2018).

10. For example, Martin Chanock, *Law, custom and social order. The colonial experience in Malawi and Zambia* (Cambridge University Press, Cambridge, 1985); Mahmood Mamdani, *Citizen and subject: Contemporary Africa and the legacy of late colonialism* (Princeton University Press, Princeton, NJ, 1996).

11. Woodman, 'Legal pluralism'.

12. S 211(3), reinforced by s 15(3)(a)(ii) and s 31(1)(a).

official pronouncements. It reflects a wider trend: across the African continent, 'living' customary law has lent force to custom's enduring legitimacy in legal arrangements.<sup>13</sup> In Eugen Ehrlich's influential formulation, 'living law' is distinguished by its role guiding everyday conduct, as opposed to formal 'norms for decision'.<sup>14</sup> But state recognition ossifies popular norms by making them the basis for judgments, while 'jurispathically' sidelining those deemed not to merit official status.<sup>15</sup> Recognition is itself uneven, as officials accommodate or undermine non-state norms to different degrees and in different ways, officially or unofficially, in the course of their work.<sup>16</sup> Conversely, officials also require recognition: as they navigate different norms, state institutions rely on popular appeal to establish relevance and authority.<sup>17</sup>

The state is central to these debates. But this article takes a different approach to its role, examining how a lack of consensus is produced through legal-bureaucratic encounters. Doing so foregrounds disjointedness and claims situated in processes, rather than counterposed categories of norms. The formal coherence of legal rules disguises the opacity and inchoateness of the institutional landscape and the struggles over opportunities within formal proceedings. Conversely, customary idioms may not amount to an agreed-upon normative framework, contrasted with officialdom. In what I describe below, these idioms are invoked in deep disagreements among kin, their very terms sharpened at the interface with bureaucratic procedure. As forms of claim-making, they reflect histories of administrative incorporation.

The significance of this approach is well demonstrated by the South African case. Experiences of alienation in relation to the law are common, of course, especially among the marginalized.<sup>18</sup> Yet the post-apartheid state, in its transformation efforts, faces a particular challenge. Inclusion has been marred by a lingering suspicion of officialdom,<sup>19</sup> as well as unfamiliarity with its stipulations and categories born of previous exclusion.

13. For example, Chuma Himonga, 'The future of living customary law in African legal systems in the twenty-first century and beyond, with special reference to South Africa', in Jeanmarie Fenrich, Paolo Galizzi, and Tracy E. Higgins (eds), *The future of African customary law* (Cambridge University Press, Cambridge, 2011), pp. 31–57.

14. See Marc Hertogh, 'A "European" conception of legal consciousness: Rediscovering Eugen Ehrlich', *Journal of Law and Society* 31, 4 (2004), pp. 457–481, p. 475.

15. Zenker and Hoehne, 'Processing the paradox'.

16. *Ibid.*

17. Christian Lund and Catherine Boone, 'Introduction: Land politics in Africa—Constituting authority over territory, property and persons', *Africa* 83, 1 (2013), pp. 1–13.

18. An established point in American socio-legal analysis. For example, Sally Engle Merry, *Getting justice and getting even: Legal consciousness among working-class Americans* (University of Chicago Press, Chicago, IL, 1990).

19. Jonny Steinberg, *Thin blue: The unwritten rules of policing South Africa* (Jonathan Ball, Johannesburg, 2008).



Experienced through bureaucratic encounters, deracialized succession law is a weapon to wield selectively in personal disputes, not the basis of societal consensus or 'legal consciousness'.<sup>20</sup> Appeals to law or custom take shape through the unpredictable application, effects and manipulation of a legal-bureaucratic system, and the claims that people have made through and against it.

Administration, too, has a particular South African significance. A defining feature of the apartheid project was the massive public provision of township family units, intended to stabilize and control urban African populations.<sup>21</sup> Domestic arrangements developed in special forms of tenure that were more enduring than standard rental, but far less than ownership, in a system that denied black people property rights.<sup>22</sup> Bureaucratic permissions set the parameters of kinship itself, as marriages were contracted to meet conditions for family house occupancy.<sup>23</sup> Physically adapted to assert embeddedness and materialize kinship,<sup>24</sup> family houses came loosely to approximate ideals of the collective rural home, contrary to rural dwellers' stereotypes of urbanites as rootless occupants of government dwellings.<sup>25</sup> But the very notion of the family house was grounded in 'permits to reside'—colloquially, 'family permits'—listing all members as occupants.

Control was far from complete, especially in apartheid's later years. While permits could be passed down to kin by official means, a lack of administrative capacity meant that they were often held within families without re-registration. Nevertheless, as state authority broke down, family permits were taken to prove relatedness and household entitlement. In the post-apartheid dispensation, the opportunities and vulnerabilities of formal homeownership have produced a new field of appeal to the state, which in turn remakes the grounds of kinship and custom. The transfer of township houses offered households freedom from bureaucratic 'permission to reside' and the security that had previously been denied them. But it was individual nominees who actually became owners with a stake in the property market, their exclusive rights protected by further

20. Susan S. Silbey, 'After legal consciousness', *Annual Review of Law and Social Science* 1 (2005), pp. 323–368.

21. Ivan Evans, *Bureaucracy and race: Native administration in South Africa* (University of California Press, Berkeley, CA, 1997).

22. Emdon, 'Privatization of state housing'; Owen Crankshaw, 'Class, race and residence in black Johannesburg, 1923–1970', *Journal of Historical Sociology* 18, 4 (2005), pp. 353–393.

23. Deborah Posel, 'Marriage at the drop of a hat: Housing and partnership in South Africa's urban African townships, 1920s–1960s', *History Workshop Journal* 61, 1 (2006), pp. 57–76.

24. See Rebecca Ginsburg, 'Now I stay in a house': Renovating the matchbox in apartheid-era Soweto', *African Studies* 55, 2 (1996), pp. 127–139.

25. Khumisho Moguerane, 'A home of one's own: Women and home ownership in the borderlands of post-apartheid South Africa and Lesotho', *Canadian Journal of African Studies* 52, 2 (2018), pp. 139–157.



bureaucratic purview. As I elaborate below, it is in this tension between household and individual entitlements, and the security they might offer, that the contested notion of the family house is today worked out. The next section introduces that contestation and its intricacies, through the example of one court case.

### *In the High Court*

In a corridor of the Johannesburg High Court, a group of siblings celebrated the settlement that had just been formalized with their deceased brother's wife. Their father had died in 1985 with a house in Soweto.<sup>26</sup> The house had been a municipal rental under a family permit. But by that point, during apartheid's slow disintegration, it was under a 99-year lease in a first step towards property rights. Already valuable given limited avenues for material accumulation, it went to the man's eldest son according to regulations under the Black Administration Act 1927. The house would become still more valuable, as it was upgraded to full ownership in the 1990s as part of tenure reform. And so, years later when that eldest son died in 2014, his wife inherited a substantial asset—now under a deracialized Intestate Succession Act 1987.<sup>27</sup> This legislation, which had previously excluded black people, placed the wife's claim above those of her husband's siblings. No one had considered who actually owned the house and one of the deceased's sisters had been living there, but family relations had now disintegrated. The widow tried to evict her sister-in-law and sell. The siblings approached an attorney recommended by neighbours.

What followed was a classic dispute over a family house, with the surviving spouse pitched against the siblings of the deceased. On the one hand, an heir asserted her right under intestate succession law, following her husband's earlier individual inheritance of the property. On the other, a 'family'—now represented by the surviving siblings—asserted collective entitlement to their father's abode, regardless of paperwork. Like countless others, they saw the histories of such houses weighing in their favour. For them, the deceased was merely a 'caretaker'—a custodian—not an exclusive owner. He must have taken advantage of his position to register the house in his own name by shady means.

The argument for a family house, underpinned by a history of apartheid-era rental, is regarded by many people as grounded in established practice and obligation. But it holds little water in law, which supports the widow of a deceased property owner. So, another reading of the past was crafted,

26. Group interview with applicants bringing the case, Johannesburg High Court, 29 August 2017.

27. Legislation for inheritance without a will. See below.

justifying a reversal of the deceased brother's title deed. If the law protected a widow against marginalization by her husband's family, it might be possible to argue that women's marginalization worked the other way, too. In the 1980s, the deceased's automatic inheritance as eldest son had been the result of legislation—the Black Administration Act—imposing a crude interpretation of customary law on black South Africans. The post-apartheid Constitutional Court subsequently struck down these racialized and gendered stipulations as incompatible with constitutional principles. Yet perhaps they might be challenged retrospectively, given gender discrimination's enduring effects. Here, the siblings stood for post-apartheid equality; the wife appeared the beneficiary of racially separate legislation favouring men.

The judge had clearly weighed the argument carefully, postponing court proceedings for preparation of a case law bundle.<sup>28</sup> But its persuasiveness became immaterial; the widow withdrew in fear of losing and facing court costs. A court order split the house equally among each of the surviving siblings and their brother's spouse (on behalf of her husband), effectively reversing transfer of title from father to son and distributing between all children. In practice, the resident sister would stay put; for the spouse to claim her share, the property would have to be sold.

Unusually, the siblings had the means and confidence in the system to take the matter to court. The widow was more typical in being bullied out of due process by financial constraints. Equally typical, the family house remained all-important although almost everyone had moved out. More generally, the fight laid bare the sheer complexity of a racialized legal-administrative history that had produced a collective understanding of the family house while also leading to its sole acquisition by the eldest son. The next section examines how the post-apartheid family house emerged at the interface with administration.

### *The post-apartheid family house: inheritable property and popular ambivalence*

Property rights and family houses have been experienced through bureaucratic encounter, underscored by the unevenness of township property regimes. Apartheid-era records became increasingly incomplete, as official control receded;<sup>29</sup> today, not all areas have the township registers required for full ownership. Meanwhile, as free transfers were extended to long-term residents, tribunals registered individual owners. The process

28. The argument is legally plausible, resembling *Rahube v Rahube and others* (2018) CCT319/17. See Maxim Bolt and Tshenolo Masha, 'Recognizing the family house: A problem of urban custom in South Africa', *South African Journal on Human Rights* 35, 2 (2019), pp. 155–156.

29. Emdon, 'Privatization of state housing'.

was murky, because of poor official record-keeping and complicated residence patterns, but also because it was accelerated by monetary incentives to local authorities.<sup>30</sup> In some cases, according to disputing parties today, family members registered ownership without their relatives' knowledge. More often, kin sent a representative—a 'custodian'—but it was unclear that at issue was the sharply bounded legal concept of individual title. This confusion was evident in the High Court example above.

Here, then, was a first layer of administrative incorporation in a post-apartheid state system: property rights and inclusion in a housing market, but on unclear terms. The divergence from a lot of people's expectations was clear to administrators on the bureaucratic frontline. Many see inclusion in formerly 'white' civil legal administration as having left people confronted with processes that are unfamiliar and grounded in rigid conceptions of property and entitlement. Yet this recognition lies firmly in bureaucrats' practical understandings, not in the official rules that see township houses narrowly as conventional urban real estate.<sup>31</sup> Starting in the 1990s, housing officials attempted to recognize an alternative model of the home and create a workaround. They thus had families sign agreements formalizing the custodian's obligations, limiting ownership rights, and ensuring collective access to the house. But, after years of agreements, they were found to lack legal weight. An official of the Provincial Department of Human Settlements explained:

We would list all the members and we used to call it a family title deed, ... then we were stopped by the Deeds Office saying ... the [Deeds Registration] Act does not provide for such title deeds, it's like it doesn't exist, so we're wasting our time.<sup>32</sup>

Even so, members of the Deeds Office appreciate the problem. At a 2018 panel discussion I organized for government officials, a senior figure explained:

It's not only about the living, it's also about even their ancestors. ... We advise people to say, 'Register the property in the name of all the siblings', but it's still the individualistic approach of ownership. This is not what people want. People want the property to be registered in the name of the family and then it will move from generation to generation, not from an individual to another individual.<sup>33</sup>

30. *Ibid.*

31. See Zenker and Hoehne, 'Processing the paradox'.

32. Interview, Department of Human Settlements, Newtown, 21 November 2017.

33. Family house panel discussion, University of the Witwatersrand, 23 July 2018.

In this rendering, families are central in a conception of custom lacking the touchstones of rural chiefly authority or distinct communal landholding. Yet the constitution of urban families is far from straightforward. Arrangements are fragmented and situational, following a long history of migrancy, insecure tenure, and economic precariousness. Shifting dependencies mean that 'kinship as a generalized system of unconditional obligation seems to be giving way to a system of more selective and perhaps more contingent altruism'.<sup>34</sup> Dire financial straits produce fragile relations of 'reluctant solidarity'.<sup>35</sup> Even so, as arrangements shift and social ties are reinvented or abrogated, 'culturally salient kinship principles have been used to give meaning', a means to assert dependencies and demand support.<sup>36</sup>

Amidst this complexity, the allocation of post-apartheid houses refracts, and raises the stakes of, family membership. Family houses are focal points for struggles over ideal custom and cross-generational kinship—that is, the extent of mutual responsibilities. Struggles for inclusion were previously about being listed on the apartheid-era rental permit and allowed to stay in the city; now, surnames on title deeds secure tenure rights, but exclusive and exclusionary ownership enables some to evict others. This is comparable to South Africa's welfare grants, where 'inequalities in public provision combine with familial norms to transform families and generate new tension within them'.<sup>37</sup> Perhaps unsurprisingly, the notion of the collective family house held back from the market is not subscribed to equally by everyone. It reinforces a version of kinship promoted by a state system that saw male family heads as intermediaries on behalf of households. As in other claims to 'proper' cultural practice,<sup>38</sup> disputes reveal the divergent interests at stake. Family houses are protected by siblings in patrilineages, especially brothers; individual ownership is defended by surviving spouses, usually wives. Given the concentration of power among men, women more generally have greater reason to resist.

Claims to group entitlement collide and combine with those to legally recognized individual entitlement, and family patrimony with market asset. This is illuminated by turning from broader trends to a detailed example.

34. Jeremy Seekings, 'Beyond "fluidity": Kinship and households as social projects' (CSSR Working Paper 237, University of Cape Town, 2008), p. 43.

35. Erik Bähre, 'Reluctant solidarity: Death, urban poverty and neighbourly assistance in South Africa', *Ethnography* 8, 1 (2007), pp. 33–59.

36. Andrew Spiegel, 'Reconfiguring the culture of kinship: Poor people's tactics during South Africa's transition from apartheid', *Africa* 88, S1 (2018), pp. 90–116, p. 90.

37. Elena Moore and Jeremy Seekings, 'Consequences of social protection on intergenerational relationships in South Africa: Introduction', *Critical Social Policy* 39, 4 (2019), pp. 513–524, p. 521.

38. See James Ferguson, 'The bovine mystique: Power, property and livestock in rural Lesotho', *Man* 20, 4 (1985), pp. 647–674.

Zanele<sup>39</sup> is a research participant whom I visited multiple times at her home in a desirable part of Soweto. Her circumstances are, inevitably, both widely recognizable and idiosyncratic. The role of female householder challenges the ideal-type patrilineal home, but is far from unknown. A nurse, Zanele is the only breadwinner in a household including children and a work-seeking male cousin on an open-ended visit from rural KwaZulu-Natal. Like many others, her professional success is weighed against substantial kinship obligations.<sup>40</sup> But, with a law student son and a de facto daughter with a biochemistry degree, the future holds possibilities. Well located, the house could have significant monetary value. It also confirms the distinctive circumstances of Soweto's fragile middle class: financial stretch, but standards to maintain. And, as I show, the idea of the family house inflects questions of upkeep and value, which reflect notions of collective entitlement.

Zanele drew attention to the bare cement walls and faded curtains. 'You paint the walls, they say "she thinks it's her house". You do the windows, they say "she thinks it's her house". You wash the curtains, they say "she thinks it's her house"'. Every time you do anything, the fighting starts: 'the police come, the community workers come—that's what it's like to live here'. That explained the dream, even if it involved a mortgage: 'I have to hustle for my own things, get my own house that I would leave for my [children] ... they would inherit'.<sup>41</sup>

When Zanele replaced the windows, the 'uncles'—the senior men of the patriline—impressed on her the difference between custodian and owner. The house was understood to belong to the lineage, a place of shelter and potential return. The ancestors were still here, to be found when called upon. And they, in turn, were connected through the house to the unborn. Zanele, who had grown up here, had been deemed the one to inherit when her mother died. The family chose her over her indigent sister, who occupied an outhouse matching the main four-room building for size. A woman was chosen, but it was a contingent form of inheritance on behalf of a collective.

When Zanele's grandmother passed away, her mother had—again unusually for a woman—invoked the new right to freehold title and transferred the house from a family permit into her own name. The house had passed down the generations of women—Zanele's grandfather had died first and her father had left when she was two—but the uncles were never far. Zanele's mother faced opprobrium for transferring the house, and the

39. A pseudonym. Interview, Soweto, 24 July 2018.

40. See Elizabeth Hull, 'Going up or getting out? Professional insecurity, ambivalence and austerity in the South African health sector', *Africa* 90, 3 (2020), pp. 548–567.

41. Interview, Soweto, 24 July 2018.

uncles' suspicion had never receded. Zanele's own response as inheritor was typical. In the years since her mother's death, she had never reported the estate or had the property transferred. Leaving it in her mother's name recognized that this was a house for the family—dead, living, and unborn.

Family houses offered a route to accumulation of sorts. When Zanele's father's brother died childless, she was given his house, too. The uncles from that family decreed that she should finally receive something from a patrilineage that had given her nothing. So, she became responsible for a second property nearby. Her eldest son, in his mid-twenties, relocated there. Yet, again, this was not straightforward ownership, and she will not transfer it to her name. This explains the dream of buying a house, undergirded by formal title, even though she already has two. Zanele had not got as far as whether her own purchase would create family house conflicts for future generations. For now, it would reset the problem and create a propertied life distinct from the lineages—the strategic navigation of state law as a way to manage kinship. Individualized ownership holds out possibilities, which take on especial significance in highly gendered arrangements.

What is notable, however, is that Zanele—and even her mother the titleholder—had little choice but to accommodate themselves to a collective view of the house as historically materialized kinship.<sup>42</sup> Elastic and inflected by power asymmetries, this notion of the home is nevertheless too influential to ignore, and it produces an ambivalent relationship with state administration. Homeownership held out the possibility of the family house becoming a formal reality, evident from the family name on a title deed. But the individual who actually acquired that deed risked perpetual suspicion, subject to pressures to keep matters private. State control requires popular cooperation, which is only provisionally granted in South Africa where state bureaucracy remains associated with its reviled past.<sup>43</sup> Marginalization in the past set the trend: it meant that 'people secured their access to land and housing in very different ways from those required by the formal property system'.<sup>44</sup> Deteriorating administration during apartheid's twilight, and a narrow definition of tenure since, only added to the diffidence. Faced with alien rules and a confusing and disjointed system to which their commitment is shallow, many people avoid formal process. Instead, they subscribe to some version of a 'system of administration of estates by

42. Earlier analysis with legal NGO ProBono.Org suggested that, unlike Sowetans, residents of newer townships underline collective entitlement without the insistence on historical embeddedness. See Bolt and Masha, 'Recognizing the family house'.

43. Steinberg, *Thin blue*.

44. Donna Hornby, Lauren Royston, Rosalie Kingwill, and Ben Cousins, 'Introduction: Tenure practices, concepts and theories in South Africa', in Donna Hornby, Rosalie Kingwill, Lauren Royston, and Ben Cousins (eds), *Untitled. Securing land tenure in urban and rural South Africa* (University of KwaZulu-Natal Press, Scottsville, 2017), pp. 1–43, p. 3.

the family'.<sup>45</sup> Official statistics presented by the Chief Master to deceased estates practitioners in 2016 showed that two-thirds of estates in South Africa are never reported, although these are assumed disproportionately to be in rural settings.<sup>46</sup> It is not only in the application of process, but also in its evasion—although still overshadowed by administrative history—that people sustain 'the family house'.

A history of administration has given shape to a marked absence of consensus about property and inheritance. Yet bureaucratic process continues to have real influence: reporting deceased estates can invite official regulation to weigh in on one side—a more accessible and common appeal to official authority than court cases. As Sally Engle Merry shows for the United States, the trade-off is that personal disputes are reframed by state logics; disputing parties risk ceding control over which interpretations matter.<sup>47</sup> The formalization involved may catalyze further disagreements, making explicit who is legally entitled to what and who is excluded. The next section shows how inheritance law, and the legal-bureaucratic encounters through which it is experienced, have laid further groundwork for a lack of normative consensus.

### *Legal-administrative inclusion and the question of custom*

South Africa's legal-administrative legacies persist partly because there was no revolutionary rupture. Existing law is now measured against a progressive constitution wielded by a proactive constitutional court. Yet it is struck down only in piecemeal fashion where it contravenes the principles of the new order. Meanwhile, Roman Dutch and English common law remain at the heart of the system, and much of the statutory corpus dates from long before 1994. The current version of the Administration of Estates Act, for example, hails from 1965. Thus, as with township houses and market inclusion, legal reform was a matter largely of extending the law and the administrative systems that had previously catered to a minority. Encounter with those legal-administrative arrangements has reproduced distance from the state for many black South Africans, in turn reinforcing the fragmentary rather than unifying effects of newly inclusive official processes.

In inheritance law, custom had a contentious status and its formal recognition was debated. South Africa's constitution protects custom, interpreted as living law as noted earlier, but an official version was historically

45. Chuma Himonga and Elena Moore, *Reform of customary marriage, divorce and succession in South Africa: Living customary law and social realities* (Juta Press, Cape Town, 2015), p. 252.

46. Presentation at the Fiduciary Institute of South Africa, 2016. Data provided by institute member.

47. Merry, *Getting justice*.



entangled with segregationist legislation. The Black Administration Act—initially the Native Administration Act 1927—had left the black majority overwhelmingly subject to the rule of bureaucracy. It allowed for the Native Affairs Department's regulations substantially to take the place of law passed by parliament. And it asserted that black Africans be governed by custom—or an enforced approximation of it—with the Governor General as 'Supreme Chief of all natives'.<sup>48</sup>

After 1994, this was recognized as discriminatory. Especially significant was the *Bhe* judgment on black succession.<sup>49</sup> Reviewing an urban township case, it struck down male primogeniture on grounds of gender discrimination, while declaring unconstitutional the subjection of black people to a top-down approximation of custom. The act and its regulations, the judgment allowed, could in theory have been regarded as 'giv[ing] recognition to customary law and acknowledg[ing] the pluralist nature of our society'.<sup>50</sup> But it was at its core 'specifically crafted to fit in with notions of separation and exclusion of Africans from the people of "European" descent' and 'a cornerstone of racial oppression, division and conflict in South Africa, the legacy of which will still take years to completely eradicate'.<sup>51</sup>

This left the problem of what to do with normative pluralism. The judges' divergent opinions illuminate the complexity of post-apartheid redress. Having done away with the Black Administration Act, the majority argued for bringing all South Africans into existing succession law.<sup>52</sup> This finally ended the apartheid-era interpretation and institutionalization of customary norms, but it also removed formal recognition of popular norms pertaining to succession. The dissenting judgment by Judge Ngcobo underlined the collective duty of family care in established arrangements and the role of houses in family security that risked being undermined by liquidation as a result of intestate succession.<sup>53</sup> Against what he saw as an effacement of custom by asset-focused inheritance—as totalizing as the blanket principle of male primogeniture that came before it—he argued for a 'developed' customary law of succession. This would remove male privilege, but protect the collective home and the understanding of succession as stepping into the custodian's shoes.

48. Saul Dubow, "Holding a just balance between white and black": The Native Affairs Department in South Africa c.1920–33', *Journal of Southern African Studies* 12, 2 (1986), pp. 217–239; Evans, *Bureaucracy and race*.

49. Constitutional Court of South Africa, *Bhe and Others v Khayelitsha Magistrate and Others* (2005) (1) SA 580 (CC).

50. Langa DCJ, *Bhe*, para 72.

51. *Ibid.*, para 61.

52. Although it was expanded to recognize (but therefore also formalize) polygynous customary wives, customary childbearing roles, and customary adoption.

53. Ngcobo J, *Bhe*, para 231.

Ngcobo represented an important constituency in South Africa's state institutions who, like the Human Settlements officials earlier, see themselves as grappling with a dated legal-administrative edifice. But his was a dissenting judgment. All South Africans became subject to a legally enshrined kinship model of the nuclear family with its European pedigree: inheritance by the spouse first, shared with children over a minimum property threshold.<sup>54</sup> The deceased's parents, then siblings, only inherit if no spouse or children survive. Children are defined biologically, include those outside marriage, and only include adoptees if recognized through formal state process. The decision threw popular practices into relief, catalysing socio-legal analysis of living customary law. Argues Sindiso Mnisi Weeks, based on a rural study, it was all the more contentious because living customary norms were far more flexible, pragmatic, and diverse—and less prejudicial—than the Black Administration Act's rigid stipulation of male primogeniture.<sup>55</sup> Indeed, Chuma Himonga and Elena Moore report in another mostly rural study, family deliberations since Bhe might from a state legal point of view produce 'nuanced compliance'—reflecting its spirit without any mention of the rules themselves.<sup>56</sup> Popular norms, characterized by pragmatism and flexibility, are weighed in relation to earlier legislated custom and post-apartheid constitutional principles.

In urban settings like Johannesburg, arrangements of kinship and the home are indeed pragmatic and flexible—indeed, unsettled—as we saw in Zanele's example. They also require understanding through histories of encounter not only with legal stipulations but with the administrative state. In bureaucratic process, too, basic arrangements have changed. Less remarked on than Bhe, but shortly before it in 2000, the Constitutional Court had outlawed separate estates administration in magistrates' courts for black people.<sup>57</sup>

Now, for most people, an Office of the Master of the High Court—an institution of Roman Dutch provenance—administers deceased estates alongside such legal oversight of economic affairs as bankruptcy, trusts, and guardianship for minors. In the wake of administrative unification, Master's Offices experienced overcrowding and massive queues. One of Johannesburg's Deputy Masters remembers how all-rounder officials suddenly had to specialize to deal with increased traffic. The Johannesburg office was established soon after to complement Pretoria and cater to its own population. It is one of fifteen, each attached to a regional High Court,

54. Currently of R250,000—about £15,000 at the time of research in 2017.

55. Sindiso Mnisi Weeks, 'Customary succession and the development of customary law: The Bhe legacy', *Acta Juridica* 2015 (2015), pp. 215–255.

56. Himonga and Moore, *Reform of customary marriage*, p. 266.

57. Constitutional Court of South Africa, *Moseneke and Others v Master of the High Court* (2001) (2) SA 18 (CC).

and a 'creature of statute' staffed by officials with law degrees. It is the biggest and busiest in the country, processing 32,000 to 33,000 files a year, reportedly around double the next largest in the national capital.

This rapid expansion was the context of post-apartheid inclusion in a deracialized inheritance system. Today, the Johannesburg Master occupies an eight-storey downtown building that once belonged to a corporate firm. Its classical portico, high ceilings, and hallway friezes speak of old wealth, but its run-down furniture and fittings and ailing utilities betray strained public budgets. There, most people—those without wills, or lawyers or banks to represent them—wait in long queues for walk-in processing, repeatedly sent away until all documents are present and correct. Then the relatives of the deceased appear before an Assistant Master who allocates responsibility for transferring the property. The decisions of these officials—all legal manifestations of 'the Master'—are challengeable only through the inaccessible process of judicial review in the High Court. Legislation prescribes inheritance rules, but the autonomy amplifies the significance of whom officials believe in disputes. This has created misunderstanding over the department's name—that they preside over their own courts.

To members of the public, the official process is alien, starting with the paperwork. Afrikaans appears before English, and no other language is used. In some correspondence, the template powerfully communicates a hybrid legal-administrative history. The post-apartheid national coat of arms and affirmation of access to justice are juxtaposed with a warning in bold italics: '*Die Bloedige Hand Erf Nie*' (in Afrikaans: the bloody hand does not inherit). Legal process and administration are often unfamiliar, but South Africa's particular legacies intensify this experience. Here, from the outset, is a reminder of the weight on the present of the Afrikaans-dominated old order.

Once confronted with the details, intestate succession rules provoke surprise and disagreement among many relatives of the deceased.<sup>58</sup> Perhaps the most common complaint is from siblings, or even parents, who expect enduring tenure rights, but now face eviction by spouses. Shadowing Master's officials, I heard countless cases of siblings or parents shocked that a short-lived or informally separated spouse would keep the family home. Conversely, long-term unmarried partners also realize with disbelief that their only claim to the estate is as guardian for minor children. The siblings-versus-spouse fight, as in the High Court example earlier, is the preeminent trope in South African inheritance today—immediately recognizable among lawyers, community workers, and administrators.

58. Such shock was equally evident among students at the University of the Witwatersrand where I attended the succession law lectures of the LLB programme.

Disagreement and confusion are exacerbated by the disconnect alluded to in the dissenting Bhe judgment, and evident in Zanele's example: between succession as acquiring assets, and as stepping into the shoes of the family head as custodian of a multi-generational home and site of engagement with ancestors. Here, Assistant Masters are sympathetic, and the practical norms with which they operate recognize the importance of the family house.<sup>59</sup> The only avenue for recognition, however, is to query how the deceased acquired their house—as earlier in the High Court—giving hope to disenfranchised siblings, but reintroducing further uncertainty about the family property. Meanwhile, Assistant Masters must also stand for the law, which insists on individual equality—and in particular protects widows and their children against bullying patrilineal elders.

If diffidence about the law comes from a lack of familiarity with rules and their processes, it is equally underlined by the way kinship roles are thrown into question in official meetings. On one occasion, an elderly man, claiming a house against his sister, took the lead explaining the circumstance of the family house. But soon after he started, the Assistant Master stopped and corrected him, concerned immediately to protect against gender discrimination: 'No! If you are not the only child, then it is "our father"!'. Yet given the lack of state control, an unfamiliar administrative edifice seems more often to undermine than reinforce confidence—a point we return to in the next section.

Experiences of administration shape the very form of challenges to legal prescriptions. 'Clients' appear before officials to complain, immersed in paperwork, arriving with bulging envelopes and files containing their bureaucratic histories, including police affidavits in an attempt to formalize one side of an argument. Those disputing entitlements to houses assert the special status of the family house by producing their apartheid-era permit—carefully preserved, its list of recognized members articulating a version of kinship, under the banner of a now-defunct local authority office. Contesting how one family member got themselves registered, they flip the title deed's authority and the permit's anachronism, claiming the latter to represent truth and the former a fraudulent formality. Title deeds are themselves not what they seem: they may not bear the holder's name because they circulate in informal sales. A piece of official documentation becomes an emblem of the sale's legitimacy, even if there has been no change of name in the records. From that point of view, it is the records that are mistaken. Documentation is all important, yet comprises layers that, as in

59. See Thomas Bierschenk and Jean-Pierre Olivier de Sardan, 'Studying the dynamics of African bureaucracies: An introduction to States at Work', in Thomas Bierschenk and Jean-Pierre Olivier de Sardan (eds), *States at work: Dynamics of African bureaucracies* (Brill, Leiden, 2014), pp. 3–33.

other postcolonial settings, 'entail divergent and even contradictory notions of personhood, state, and society'.<sup>60</sup>

Concrete changes thus combine with legal-bureaucratic legacies and the specifics of institutional inclusion. Here we see the inchoateness of incorporation and the entanglement of administrative histories with a lack of normative consensus. Key is the fact that legal-administrative process does not have unifying effects. This is intensified by renewed stratification within the system itself, as the final section explains.

### *The persistence of separate government*

In part to cater to South Africa's extraordinary inequality of wealth, financial incorporation, and legal familiarity, inheritance bureaucracy has reproduced a strangely durable system of separate government. The result underlines the fragmented character of administrative process, while also illuminating how bureaucratic lacunae frame assertions of custom.

At the Master's Office, the standard track for deceased estates is cumbersome, a feature of the 1965 Administration of Estates Act. Here, today's dramatically expanded public confronts a two-step process involving different departments—appointing an executor and supervising the estate's liquidation and distribution. In a tightly regulated back-and-forth engagement with the Master, adverts are placed twice, each in two newspapers, inviting claims and objections within prescribed periods. Reportedly, almost no one reads these except professional debt collectors. Adverts need not be in a language that interested parties might understand—another holdover from when the regulations covered a more homogenous minority. Objecting is complicated. The Master's file gathers claims (debts, maintenance) and proofs of transfer little changed even from those archived in the 1920s under a previous version of the legislation. The stipulations have consequences. The process requires an attorney, who charges for services, on top of the usual transfer and Master's fees. No appointments can occur without consent from all living heirs. Where kin networks are far-flung and domestic arrangements shifting, this has knock-on effects—the deceased's insurance policies cannot pay off mortgage bonds and other debts, for example, because they are inaccessible until the estate is processed. A growing number of township houses have increased in value in a booming township real estate market and thus require this standard track.<sup>61</sup>

60. Geoffrey Hughes, 'Infrastructures of legitimacy: The political lives of marriage contracts in Jordan', *American Ethnologist* 42, 2 (2015), pp. 279–294, p. 291.

61. Statistics collated by the Chief Master, mentioned earlier, show that a quarter of estates exceed the threshold. Even given underreporting among small estates, this is testimony to the number of valuable township houses.

For those who have achieved some measure of accumulation, it is another reason to avoid legal process, despite its potential protections.

Under a threshold of 250,000 Rand,<sup>62</sup> estates are channelled into an abridged process. Previously more often a way to simplify matters for surviving spouses with few assets, this took on fresh meaning as expansion meant it applied to most deaths. The Master simply appoints a family representative to take control of assets and claim or distribute them—issuing a ‘Letter of Authority’. Procedure narrows to a single official’s decision, given further consequence because the Master then has no oversight of the appointees’ actions.

Confusion about Assistant Masters’ ambiguous roles—adjudicator, advisor, mediator, and defender of the law—is compounded by the popular notion that a Letter of Authority amounts to a certificate of ownership. Assistant Masters repeatedly insist otherwise. But, practically speaking, unsupervised distribution enables many letter holders simply to keep the property, where disputants are particularly unlikely to take them to court. Many never even transfer assets into their names, settling for paperwork confirming their recognition. Registration would, anyway, require Deeds Office fees and settlement of municipal debts. Informal assertions of the family house can thus be channelled through bureaucratic mechanisms and their perceived documentary protection—a degree of evasion under the system’s auspices.

The simplified track’s institutional blindness enables exclusion, not just informal inclusion. Fraud is rampant, confirmed by specialist detectives.<sup>63</sup> All living heirs are still supposed to consent to any appointment. Where fights are evident, attorneys are brought in, although this again introduces intimidating administrative complexity and costs (the state-run Legal Aid programme only assists if minor heirs are involved). But, with no built-in follow-up process, relatives—or even chancers with similar names—get away with omitting kin when reporting. After having themselves appointed Master’s Representative, they sell the property. Heirs are confronted with eviction orders and paperwork evidencing the sale of their home—a shady corollary of the aspiration to purchase formal property, evident in Zanele’s case. Popular awareness of such risks undermines the possibility that state process might form the basis of a wider consensus.

For those encountering fraudulent expropriation, the Master’s decision is only one part of a bigger problem requiring a reversal of transfer and therefore a judge’s decision. The system’s fairness relies on recourse to the High Court, which costs most people too much money, time, and energy. In a stratified administrative system, the majority lack effective legal

62. Approximately £15,000 in 2017.

63. Interview with detective, Johannesburg Central Police Station, 15 December 2017.

protection. They approach the state in different ways from their wealthier counterparts, and accumulation for the next generation is rendered still more precarious than otherwise. Access to justice is profoundly inflected by South Africa's racialized administrative history; another casualty is commitment to the system. Bureaucratic encounters give law everyday meaning, while throwing into relief and crystallizing claims to custom.

A legacy of little oversight is epitomized by the many houses never transferred at death. These remain for years—even generations—in the names of deceased people. One reason, as noted, is that transfer requires payment of outstanding municipal rates and utilities, which stack up prohibitively, preventing sales or mortgages. Another is the avoidance of conflict among kin. Many estates reported at the Master's Office are at least a decade old—the requirement to report within two weeks is a fiction, and the Master has no punitive powers.

The stratified administrative state is epitomized by Johannesburg's Central Magistrate's Court, Family Section. In an austere concrete monolith, wooden divides between white and black galleries still in place, and staffed by a magistrate, stenographer, translator, and police guard, the court administers black deceased estates just as it did under apartheid. When the system was deracialized, black estates already lodged with magistrates' courts had to stay there. The Johannesburg court has around 165,000 open files, in which the status of houses remains uncertain. The aim is to reduce the backlog, albeit without a budget. The only way is if people bring complaints and, each day, a queue trails down the corridor. Families fight out their disputes, going back as far as the 1970s, armed with Black Administration Act paperwork. A dedicated magistrate picks over 40-year-old permits to reside and issues subpoenas to determine what happened. Calling on disputing kin in open court, he pieces together generations of non-transfer, as people avoided what was effectively the old apartheid system transposed into the post-1994 era. The Family Section's isolated fourth floor renders visible South Africa's fractured administrative legacies and the historical terms of institutional incorporation. These underlie legal-bureaucratic process's disunifying effects, which in turn inflect acrimonious disputes over the terms of economic inclusion through homeownership.

### *Conclusion*

Expanded homeownership and the possibility of property inheritance have been key forms of post-apartheid inclusion in Johannesburg's townships. Yet, in a constitutional dispensation that places property rights centrally, they have not produced a normative consensus.



A classically Africanist perspective might begin analysis with normative pluralism and specifically the importance of customary values. For example, in South Africa, as elsewhere on the continent, the promotion of formalized property rights gained currency in the early 2000s, inspired by Hernando de Soto. Titling in apartheid-era townships was rolled into a wider vision. Important critiques underlined the dangers of undermining extra-legal norms and arrangements surrounding land and property.<sup>64</sup>

Without denying that normative breadth, this article has approached ownership and inheritance as an administrative artefact in a broad sense, well beyond property registration. This is key to understanding how notions of property are actualized and how individual disputes are worked out. Theoretically, the article has offered a complementary perspective to those taking normative diversity as a starting point.<sup>65</sup> The analysis above has instead explored how a lack of consensus is given shape in administrative process, as concrete experiences of the law and a broad set of claims around family property, kinship, and custodianship are together worked out to create a new understanding of and insistence on 'the family house'. An examination of encounters with bureaucracy reframes fights over urban property and inheritance as taking place in the administrative margins and in the legal shadows of apartheid.

In contemporary South Africa, a widespread lack of trust in state administration is matched by a tentative consent to being governed. It is therefore crucial to understand the mechanisms for mistrust and dissensus. The account offered here has implications for understanding post-apartheid inequality. Administrative inclusion—uneven and disjointed—has in practice been a form of 'adverse incorporation' that reproduces racialized stratification.<sup>66</sup> A history of state process and popular response—both marked by apartheid's legal shadows—has resulted in mutually reinforcing and iterative forms of disadvantage. Inflexible administrative rules inattentive to particular needs, and unequal abilities to navigate officialdom, are general features of legal bureaucracies.<sup>67</sup> But South Africa presents an especially stark case. Life chances are affected by official impenetrability, opaque decision-making, burdensome demands, stratified procedures, and—for most—unfamiliar legal culture that is perceived to be distant and

64. Rosalie Kingwill, Ben Cousins, Tessa Cousins, Donna Hornby, Lauren Royston, and Warren Smit, *Mysteries and myths: De Soto, property and poverty in South Africa* (Gatekeeper Series 124, IIED, London, 2006).

65. For example, Woodman, 'Legal pluralism'; Comaroff and Comaroff, 'Criminal justice, cultural justice'.

66. See, e.g., Kate Meagher and Ilda Lindell, 'ASR Forum: Engaging with African informal economies: Social inclusion or adverse incorporation?—Introduction', *African Studies Review* 56, 3 (2013), pp. 57–76.

67. Akhil Gupta, *Red tape. Bureaucracy, structural violence, and poverty in India* (Duke University Press, Durham, NC, 2012).

‘white’. Township residents’ experiences of being brought in from outside the law’s protections, but in ways that fail to transcend that divided history, shape and sharpen customary claims to alternative ‘moral orders’ that limit the institutionalization of ownership and inheritance.<sup>68</sup> This article has examined a lack of normative consensus, itself reinforced and given form by ineffective access to justice and weak regulation. The effect is persistent uncertainty about what happens in frequent disputes over scarce housing.

68. Karl von Holdt, ‘Institutionalization, strike violence and local moral orders’, *Transformation* 72/73 (2010), pp. 127–151.