



THE LAND AND ITS PEOPLE

The South African 'Land Question' and the Post-Apartheid Political Order

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ABSTRACT

This paper examines the disjuncture between the discourses of policy deliberation and contentious politics in debates about 'the land question' in South Africa. It argues that the South African land debate as it unfolds in the public realm is best understood as a displaced discourse indirectly addressing the terms of political belonging and the nature of the post-apartheid political order. Far from being a distraction, this is a challenge that urgently needs to be confronted in its own terms. Confronting the crisis of the post-apartheid political order requires a re-thinking of the terms in which national identity is conceived. The paper explores the possibilities of a politics of belonging centred on the Constitutional invocation of a political order 'for all who live in it' and what this might imply for a more constructive and productive engagement with land struggles in urban and rural South Africa.

Keywords: Land Reform; Constitutionalism; Government; Emancipation; Citizenship.

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The trouble with land

Why is it that South Africa's 'land question' is so stubbornly resistant to resolution? Twenty-nine years after the transition to democracy, it still casts a malign shadow over our political and policy landscape, widely acknowledged as a crucially important piece of 'unfinished business' left over from the past. It is South Africa's 'original sin' in much the same way as the memory of slavery is for the USA: its legacy obstructing any future it is possible to feel optimistic about, yet somehow never decisively dealt with. A 'ticking time bomb', in the language of journalistic cliché; but perhaps more properly imagined as an unquiet ghost or an unburied corpse haunting our national imagination: mouldering away in the background despite attempts to forget or ignore it, returning to the centre of the political stage when politicians feel the need to invoke it, but never addressed in a way that allows it to be finally exorcised or laid to rest. Why not?

One popular but unsatisfactory answer is: the Constitution, stupid! In this account, land reform was betrayed, right at the very beginning of our democracy, by the agreement to include the property clause in our Constitution, thereby retroactively legitimising colonial land theft and apartheid dispossession. The only way forward is thus to amend the Constitution to allow land expropriation without compensation. This is a popular take, because it seems to provide an obvious answer to a pressing question. But it is also inadequate, because it misrepresents the content and requirements of our Constitution and misunderstands the real obstacles in the way of land reform. The reality is that our Constitution as it stands *does* allow expropriation of land for purposes of land reform, and it is *entirely* possible for the state to pay below market value or even zero compensation if justice and equity demand it. In addition, the cost of land is not a particularly significant obstacle to the implementation of land reform; in fact, making expropriation without compensation a wholesale policy is likely to slow down our land reform programme, not speed it up.

A different answer is to say that the problem lies with the 'lack of political will'. From this point of view, the South African Constitution is not an obstacle, but the basis of and mandate for a successful land reform process. Not only does it provide the state with the legal framework it needs to implement a successful programme; it explicitly requires it. The problem is not that the state *cannot* do land reform it, but that it *will not*.

A more elaborate version of this position, long articulated by my colleagues at the Institute for Poverty, Land and Agrarian Studies (PLAAS), but recently stated most eloquently and powerfully by Tembeka Ngcukaitobi (2021), situates the problem not simply in the failure of political will, but also in the nature of the policy framework that has been created to guide land reform. From this point of view the difficulty with land reform lies in its class agenda. Land reform has lost its original pro-poor focus and has been captured by those who wish to use it to create a class of middle-class, medium- and large-scale black capitalist farmers (Hall & Kepe 2017). Not only is this a betrayal of the original promise of the African National Congress (ANC) and at variance with the Constitutional requirement to ensure that land reform leads to equitable access (Mtero et al 2021), it also makes land reform unworkable, seeking to recreate the 'agrarian class of 1913' in

the teeth of hostile macro-economic forces, littering the landscape with ill-conceived trophy projects — and creating along the way numerous opportunities for corruption and elite capture (Mtero et al. 2019).

Perhaps most interestingly, some critics of our current land reform programme also point out that the mainstream debate's almost exclusive focus on the redistribution of *agricultural* land — as if the privileged site of our 'original sin' is still somehow located in the countryside — misses the nature and the location of *actual* land hunger in South Africa: it is felt most urgently, not in the rural areas, but in our urban and peri-urban areas. What is needed is land not only for farming, but also for somewhere secure to live, in a way that makes possible the pursuit of the complex and ingenious forms of survivalist improvisation and hopes for intergenerational accumulation that is the reality for most poor, black South Africans (Ferguson 2013; Mtero 2021; Neves & du Toit 2016). Land matters in both rural and urban areas as a site for subsistence agriculture (especially horticulture and livelihood production). The maintenance of family compounds and landholdings is pivotal to the maintenance of the networks of care and reciprocation that are the mainstay of informal social protection. Security of tenure on well-situated land is essential to the pursuit of formal and informal livelihoods across the urban and rural divide. And finally, and most importantly, access to land matters simply to have a place you can call your own, where you do not have to pay extortionate rent or fear eviction. It is on these vital and concrete needs, not those of a small group of middle-class black farmers, that the debate on land reform should focus.

In this paper, I argue that while these last points of view capture something important about what is going wrong with land reform, they do not go far enough. I argue that the land question as it is posed in public debates in South Africa does not admit of a policy resolution, because it is not a policy question to begin with. It is a *political* question, and it is not really (or not only) about land. It is (also) about something much bigger. A more constructive debate is only possible if we are willing to confront this reality.

A thwarted debate

Let me start with an observation I have had occasion to make before (du Toit 2013; 2018; 2019). The debate about land in South Africa is beset by a curious disjuncture. On the one hand, the resolution of the land question is the subject of a burgeoning, complex, and technically sophisticated process of policy deliberation concerned mostly with debating the optimal content of policies for the redistribution of agricultural land. These debates focus on land considered as a socio-economic asset: as a factor in the production of agricultural goods (Sihlobo 2020), as a resource for the creation of jobs and the support of livelihoods (Aliber 2019), and (sometimes) as the foundation of informal systems of welfare provision, social protection, social reproduction, and distributional labour (Ferguson 2013). While these processes of policy deliberation often invoke the need to 'undo the injustices of the past', their primary focus is forward looking — and much narrower: discussions about who should *get* the land quickly segue into arguments about how it should be *used*, and the circle of stakeholders is assumed to be relatively delimited —

commercial or smallholder farmers and their agribusiness partners, and (at a pinch) specific affected groups, such as labour tenants or farm workers. The core issues at stake in debates also tend rapidly to become technical: the nature and design of agro-food value chains (Neves & Hakizimana 2015); long-running debates about optimal farm sizes (Thirtle & van Zyl 1999); about whether (or how) to give formal recognition to informal or customary land rights (Hornby et al. 2017); or about the difficulties experienced in the administration of communal property associations (Sebola & Mamabolo 2020).

But in public discourse, the land question is not understood in these terms. Here, the concerns of policymakers do not matter at all. Almost all the attention is focused, instead on the emotive and polarising debate about expropriation. On the one side, the Democratic Alliance (DA) has been turning the scary music up beyond all reason, invoking the spectre of an ANC-led government hell-bent on taking white property at all costs (see, e.g., Steenhuisen 2021); on the other side, Julius Malema — Economic Freedom Fighters (EFF) leader — has built an effective political brand based on embodying, with transgressive enjoyment, precisely the 'swart gevaar' that conservative white liberals fear, linking calls for wholesale land expropriation and nationalisation with boastful promises to disrupt white economic power:

... we are coming to sit on the dinner table, and if you are refusing us on a dinner table, we are going to destroy that dinner table. No one is going to eat until all of us in South Africa eat from the same dinner table. That's what we are fighting for (Ozman 2021).

The technical minutiae, in other words, are irrelevant. Indeed, public discussion of the land issue in South Africa mostly proceeds in complete disconnection from the material and practical complexities of actual land redistribution.

This is because 'land' figures in South Africa's political debates today largely as a symbolic issue. South Africa is not a country like, say, Viet Nam, where there has historically been a large, land-hungry and politically organised peasantry that has provided the social base for a mass politics built on the demand for land. The redistribution of agricultural land matters in South Africa today, and has become a fertile issue of intense political contention, mostly because it functions as a powerful *metaphor* for broader political problems only tangentially related to land ownership: the continued existence of racialised injustice; the obscene arrogance, ignorance, and entitlement of wealthy white South Africans; persistent inequality; and the continued social and economic marginalisation of millions of poor black people. The persistence of the racially skewed patterns of land ownership inherited from apartheid is politically explosive not because of what it means for rural livelihoods, but because it dramatises much more widely felt concerns about the perpetuation of white privilege and black abjection after the transition to democracy in the country as a whole.

It is important to understand just why it is *land*, and not something else, that has come to play this crystallizing role in our political debate. Land has not become resonant because of the numerous and humble material ways in which it is central to the livelihood strategies of poor black people. Rather, land has become a potent metaphor because, in the aftermath of

colonialism and apartheid dispossession, to say 'land' is to say 'race'; to say 'land' is to say 'nation'; to say 'land' is to fasten attention on the perpetuation of white privilege in a black republic (see, e.g., Ntsholo 2016). And the demand for its return allows the articulation of a whole range of concerns, which have tended to be silenced or marginalised within the constitutive rules of 'non-racial' political discourse. Above all, invoking the unresolved land issue is a way of calling into question the legitimacy of a Constitutional dispensation that requires the descendants of those from whom the land was stolen to live, cheek by jowl, and in a relation of legal, political, and moral equality, with the descendants of the settlers who stole it (du Toit 2018; 2019).

In other words, the 'land question' is not really, or not *only*, and definitely not *mainly*, about land. It is also, and most significantly about something else — let us call it, for want of a better term, emancipation. Here, I am using the word 'emancipation' as an open-ended term: a shorthand for the 'something' (however it can be defined) that the 1994 democratic transition promised but failed to deliver: 'true' liberation, 'people's power', an end to the nightmare of want, marginalisation, exploitation and black precarity persisting within the so-called rainbow nation; the frustration of living in one's own country as if it belonged to someone else.

And the problem is that here, in this respect, land reform as it currently exists cannot deliver. Firstly, it cannot deliver because the economic meaning of landownership has itself changed. During the eighteenth and nineteenth and even much of the twentieth centuries, holding on to land was indeed a way of resisting full economic incorporation into the South African capitalist economy, maintaining a bulwark against commodification, of achieving a measure of independence from the high costs of urban life and the demands of industrial labour markets. During the first two-thirds of the twentieth century, when white farmers were a powerful and protected constituency, cosseted and protected by the National Party and the early apartheid-distribution regime, ownership of land could also be, at least for some, the pathway to considerable wealth.

But the structure of the South African economy has changed. Land is no longer what it used to be. The dispossession of the land in the colonial and apartheid periods was followed, from the 1980s on, by an equally momentous but largely unremarked process: the capture of the markets. Agricultural production is now but a node in an agro-food system dominated by agribusiness, biotech, and logistics companies; farmers are integrated as subordinate links in buyer-driven value chains governed by supermarkets and food manufacturers (Bernstein 2013). To be a farmer is to be a price-taker, surviving in a sector where the name of the game is 'get big or get out'. Any notion that land reform can aim to recreate the 'agrarian class of 1913' is pure fantasy; and while pro-poor redistribution of land *can* make a significant difference to employment and livelihoods, that difference is still a marginal one in a context where inequality is driven by much more deeply embedded structural dynamics in South Africa's distributional regime as a whole (Friedman 2020; Seekings & Nattrass 2015).

Secondly, it cannot deliver because the *political* questions (of emancipation, of Constitutional legitimacy, and of racial belonging) that the land debate indirectly invokes and channels are, today, questions that arise in a largely urban society.

It seems, in other words, that the 'stuckness' of the land question in South Africa is at least partly due to the entanglement of two different questions — the 'land question' and the 'national question'; and the tendency of the debate to veer backward and forward between these quite different levels without clearly distinguishing between them. Sensible proposals for the redistribution of land for jobs, livelihoods, or for social protection cannot get traction partly because they do not address the underlying political questions that animate the debate in the first place; and those underlying questions themselves — always only indirectly and metaphorically present — are never confronted in their own right but are posed indirectly, with powerful but obscure emotional force, through the metaphor of land.

Roads taken ...

If one of the difficulties with the South African land debate is that policy deliberation and political contention are at one and the same time both entangled and misaligned, how can we proceed? Policy debates on land reform seem to have responded to this challenge in two quite distinct ways.

Refusing the metaphor

The first strategy is to try to ignore, avoid, bracket, or transcend the contentious politics of land in the public sphere: to regard the affective burdens and emancipatory dreams with which the land question is freighted as matters that are 'muddying the waters' and preventing sensible or rational policy deliberation, and which for that reason need to be set aside or otherwise outmanoeuvred. From this point of view, the problem is the politicians, and finding an answer requires us to extract the debate on land reform from political point scoring and the agendas of vote-hungry and populist politicians (Mnwana 2019). What is sought is a discussion of the land issue from which the metaphorical surplus-meanings of the land issue are excluded, so that policy deliberation can continue insulated from the distorting impact of broader political engagement.

Thus, the agricultural economists Nick Vink and Johann Kirsten — who contributed in large part to the formulations on land in the National Development Plan (NDP) — propose, for instance, that land reform should take place in a radically decentralised way, within local Land Management Committees, essentially controlled by the private sector and other local stakeholders, imbued with statutory powers but *outside governmental control*: a land reform process, in other words, encapsulated and protected from democratic oversight (du Toit 2019; NPC 2011; Vink & Kirsten 2019). A different approach can be found in the work of Michael Aliber, who endeavours to learn from the experiences of land reform implementation of the last 25 years: he proposes a vision of land reform for livelihoods that depends on a sophisticated and technocratic art of government. Even though Aliber's work is not marred by the cynicism of Vink and Kirsten's intervention, it is still an approach that depends for its success on the hope that

land reform can be depoliticised, so that policy and programming can be informed by careful processes of governmental deliberation about the rational allocation of resources rather than the requirements of political theatre (Aliber 2019). Even ‘radical’ and innovative approaches to land reform — for instance, those which invoke the Constitutional mandate for equitable access (Mtero 2021), which seek to challenge the class basis of land reform or to prioritise the need to transform the agrarian structure (Cousins 2016; Hall 2015) still often seek to address land reform *primarily as a policy problem*, in which the excessively racialised nature of popular discourse *obscures* the essential class issues at stake. All of these responses — conservative, ‘moderate’, and Marxist — seek to protect policy deliberation about land from the superheated energies of political contention by constructing arguments that seek solutions through rational analysis of material interests in land rather than in engagement with its symbolic and affective dimensions.

The problem with this approach is that it is plainly not working. The difficulty is not with the content of what is being put forward. Many of the policy proposals being floated in these debates (particularly by the critics of the current programme’s deeply misconceived class agenda and its overfocus on commercial agriculture) are of great importance if land reform is to work at all. But the notion that contentious politics can be somehow contained, set aside, or finessed seems to me rather naïve. The anger and frustration at the perpetuation of inequality and poverty is too strong, the toxic legacy of unreflective white supremacy is too pervasive, and land is too potent a metaphor of general racial injustice for the policymakers from the left or the right ever to be able to get a clean shot at their target. Indeed, the scope for rational policy deliberation, untroubled by political contention, is arguably narrowing. The very prominence of the land question in our national politics since 2017 is mostly due to the willingness of both the EFF and the ANC to use the issue as a basis for political manoeuvring with very little genuine interest in its actual, practical resolution. On the political right a similarly short-sighted and dangerous strategy is being pursued by the DA, which has abandoned even the pretence of serious policy engagement, preferring to link overblown fears of wholesale expropriation with discourses about farm murders and white genocide, seeking to connect white oppositional politics in South Africa with the transnational networks of white supremacist solidarity (Findley 2020). So, while there is great value in many of the proposals and models being put forward by the policy professionals, they end up not being heard: ignored and overpowered by the more urgent and audible noises of political contention.

Making it literal

A second response is not to try to *disentangle* the distribution of rural land from the burden of emancipatory desire, but rather to *align* them: to argue that if land reform policy as it currently stands can indeed not deliver on its emancipatory promise, then the task must be to ensure that it does. From this point of view, the way forward for the land reform process is not to protect or insulate it from politics but to broaden and deepen it, to make it more radical and more thoroughgoing: to go from mere ‘land’ to ‘agrarian’ reform, to the complete transformation of the agro-food system — even of capitalism itself. Rather than seeking to disconnect the land question from its metaphorical connotations, this strategy seeks to make land reform deliver on

its implicit promises and to use it as a vehicle for deeper and broader political change, so that resolution of the 'national question' is achieved by way of the transformation of society through class struggle.

There are many different visions of how this can be done. The EFF's demand for the nationalisation of land is clearly one take on how to do this, with summary expropriation by the state effecting the resolution of the land question from above. Other visions, for example that articulated by Mazibuko Jara (2019), calls for mass action 'from below' in which poor and landless people are mobilised around an agenda of agrarian transformation and the creation of a solidarity economy. This latter perspective is, of course, closely aligned with transnational 'agrarian populist' networks such as *La Via Campesina* and movements coming together around visions of food sovereignty and degrowth. All of them in one way or another see land reform as the prerogative, not of policymakers, but of a transformative, perhaps even revolutionary social movement for which agrarian reform is a central component of the struggle of the labouring classes for a post-capitalist or even socialist future.

It is important to note that these arguments do indeed flag many real and important problems. South Africa's heavily concentrated and unsustainable agro-food system is undeniably in need of a thoroughgoing critique; the demand for land reform to prioritise the marginalised poor is urgent and valid; there are powerful arguments for involving people as agents in processes of development driven by themselves; and there are indeed important gains to be made through creating networks of solidarity and social agency through work with landless and marginalised people. But the notion that these forms of politics can deliver a broad and revolutionary emancipatory transformation of South African capitalism as a whole falls short on two counts.

Firstly, there is what one might call a problem of political reality. There is, very simply, a plainly evident disconnect between the enormity of the social task being envisaged here — the thorough transformation of the entire food system, not to mention capitalism itself — and the fragmented and marginalised nature of the social forces that are available to deliver this change. The landless and unemployed classes of agrarian labour are scattered, unorganised, and lack significant political leverage. The conditions for political mobilisation that existed in the South African 1970s and 1980s, in which it was possible to bring together disparate and disconnected local struggles (of workers, of students, of rural peasants) into a popular front against apartheid no longer exist. The unfortunate reality is that, despite all the rhetoric about the virtue and power of mass action in pursuit of social transformation, these visions are not at present linked to any real and effective forms of popular politics.

Secondly, there is a sense in which these visions of agrarian transformation remain curiously limited. They are still often beset by a tendency to consider and valorise *land*-based livelihoods and *agrarian* transformation, as if these can be understood separately from the broader currents of democratic politics in South Africa; or as if it makes sense, in this day and age, to talk about 'emancipatory *rural* politics' as a distinct and coherent political terrain (see, e.g., Scoones et al. 2017). In much 'agrarian populist' discourse there seems to be a kind of slippage between the notion of social and political emancipation, broadly speaking, and the specific kinds of change that even a successful agrarian social movement can deliver. This may be a convincing narrative in largely agrarian societies, where a peasants' or even small farmers' movement could have an

opportunity to play a leading role on the national political stage. But in a society as thoroughly urbanised as South Africa, imagining landless rural people, farm workers and small farmers playing a leading role in a mass-based social movement seems far-fetched. At the very least, it involves a misplaced faith in the ability of a shared material condition of abjection, poverty, inequality, and marginalisation to ensure the eventual political coherence and unity of popular alliances.

Inequality, emancipation, and the political order

So where does this leave us? If the project of land reform can neither be separated from the emancipatory hopes implicit in the demand for expropriation without compensation, nor in any simple or direct way deliver on them, what options remain? Are we doomed to be stuck in a stalemate in which land reform is forever bedevilled by politics?

I think a third approach is possible: to argue that a more creative and effective option is to engage *directly and fully* with the political, symbolic, and affective issues that are indirectly vectored through the metaphor of land. If the real underlying issue at stake in South Africa's land debate is frustration at the persistence of poverty, inequality, and economic marginalisation in the country as a whole, unfulfilled dreams of true emancipation, growing dissatisfaction with our constitutional and legal order, and the questionable legitimacy of our non-racial political settlement, then the appropriate political task is arguably to stop beating about the bush and to take on these questions as *important political problems in their own right*. Rather than trying to hope that they can be indirectly finessed — the 'time bomb' of political illegitimacy defused by changing the optics of patterns of land ownership — the fundamental and underlying questions of deep inequality, of the toxic legacy of a settler society, of the value of the rule of constitutional accountability and our rule of law, and of the contestable nature of political belonging in the aftermath of colonial settlement *need to be addressed head on*. They are clearly of primary importance to the political future of the South African democratic experiment; and whatever resolution is found for the distribution of and access to land in South Africa, will in any case need to be shaped by the nature and outcomes of debates about these core issues. Rather than insulating the debate about land reform from the charged questions about belonging and legitimacy that drive it, we should confront those questions; and we should do so sooner rather than later.

This is a daunting challenge, and not one that can be addressed in detail in this short paper. I will however, set out some thoughts about each of the three core issues that need to be confronted: addressing inequality, the problematic of emancipation, and the unresolved nature of our national question.

Inequality

First, inequality: here, the problem should be obvious. No resolution to anything at all is possible if South Africa does not begin dealing more effectively with the persistent reality of deep and racialised inequality in both urban and rural contexts. Clearly an effective and expansive programme of land reform geared, not only at the de-racialisation of large-scale agriculture, but also at supporting the livelihoods, coping strategies, family structures, and tenure security of poor and marginalised people in rural *and* urban contexts will play an essential role. But it is not enough. The marginalisation and structural exclusion created by land dispossession and by decades of corporate agro-food restructuring needs to be addressed — but this necessarily can only be one small part of a much broader coherent strategy for pro-poor change that informs economic policy more generally.

It is important to realise that this is not an impossible demand. The depth of inequality experienced in South Africa today is not the inevitable outcome of the underlying logic of capitalism itself, but of the specific design of the distributional regime that took shape here during the middle of the twentieth century: a distributional regime that entrenched and enforced deep divisions between (mostly urban, and formally employed) insiders and (mostly rural landless, jobless, and African) outsiders (Seekings & Natrass 2005). The crisis of the post-apartheid project is in large measure the result of a policy framework that failed to decisively transform this distributional regime, resulting merely in its partial de-racialisation and a limited shift in the composition of the groups of beneficiaries (Friedman 2021; Seekings & Natrass 2015). What is required is the transformation of the policies, institutions, and arrangements that have led to this situation, and that have effectively ended up protecting the interests of South Africa's employed 'insiders' against the unemployed.

This is admittedly an enormous, even daunting task, requiring both a coherent vision and political will. It is particularly challenging because we now find ourselves in adverse conditions, with flagging growth, a global economy beset by climate and political crisis, a moribund state, collapsing infrastructure, and a ruling party seemingly caught in an endless leadership crisis. But it is also worth stating that addressing inequality is not an all-or-nothing game. It is not as if South Africa faces a stark choice between endlessly increasing social inequality and a classless utopia. Implementable policies exist, even within our capitalist economy, that can result in a more equal distribution of the benefits and costs of economic activity. It is entirely possible to take steps that reduce the precarity of black and landless life, and to make it possible for poor and marginalised people to participate in the South African economy on more advantageous terms. Rolling out a universal basic income grant, making rural and urban land available to those who need it, adopting policies that enable and sustain informal economic activity, getting rid of the colonial and segregationist legacy that still shapes urban planning and land administration, and, above all, gradually and laboriously rebuilding the functional capacity of the state are all still within our grasp, should we muster the collective will to take on these challenges. At the very least, they are essential if things are not to get a whole lot worse; and if they are well and wisely done, they can be part of a process of 'building tomorrow today', supporting the livelihoods of poor black people

and building their social agency in a way that makes possible deepening democracy and broadening the strategic scope for future action.

Emancipation

But inequality is only part of the problem. A large part of what animates the land question in South Africa, at least for some of its most vocal spokespeople, is the desire or dream for something very different. That is what Julius Malema's resonant promise to 'destroy the dinner table' invokes: not 'inclusive growth' but *total social transformation*; not strengthening the capacity of a technocratic state to manage the economy in partnership with active citizens for the benefit of all, but tearing down the entire postcolonial structure and making it new in the cleansing fires of socialist revolution or national liberation.

Here, a political reckoning may be needed. The notion that 'the Revolution will be live,' as the poet Gil Scott-Heron famously put it (Scott-Heron 1974) — the idea, in other words, that 'real' social change requires a decisive, redemptive, and *complete* transformation of society in which all contradictions are resolved and the will of the people is manifest as pure, unmediated presence — is a recurring theme in modern anti-capitalist politics; and although it does not command wide and popular assent in South Africa today, it is still a dearly held article of belief in some sections of its socialist left. For some, of course, particularly within the ruling party, the wearing of revolutionary garb is not part of a genuine strategic commitment, but rather a rhetorical and legitimating ploy; but for many it still serves as a badge of political identity, and a way of signifying the depth and earnestness of their rejection of the brutality and inhumanity of the capitalist system as we find it around us.

But it does not provide much guidance in thinking about 'real change'. Quite aside from the question of political reality I have mentioned above — the question of the balance and character of what Marxists call the social forces — there is also a real and pressing question about the politics of this commitment. Anyone who today seriously purports to argue for the resolution of South Africa's political and social problems through a process of totalising revolutionary transformation is either unconsciously or deliberately refusing to engage with the actual history and legacy of revolutionary and socialist politics in the twentieth century. It may have been possible, in 1917 or 1918, to still look forward with idealism and enthusiasm to the possibility of spontaneous popular uprising, guided and supported by a core of disciplined activists, fundamentally transforming the institutions of society to enable the transparent government of the people by itself (see, e.g., Luxemburg 1961). But today, after the brutality of Stalinism, the murderous destructiveness of Pol Pot, and the chaos of the Cultural Revolution, it no longer is. At the very least, it is important to recognise that the tragic history of twentieth century socialist politics, and the total failure of repeated attempts to link the project of political emancipation to that of fundamental economic transformation, are not only due to the triumph of reactionary forces or the betrayal of the purity of its principles. These disasters also proceeded from problems immanent *within* the socialist and emancipatory tradition itself, and in particular, its failure to engage seriously with the problem of politics.

One way of framing this issue is to take note of the internal limitations of the political tradition of emancipatory politics that we have inherited from the European Enlightenment. Powerful as this tradition has been, it is built around the construction of a shackled political subject: a subject constrained, thwarted, and denied by unnatural and external bonds of oppression, of law, of political power, of convention; and whose task it is to cast aside those bonds to reclaim for itself an original state of freedom in which it can express itself, own itself, and become itself. But what this tradition is silent about is the conduct of *politics* and of the nature of *political order* in the context of the human interdependence that is central to living in a complex society in our times. If it is not possible to exit from social relations altogether — to melt back into the forest, like Rousseau’s original humans, or to go off-grid, as imagined by today’s technologically enabled elites — and if it is not possible or desirable to resolve political differences simply through the exercise of brute force, then the unavoidable question is how to deal with the adjudication of competing interests and the management of conflicting visions of the common good within a shared polity. That is not a problem that is resolvable merely by invoking the virtues of solidarity, or by dreaming of a future in which the state withers away and the government of people gives way to the administration of things.

Rethinking political order

The task, in other words, is not merely to free oneself from pre-existing shackles. It is much more. It is the creation of a new political order. It is, as Ivor Chipkin (2021) has recently argued — the *constitution of ‘the political’* itself: the transformation of members of society from a mere *population* into a *political community*, and the determination of the ground rules and institutions whereby conflict, contention, and competition can be managed and resolved. This is the issue at the heart of our national question: Who are we? Who belongs within the boundaries of our political community? What obligations and rights does membership confer? And what do we owe each other?

Perhaps the most powerful and relevant intervention into this debate in recent years in the context of the land question has been made by Tembeka Ngcukaitobi (2021), in his book *Land Matters*. It is important to understand that Ngcukaitobi’s intervention works on two levels. On the first level, his work is an urgent call for a radicalised and sweeping land reform project. Ngcukaitobi’s argument is that the South African Constitution, far from being an obstacle to land reform and social change, allows, enables, and in fact enjoins it: that an expansive reading of the Constitution, interpreted in the light of the history of colonial settlement and subjugation, can be the foundation for a generous and pro-poor land reform project aimed at supporting the livelihoods of poor and marginalised black people, enabling the recovery of African identities, and entrenching the rights and empowerment of women.

But that is only one aspect of his project. The final and concluding sentence in Ngcukaitobi’s book is the urgent injunction (it ends without a full stop!) that ‘There can be no struggle for the return of land without the rule of law’ (2021, 239). His book, in other words, is also an impassioned argument for the *value of the Constitution itself* and the political order it inaugurates: an argument

that freedom is only possible on the basis of the framework of rights and law created by the Constitution and a strong state acting to make its promise real.

This, then, brings us at last to the nub of the question. For, above all, the salience and political charge of the 'land question' in South Africa is linked to its role in casting into question the legitimacy of this political and legal order in its entirety. The trouble with land is the trouble with our Constitution, and the trouble with our Constitution is its scandalous assertion that South Africa is a political community that brings together *as juridical and moral equals* 'all who live in it': the white people who have been — and who largely continue to be — the beneficiaries of the violence and brutality of colonialism and apartheid, and black people, who have been delivered by this history into a condition of poverty and disempowerment. The real point of the land debate is the question it asks about the boundaries of South Africa as a political community: Whose country is this anyway, and on what terms should and can we co-exist in it?

The distinctiveness of Ngcukaitobi's intervention is that he reframes the question of the legitimacy of the South African Constitution by essentially depicting it as a debate *internal* to South Africa's black liberatory tradition (see also Ngcukaitobi 2018). Challenging the racially polarised framing of the argument about the value of our Constitution that sees it as a confrontation between white people (who argue for the rule of law because they want to keep their land) and black people (who, if they are to recover their land, need to reject it) (see Sisulu 2022), Ngcukaitobi recounts the struggle for black liberation in South Africa as a struggle *for* the law; a struggle for a Constitutional order in which rights and freedoms can be protected and people can find their dignity as citizens. It is a powerful argument, not least because Ngcukaitobi is completely correct to question the self-serving narratives of the (conservative) white people who style themselves as liberals in South Africa today, their cynical appropriation of constitutionalism for sectional purposes, and their dishonest attempt to retroactively paint themselves as the real champions of the struggle against apartheid. Indeed, Ngcukaitobi's books may arguably be read as evidence of the continued existence and vigour of a powerful tradition of humanist and egalitarian radical *African* liberalism in South Africa's political culture.

But in the end, this reframing is not enough, because the underlying question will not go away: what is the nature and the boundaries of the political community constituted by the South African Constitution? 'The people shall govern', but who is 'the people'?

'All who live in it'

This, then, is where a serious engagement with the unspoken politics of the land question brings us: to the bankruptcy of rainbow nationalism, and the increasing inability of the hegemonic articulations of non-racialist discourse to allow a successful engagement with the painful memories of racialised violence and the present-day realities of persistent inequality.

It is important to understand that here we are talking about more than the end of a sentimental dream. It is much more serious. The inability of 'rainbow-nation non-racialism' to provide

coherent and convincing narratives about how we should live together as citizens and what we owe each other threatens the legitimacy of South Africa's political settlement itself: it imperils the very notion of South Africa as a rule-bound political order held together by a respect for the rule of law and the processes of government.

State capture and the national question

And so we come to 'state capture'. As Chipkin has argued, 'state capture' should not be understood merely as the outcome of self-interest and moral decrepitude on the part of venal politicians. Rather, it should be seen as a distinct political strategy rooted in a critique of South Africa's liberal democratic order (Chipkin 2021; forthcoming). The 'Radical Economic Transformation' (RET) faction in the ANC, whose arguments have provided the ideological cover for large-scale corruption and the perversion of state institutions, is not driven by mere criminality. Rather, it should be recognised that they have formulated an important counter-hegemonic discourse that dismisses the basic rules of our Constitution and the procedures of accountable government as mere facades for white privilege. This is what makes it possible to characterise RET and EFF as populist: for they purport to be acting in the name of the *real* South African people, the South African people who are the *authentic subject* of South Africa's long struggle against oppression, and whose interests are not served by the laws that protect 'white monopoly capital'. This is a very different definition of nationhood: it asserts that South Africa belongs, not to 'all who live in it' but to 'Africans first'; the 'true' Africans who align themselves behind the banners of RET figurehead, Jacob Zuma and EFF's Malema. The bankruptcy of rainbow nationalism, in other words, is what has made it possible for Jacob Zuma and the RET faction to tear up the Constitution and to engage in the wholesale repurposing of state institutions in order to redirect rents (Bhorat et al. 2017) and to use political violence and the wholesale destruction of national infrastructure as part of a political game to preserve their networks of patronage.

Here it is also important to realise that the danger of the state capture project does not only lie in its direct fiscal implications. Rather, it is the way in which this wholesale repurposing accelerates the fragmentation and descent into incapacity of an already fragile and poorly functioning state, and the undoing of the construction of 'the political' on which our democracy depends. What the RET faction delivers, instead of a government 'for all who live in it', is not a government for black folk. It is no government at all — or rather, a government organised around warlordism, the deployment of patronage, and the entanglement of the operations of the state with the 'hidden power' required by the political logic of organised crime (Cockayne 2016). Indeed, as Chipkin (forthcoming) has argued in a more recent piece, it involves the deliberate dismantling of the South African political order, and the articulation of a new narrative in which the ANC is located entirely outside the structures of political and legal accountability.

This is the real threat posed to South Africa by its unresolved land debate. It is not the spectre of 'expropriation without compensation'. It is not the ability of the EFF to use land as a lever against the ANC's electoral hegemony. Neither is it the prospect of the capture of land and other resources by wealthy elites — though that is a matter of serious concern. Rather, it is the erosion

of the notion of South Africa as a nation of laws, working together under a shared government dedicated to equality. It is the fragmentation of the coherence of the democratic and political process.

The fundamental difficulty we face here is the tension between the nature of the Constitution as a political order for 'all who live in it' and the presence of deep divides that seem to undermine its very possibility. How is it possible to constitute a population as a political community, as 'a people' under these conditions, and what are the terms of belonging?

The practice of democracy

The question, then, is not simply who shall own the land, but who shall count as 'the people': the people who shall govern, and to whom the land belongs. The Constitution provides an answer that is at the same time very specific and (in one crucial aspect) interestingly and evocatively ambiguous: echoing the famous formulation of the Freedom Charter, it announces in its preamble that South Africa belongs to 'all who live in it'. It then goes on to define the South African people in formally political terms: the people are the people of a *country*; and the land of the country shall be shared among them. But what does it mean to define political community in these terms? And how do we deal with the deep and painful divisions and experiences of historical wrongs, present abjection, and fears of the future that so many in this population experience? 'Civic nationalism' — the notion of a patriotism and a sense of belonging simply based on the formal rights and identities bestowed by our Constitution is clearly not enough. What then is the alternative, if not the unmaking of this political community as proposed by the EFF and the RET faction?

One promising, but tantalisingly challenging alternative is to say 'the people' is not an already-given, empirical reality, but a historical *project*, something in a process of *emergence* or *creation*. This is the answer that Chipkin gives to the question posed by the title of his book, *Do South Africans Exist?* South Africans, he suggests, exist only when and where people *take on* their role as South African citizens, to act in terms of the responsibilities and duties they are enjoined to by the Constitution. Membership of the national community does not simply flow automatically from being part of a given population; rather, it is something that only becomes real by being *enacted* through participation in the processes and institutions of democratic practice, in accordance with the democratic norms of mutual respect, egalitarianism, and solidarity the Constitution demands. The boundaries of the political community are not defined by simple geography, nor by ethnic 'marks of population'; rather, it encloses those who share in the 'special solidarity' produced in and through democratic encounters (Chipkin 2007, 15, 210). To do this is to see the South African nation not as a legal and civic reality, but as a moral and political potentiality: a community that is made real not through constitutional fiat, but through a laborious process of social struggle: through good government and sensible policymaking and equitable policies, but also through a willingness to be present and accountable *as citizens* to one another for our past, for our privilege and pain, and for the possibility of a shared future.

There are three aspects worth pondering in this way of thinking about political community. Firstly, it frames citizenship as an *ethical* relationship. It is not (as liberals would have it) simply a neutral juridical status. Nor does it simply flow from public participation in public affairs. Rather, it is a moral requirement that democratic encounters should be governed by the ethical constraints and freedoms of accountability, solidarity, and equality (ibid., 169).

Secondly, an important aspect of citizenship is that it has an irreducible *affective* dimension. What matters is not only *liberté* and *égalité* but also *fraternité* — the strong ties of what Chipkin calls ‘democratic love,’ of the ‘deep horizontal solidarity’ that people can experience through participation in the practices and processes of democratic life. Indeed, part of the point of deliberative or participatory public processes is not only their intended outcomes, but that they are also a way of making the *practice* of this connectedness, egalitarianism, and openness to others part of the ordinary lived experience of democratic life (ibid., 214).

But if this is to be more than a sentimental formula and about more than the temporary *frisson* of community that South Africans may experience when we encounter one another during various enactments of democratic membership (queueing to vote, for example, or for vaccines!), much more work has to be done. The idea that political community can be created through the mobilisation of democratic affect between citizens is a powerful one. But ‘democratic love’ does not come cheaply. It is about much more than singing ‘Thuma Mina’ (send me) or uniting around the symbols of national identification. It requires a willingness to confront and deal with the ghosts, the emotional baggage, and the material legacy of the past. To take on this challenge is to go well beyond the limitations of rainbow nationalism. The possibility of a shared South African nationhood lies not in seeking to leave behind the pain and anguish of our brutal past, either by wishing it away, or through narratives of nationalist triumph, but to be willing to be fully present to its ugly and persistent reality — and for each of us to be accountable for their part in its past and their role in rebuilding its future.

But thirdly, it is curiously and specifically limited. Chipkin’s formulation sees the boundaries of political community as being defined and embodied by *citizenship*. His formulation, in other words, falls short of exploring the full ambiguity of the crucial phrase at the heart of the Freedom Charter, the phrase that found its way into the preamble (if not the body) of the Constitution. To say that South Africa belongs to ‘*all who live in it*’ is to say very specifically that it does not only belong to those whose papers are in order. ‘All who live in it’ includes Somali traders. It includes Zimbabwean taxi drivers and Congolese truckers. It includes Malawian men and women who trade in dried fish or who work on construction sites. It includes, to borrow Mahmood Mamdani’s phrase, many, perhaps millions, who do not fit neatly into the simplistic dichotomy between ‘settler’ and ‘native’ (Mamdani 2020).

Indeed, it seems appropriate to argue that we should read the Constitution and the Charter as if, in that vague and inclusive formulation, those trying to find a way of articulating the nature of the political community in whose name they were speaking were exploring more spacious and encompassing ways of thinking about where the links of equality and fraternity might lead. We can imagine them as speaking about a community, neither strictly defined by the boundaries of the nation state (which, after all, are boundaries bequeathed by colonialism), nor encompassing ‘all of humanity’ (that is, as Chipkin rightly points out, the weak spot in Archbishop Desmond

Tutu's notion of the rainbow nation, where what we have in common is that we are all God's children, thus including everyone on the planet). Rather, 'all who live in it' includes everyone who *finds themselves here*, on this corner of our continent, stuck together with each other in the midst of the gigantic mess we have been bequeathed by our ancestors and by history; so that the task is to figure out the rules and practices by which we can create a survivable future characterised by kindness and care. This is in some ways a shakier and more complex, but also a richer and more flexible ground for the roots of social obligation and solidarity: a form of belonging rooted not in shared history, class interest, or ethnicity, but, as Partha Chatterjee (2006) and Jim Ferguson (2021) have suggested, in the temporary and provisional, but also more urgent connections created by shared presence and the politics of the governed in a rapidly changing world.

Land and the politics of belonging

Let us recapitulate: I argued in this paper that the question animating our land debate is the question of political belonging. Behind questions about the expropriation and redistribution of land, with or without compensation, lie deeper questions about whose country this is, about who really belongs here; about the boundaries of the national community, and what we owe each other. These questions are both deeply charged and hard to resolve. It is not possible to bracket them, or to hope that processes of policy deliberation be insulated from their unsettling metaphorical charge. Neither can they be dealt with by taking land as a metaphor literally, and by investing hope in the reparative fantasy that large-scale land reform, however 'radical,' can by itself deal with the deep and unsettling questions about the political and ethical viability of our polity. Neither evasion nor political literalism can do away with the painful difficulties and realities facing both the descendants of the colonised and of the colonisers. The challenge is to engage with the question of belonging as a *living and salient* issue: to accept that our relationship with one another as citizens is not something that can be simply taken for granted; and that the question of what we owe and can expect of one another as members of a shared political community, caring for 'all who live in it' is something that has to be continually kept alive and renegotiated.

In the previous pages I argued that this means arguments about the legitimacy of our constitution and of our legal order need to be front and centre in our political discourse. Secondly, the argument for constitutionalism and the political settlement on which it is based can only be won on the terrain of the struggle against socio-economic inequality. As Ngcukaitobi remarks, the point of our Constitution is not to venerate it, but to use it. This means that decisive action is needed — and urgently — to enact social and economic policies that bring real benefits to the landless, impoverished, and vulnerable populations created by the legacy of apartheid and the perpetuation of South Africa's narrowly based distributive regime.

But meanwhile, what about land? We have come rather a long way from arguments about farm size, or even about the class agenda of land reform. What, if anything, do the arguments I marshalled here mean for how we conduct discussions about how land itself should be distributed and governed? It might be true that the debate about land is about land as a symbol. But besides being a symbol, land is also very much a material reality, and access to it is a central factor in almost every aspect of social and economic life. The question about who gets land, how, on what terms, and how they use it, will not go away and remain relevant as well. How are we to approach those questions?

One way to think about this is to focus again on the problem I raised in the opening pages of this article: the problem of the misalignment and the tension between the two registers — that of policy deliberation, and that of political contention — within which the land question is discussed. Political contention cannot be wished away, and neither can it be resolved by collapsing the one question into the other. This is still true. But the possibility still exists that a more fruitful way could be found of *connecting* the two issues with one another. In other words, the challenge is to find ways in which proposals about the distributive politics of land and land use can be framed so *that they also directly address the deeper and underlying questions about belonging*. The question is, in other words, whether negotiations about the distribution of, access to, and use of land on the ground by poor people can be used as a vehicle to re-weave the web of belonging and political integration.

To approach land in this way is to go beyond approaching it primarily as a productive resource, and as the 'special issue' of a distinct class of rural dwellers; and to see it, rather, as a constitutive dimension of South African political life. From this point of view, one of the key dimensions of our current crisis is not only the economic and social marginalisation of the rural poor, but the denial of political belonging and citizenship much more generally. For one thing, land is a crucial component of the many issues (access to water, energy, transport, sanitation, and education; the right to freedom of movement and economic activity) that are at the centre of struggles of poor and marginalised people to survive and thrive in South Africa, and to make the promise of 'a better life for all' a reality. But beyond this, it is central to democratic political life. The commodification of land, the failure of land reform and of post-apartheid spatial development, and the free rein given to corporates and powerful vested interests to develop land, prospect on it, and to push aside 'those who live in it' for sectional interests and in the name of narrowly conceived and exclusionary paradigms of development is a disaster, not only because it has accelerated adverse incorporation and undermined the economic agency of poor people, but also because it has eviscerated the meaning of citizenship and political belonging for poor people wherever they live.

Landlessness has torn apart the connections and institutional relationships on which political integration into the national community depends, replacing them with warlordism and violently enforced clientelist relationships. Making land available for those who need it, where they need it, and involving them *as formally equal partners* in negotiations about who shall live on the land, how it should be used, and what they owe each other, is potentially one powerful way to re-create a political project and practice that can directly address the

disintegration of 'the political' currently under way in South Africa, that can contest the narrow and chauvinistic re-articulations of national identity being put forward by the RET faction, and that can take forward the inclusive, participatory, democratic, and empowering political tradition of which the Freedom Charter is still an important and salient articulation in Southern Africa.

Three further remarks may be useful here:

1. Firstly, as Ngcukaitobi points out, it is a mistake to see land reform as something that needs to be completed; as if the land question is something that can be counted as 'resolved' when a certain percentage of the land is redistributed to people of a certain class. Instead, he argues, it should be seen as 'a way of imagining the world, and of being in it' (2021, 10). He argues that engaging in the politics of land — interrogating who is using it, how, and for what purpose — is one way of reconnecting the present to the past (2021, 220). By the same logic, negotiations about access to land, about its redistribution and its use, and its significance as a location of economic and spiritual life and belonging needs to be seen as part of the ongoing practices whereby it might be possible to build a bridge to the future and to a viable Southern African political community — one founded in the democratic values of egalitarianism, deep horizontal solidarity, and justice.

2. These political practices have an irreducibly local character. The new politics of land that is emerging on the post-agrarian zones of black life in South Africa are above all, manifestations of the complex claims and counterclaims that follow from the assertion and denial of 'presence' and 'being there' (Ferguson 2021). They are best understood not as the struggles of a slumbering national giant (or a proletarian class) seeking to shake off its chains, but the provisional politics of the governed (Chatterjee 2006) — struggles around the occupation of land and evictions, of resistance to the depredations of multinational corporations and the self-serving actions of local and national elites. They are about the insistence of particular people, wherever they find themselves, of their right to live where they are, and to seek effective ways to survive and thrive. Sometimes they are about the right to use land for agriculture and making a livelihood, but they are also about access to municipal services, for sanitation and energy, for transport, and the right to family and economic life. Land here figures as one of the many issues relevant in complex battles about the terms upon which poor, marginalised, and vulnerable people — citizens and subjects, South Africans and foreigners, farmers and street traders, waste pickers and taxi drivers — are able to participate in social and political life. These struggles are not easily recuperated and integrated in grand narratives of any kind: neither liberal-utopian dreams of emancipation through hard work and enterprise nor national-democratic fantasies are of much help here. They are messy and difficult engagements that connect the gritty needs of survival and hopes of a better future with the 'drilling

through hard boards' (Weber 2004:93), contestation around the terms of local regulation, and frustrating wrangles with national and local government.

3. Making this real will require a carefully thought through and pragmatic art of government: firstly, because it requires ways of working that allow the social and political construction of community at local level and the involvement of poor people as social and political agents; and secondly, it inevitably requires the negotiation of complex and contested interests within the population of the poor themselves. This is a difficult requirement to meet because it will, inter alia, require confronting 'the state of the state' and addressing the predatory and dysfunctional structures of violently enforced patronage that have destroyed municipal government in South Africa. But this is no reason to declare defeat. Good 'governance' in South Africa does not require that every trace of corruption is expunged and replaced by wall-to-wall squeaky-clean audits. Rather, it requires creating significant agreement about broadly defined common purpose between citizens, community members, and officials, and using that to align state action with public purpose. And rebuilding municipal capacity does not need to be done in one fell swoop: rather, it is something that is best imagined as being achieved through creating 'islands of functionality' that can function as paradigms and learning opportunities.

These may sound like abstract or excessively rosy formulations. But I think they are existential for our society. The salience of the land question, as it is posed in South Africa today, is largely due to the increasingly strained legitimacy of the political order as it is currently configured. Among other things, it is a symptom of the unacceptability of the obscene levels of inequality and poverty entrenched by our current distributional regime. It is a cry against a distributional regime that reduces millions of black South Africans to a life on the social and economic margins of our society. It is a symptom of the incompleteness of our 'race work' and the inadequacy of our attempts thus far to deal with the ghosts of racialised violence, abjection, privilege, and arrogant unconsciousness. These legacies threaten the legitimacy of our political order as such. The likely consequence, though, is not a national uprising or revolution. Rather, it is the gradual decline of the coherence and efficacy of our current political order, and the descent of our polity into a zone of corruption, warlordism, gangsterism, and violence. The struggle is not only for land. It is for the nature and meaning of the South African political order itself.

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