

https://dspace.org/

Bringing Formalisation to the People Deceased Estates as a PostApartheid Legal Field

Maxim Bolt

https://hdl.handle.net/10539/48606
WOS

Downloaded from a DSpace repository. https://dspace.org/



South African Historical Journal

ISSN: 0258-2473 (Print) 1726-1686 (Online) Journal homepage: www.tandfonline.com/journals/rshj20

Bringing Formalisation 'to the People': Deceased Estates as a Post-Apartheid Legal Field

Maxim Bolt

To cite this article: Maxim Bolt (2025) Bringing Formalisation 'to the People': Deceased Estates as a Post-Apartheid Legal Field, South African Historical Journal, 77:2, 279-298, DOI: 10.1080/02582473.2025.2565587

To link to this article: https://doi.org/10.1080/02582473.2025.2565587

© 2026 The Author(s). Co-published by Unisa Press and Informa UK Limited, trading as Taylor & Francis Group

Published online: 11 Dec 2025.

Submit your article to this journal

Article views: 140

View related articles

View Crossmark data

Full Terms & Conditions of access and use can be found at https://www.tandfonline.com/action/journalInformation?journalCode=rshj20

SOUTH AFRICAN HISTORICAL JOURNAL
2025, VOL. 77, NO. 2, 279–298
https://doi.org/10.1080/02582473.2025.2565587

OPEN ACCESS Check for updates

Bringing Formalisation 'to the People': Deceased Estates as a Post-Apartheid Legal Field

Maxim Bolt

University of Oxford and University of the Witwatersrand

ABSTRACT

In matters of inheritance, post-apartheid transformation has meant extending formal administrative arrangements previously for a privileged minority to all South Africans. That formalisation is hampered by the distance between popular ideas of proper inheritance and formal intestate succession rules, exacerbated by a confusing system. Yet a wide range of legal practitioners see the formalisation of inheritance as increasing popular access in the public good. Focusing on Johannesburg, this article explores deceased estates assistance for the historically marginalised. Legal assistance for marginalised people is often depicted as adversarial, positioned against an uncaring system. By contrast, this article argues that inheritance work reveals a distinctly post-apartheid field of collaboration. It traces how a common project unites legal practitioners ranging from state officials to attorneys, non-governmental organisation-based practitioners, and community advice officers. In the name of bringing formalisation 'to the people', they converge on exhorting South Africans to engage with legal administration by formalising and planning their affairs – in short, preparing them as citizens for the system. This is thrown into particular relief in wills advice. From public education by officials to workshops where lawyers and paralegals explain and draft wills, testation is presented as bringing the system closer to people's own priorities.

ARTICLE HISTORY
Received 4 February 2025
Accepted 19 September 2025

KEYWORDS
Property inheritance; formalisation; bureaucracy; legal administration; legal assistance; legal field; Johannesburg; post-apartheid South Africa

Introduction

The representatives of the legal non-governmental organisation (NGO) drove out of central Johannesburg. They were heading to a historically black township to the north-east. The head of family law, Lindiwe, interns Phumi and Nosipho,

CONTACT Maxim Bolt maxim.bolt@qeh.ox.ac.uk

This article has been corrected with minor changes. These changes do not impact the academic content of the article.

© 2026 The Author(s). Published by Informa UK Limited, trading as Taylor & Francis Group
This is an Open Access article distributed under the terms of the Creative Commons Attribution License (http://creativecommons.org/licenses/by/4.0/), which permits unrestricted use, distribution, and reproduction in any medium, provided the original work is properly cited. The terms on which this article has been published allow the posting of the Accepted Manuscript in a repository by the author(s) or with their consent.

and I made for the police station.[1] From this landmark, a community advice officer could guide us to the hall where we were to run a workshop on wills and estates. There, we found Sophie, a well-established attorney. She was firmly grounded in elite, and disproportionately white, legal circles. Yet the group of black, publicly oriented practitioners knew her well. The NGO relies on attorneys offering their time for free. Sophie drafts wills for their clients, and she speaks regularly at wills-focused events. At this workshop, side-by-side banners announced the NGO and Sophie's practice.

The workshop illustrated the field of legal advice that has emerged around formalised inheritance in post-apartheid Johannesburg. After a collective prayer, Sophie addressed the audience of 57 registered local residents and a floating crowd of onlookers. She introduced succession law and responded to questions. In the role of facilitator, Lindiwe was a key part of the performance, interjecting with clarifying translations: on the rights of out-of-wedlock children – 'bloodline'; on the rights of legally adopted children – 'creates a fake bloodline'; on those of abandoned kin – 'distance does not take away the blood'.

Sophie focused in on wills, breaking down the formalities, then 'the good stuff' – how to think about property in testation. Questions, fielded by Lindiwe, Sophie, and Phumi, underlined people's basic lack of familiarity with wills. But they expressed interest, nevertheless. One woman filmed on her phone, and there was some note-taking – although it dried up as the information became denser and more involved. Lindiwe wrapped up with information about how to contact the NGO. The expectation was not to write wills now. Instead, participants would be left to consider. The NGO would convene follow-up workshops where volunteer attorneys would record details on templates, using these to draw up draft testaments.

The workshop offers a window into a distinctly post-apartheid legal field in South Africa. As post-apartheid changes in property ownership and registration pulled historically marginalised people into formal inheritance processes, the promotion and free drafting of wills emerged as a ready form of assistance. Practitioners advise historically marginalised people in planning their affairs for formalisation. Formalisation is explicit – the 'formalities' of wills bring people's wishes into line with legislated rules. For social justice-oriented legal practitioners, formalisation promises a way to address the shortcomings and realise the promises of post-apartheid legal administration.

Legal support for the marginalised, in South Africa and elsewhere, is often depicted as adversarial in relation to an unkind system. Post-apartheid property inheritance, this article argues, reveals a different mode of engagement. A field of assistance brings together legal professionals and para-professionals, in NGOs, community advice offices, and legal practice, with state officials. It is driven by an ethos of access to legal administration – a remedy for apartheid's

1. All names are pseudonyms.

exclusions – shaped by a new generation of black practitioners. Formalisation is a shared goal: bringing the system 'to the people' and preparing people for the system. Spanning the state, NGO and community advice office settings, and law firms in Johannesburg, the article examines that field, that ethos, and the perspectives that practitioners bring to the work.

Property, inheritance, and legal advice in post-apartheid South Africa

Efforts to promote testation, drawing together different kinds of legally oriented practitioners, follow from intersecting changes since apartheid. During apartheid's slow decline, the profile of property ownership in Johannesburg and other cities shifted rapidly. Members of the black majority had been prevented from owning land in 'white' South Africa and lived in state-owned, racially defined townships. Gathering pace through the 1980s and 1990s, township 'family houses' were transferred to their inhabitants – although who in families came to hold title is an enduring source of confusion, conflict, and vulnerability.[2] The result was a massive redistribution of property – over 100,000 houses were eligible in Soweto.[3] The creation of homeowners was on such a large scale that, beyond the very wealthy, it represents a substantial part of the post-apartheid story of black asset accumulation.[4]

The allocation and registration represented one instance of rapid formalisation for black urbanites, in the wake of fraying apartheid control. An urgent subsequent question was formalising the inheritance of that property. Under apartheid's segregated administration, black deceased estates by default went to native commissioners or magistrates, who applied a crude approximation of 'custom'. But there was limited reason to use what system existed, given the scant possibilities for property accumulation. Owning township homes now brought people into formal process. Meanwhile, post-apartheid Constitutional Court judgments desegregated the administration of deceased estates.[5]

Administrative transformation meant extending areas of formalisation, which had previously been intended to secure life for a privileged minority of South Africans. However, formalisation has been hampered by distance between popular ideas of proper inheritance and formal intestate succession rules (inheriting without a will). The disjuncture is exacerbated by a confusing system – burdensome and opaque, yet overstretched and lacking coercive

2. M. Bolt, 'Homeownership, Legal Administration, and the Uncertainties of Inheritance in South Africa's Townships: Apartheid's Legal Shadows', *African Affairs*, 120, 479 (2021), 219–241.
3. E. Emdon, 'Privatization of State Housing: With Special Focus on the Greater Soweto Area', *Urban Forum*, 4, 2 (1993), 1–13.
4. R. Simson and M. Mahmoudzadeh, 'Inherited Wealth in Post-Apartheid South Africa: New Perspectives from Probate Records', LSE International Inequalities Institute Working Paper 146 (2024), https://eprints.lse.ac.uk/125939/3/III-WP-146.pdf, accessed 15 August 2025.
5. Constitutional Court of South Africa, *Moseneke and Others* v. *Master of the High Court* (2001) (2) SA 18 (CC); Constitutional Court of South Africa, *Bhe and Others* v. *Khayelitsha Magistrate and Others* (2005) (1) SA 580 (CC).

capacity. A new post-apartheid generation of mostly black practitioners strive to offer legal assistance and outreach, making the system more accessible to the newly enfranchised. Shared aims and projects connect these practitioners, within and beyond the state. Wills, combining personal choice with formalisation, emerged as a prominent objective: officials provide public education; lawyers and paralegals provide workshops to explain testation and translate wishes into recognised documents; sometimes they appear onstage together at community events.

While tracing inheritance assistance, and its convergence on wills advice, this article profiles the work, perspectives, and connections particularly of five women practitioners (reflecting women's predominance) across state, NGO, and legal practice. A senior official, a Deputy Master, qualified as an attorney after studying at a historically black university, then moved to the Master's Office and saw a meteoric rise through the ranks. From the NGO, I focus on two key figures responsible for departments – an attorney who formerly worked for a bank, and a senior paralegal – and a younger intern completing university studies before embarking on qualification as an attorney. All four grew up in Johannesburg's townships, with parents or siblings in tertiary education. Finally, I describe the perspective of a partner in a major law firm, from another South African city, whose working-class Indian background has shaped a deep commitment to pro bono work.

These different practitioners operate within a single professional field. Bourdieu proposes the 'field' as transcending particular institutions, connected by norms, conventions, and values that orient practice. He identifies a 'juridical field' grounded in faith in formalisation and codification and in which membership depends on recognition as a qualified 'legal interpreter'.[6] Tracing the legal-administrative field in post-apartheid property inheritance means taking a broad view. As elsewhere, various advice agencies may comprise 'part of the legal system'.[7] In South Africa, where many have lacked access to lawyers, non-lawyers have long been crucial. Community advice offices, staffed by a range of unregulated paralegals, emerged in response to an authoritarian and repressive apartheid system.[8] In that system's wake, the field involves practitioners with different degrees of legal qualification and different kinds of work and practical experience. It includes state officials, which is not itself surprising. But crucially, officials are not merely figures of legal-administrative decision-making and authority. They are collaborators in a shared project of access: formalisation as a post-apartheid public good.

6. P. Bourdieu, 'The Force of Law: Toward a Sociology of the Juridical Field', trans. By R. Terdiman, *Hastings Law Journal*, 38 (1987), 805–853.
7. M. McDermont, 'Acts of Translation: UK Advice Agencies and the Creation of Matters-of-Public-Concern', *Critical Social Policy*, 33, 2 (2012), 235.
8. J. Dugard and K. Drage, '"To Whom Do the People Take Their Issues?" The Contribution of Community-Based Paralegals to Access to Justice in South Africa', in V. Maru and V. Gauri, eds, *Community Paralegals and the Pursuit of Justice* (Cambridge: Cambridge University Press, 2018), 43–95.

This article explores the character of this shared field, connecting a post-apartheid generation of practitioners across their different professional positions. Doing so offers a different perspective from scholarship emphasising an adversarial stance in legal assistance for marginalised people. That emphasis reflects a legacy of legal activism under apartheid in which the law was 'sword' or 'shield'.[9] Community advice offices 'help[ed] to address the specific injustices of the time, such as the problems of being politically associated, the dom pass [racially regulating movement and residence], and the consequences of forced removals'.[10] As state responsibilities to black South Africans have expanded, the defensive emphasis continues. In assisting with access to social grants, one of the most common issues brought to paralegals today,[11] '[t]he Black Sash [a major human rights organisation] has a principled opposition to the behaviour of companies like Net1 that is underpinned by a longstanding tradition of rights activism'.[12] More generally, in the post-apartheid era, access-to-justice lawyers continue to view their work as 'defensive' (realising recognised rights) or 'positive' (developing law to expand the terms of rights).[13]

In inheritance administration, too, increased expectations of state support may coexist with, and even shape, adversarial encounter. Resembling findings in the United Kingdom, assistance may give coherence to dealing with a state whose processes are experienced as confusing and even uncaring, in part by mediating on behalf of clients.[14] This adversarial mode of activist advice is doubtless of clear and sustained importance. There is plenty of work in navigating what is perceived to be a dysfunctional system. That criticism ranges from the Law Society of South Africa to the quieter everyday criticism of lawyers and other practitioners.[15]

Nevertheless, this article argues that a new era of formalisation is accompanied by practitioner emphasis on together increasing popular access. Post-apartheid practitioners see how the system's opacity, barriers, and legacies reproduce inequality, as marginalised South Africans are adversely incorporated into it.[16] They respond by seeking better incorporation, even if the challenges are acute and the goal far from realised. That makes for a different modality of advice and a different way for them to view their work, across a field that spans state officials, lawyers, NGO-based practitioners, and community advice officers in the Johannesburg area. The connections amongst practitioners that enable such assistance are often highly personalised, yet this is not an instance

9. R. Abel, *Politics by Other Means: Law in the Struggle Against Apartheid, 1980–1994* (London: Routledge, 1995).
10. Dugard and Drage, 'To Whom Do the People Take Their Issues?', 47.
11. Dugard and Drage, 'To Whom Do the People Take Their Issues?'.
12. D. James, 'Principles or Pragmatics? Debt Advice as a Comparative Encounter', in M. Pelkmans and H. Walker, *How People Compare* (London: Routledge, 2023), 118.
13. L. Strelitz, 'Helping the Individual: Defensive ATJ Work in Practice', unpublished paper, 2024.
14. A. Forbess and D. James, 'Acts of Assistance: Navigating the Interstices of the British State with the Help of Non-Profit Legal Advisers', *Social Analysis*, 58, 3 (2014), 73–89.
15. See Law Society of South Africa, *2021 Annual Report* (Pretoria: LSSA, 2021), https://www.lssa.org.za/wp-content/uploads/2022/03/LSSA-Annual-Report-2022-1.pdf, accessed 11 April 2022.
16. Bolt, 'Homeownership, Legal Administration, and the Uncertainties of Inheritance'.

of informal relationships and navigational strategies for 'accessing the state'.[17] The goal is reducing the distance between marginalised South Africans and the assumptions and requirements of formal law, yet this is not an instance of access to justice through 'traditional justice mechanisms'.[18] In the name of access and bringing formalisation 'to the people', practitioners converge on exhorting South Africans to engage with legal administration by formalising and planning their affairs. Striving to prepare citizens for the system, they attempt to create a more legible, less opaque encounter with the administrative state. Aligning a public with formal process is especially clear in wills advice, a key form of free deceased estates assistance.

In what follows, I chart Johannesburg's post-apartheid legal field of deceased estates assistance for the historically marginalised. I focus on the central roles of the Master of the High Court and the legal NGO that organised the wills workshop above. I trace their connections to community advice officers and the large law firms that provide substantial pro bono time as a Law Society stipulation. The main period of fieldwork on which this account is based was conducted throughout 2017. Ethnographic research exploring formal inheritance in Johannesburg included shadowing and interviewing practitioners across the professional field, starting from a focus on wills, and following research participants' views on what mattered.

Mapping the legal-administrative field

At the field's centre is the Master of the High Court, South Africa's dedicated institution for the administration of inheritance, with a branch attached to each local division of the High Court. Master's officials see their protective role as extending beyond the living: 'the person has passed on', I was reminded, 'so they cannot speak for themselves'. A professional ethos further derives from membership of a generation of black, legally trained representatives of the post-apartheid state. Officials and senior clerks have succeeded in earning LLBs in a context of high attrition in legal training and attaining government posts that in a previous generation would have been impossible. Their positioning attunes them to the possibilities of post-apartheid legal protection, but also to the system's holdovers and dysfunction.[19]

That sense of possibility informs the deep commitment especially of a Deputy Master, a senior official, to outreach work. The Master's Office contributes to public information initiatives via radio, television, and events in township community halls. At events, alongside NGO representatives and other state

17. See C. Bénit-Gbaffou and S. Oldfield, 'Accessing the State: Everyday Practices and Politics in Cities of the South', *Journal of African and Asian Studies*, 46, 5 (2011), 445–452.
18. See S. Mnisi Weeks, *Access to Justice and Human Security: Cultural Contradictions in Rural South Africa* (New York: Routledge, 2018), 1.
19. For a fuller account, see M. Bolt, '"Creature of Statute": Legal Bureaucracy and the Performance of Professionalism in Johannesburg', *Critique of Anthropology*, 42, 4 (2022), 419–438.

officials, such as from the magistracy and the Department of Human Settlements, they explain their brief, hold public Question and Answer sessions, and set up help desks. 'When it comes to public education', the Deputy Master underlined, 'it should be an ongoing thing.' That ethos similarly informs the mentoring work the Master's Office undertakes with black law students, complete with certificates at the end of a shadowing scheme.

Officials are also acutely aware that they stand for legal administrative arrangements largely carried over from the apartheid era and stretched in the name of deracialisation. Attempting to address the system's shortcoming, officials become purveyors of legal advice. Frontline administrators become mediators, and they understand that function to be important to their roles. In countless inheritance disputes, they offer fora for disagreements, adjust expectations, and educate on the law's requirements. They probe to what extent multiple beneficiaries need to liquidate estates (so that they are paid out individually) or whether a workable arrangement can rather be reached to share the home on which everyone relies. They use genealogical diagrams to explain and persuade who is legally entitled to inherit and in what proportions.[20]

In principle, the processes for deceased estates administration are clear: for testation, there are rules for a valid will; for intestate succession, there are rules about which kin inherit in which order, painstakingly taught in university succession law courses through genealogies and a dedicated technical vocabulary. For larger estates (over ZAR 250,000), complicated steps for recording assets and debts in the estate include advertising at two different stages in the government gazette and a newspaper. For smaller estates that process is waived and a 'Master's Representative' is appointed and issued with a 'Letter of Authority', enabling them to gather and distribute assets. Historically, smaller estates catered to circumstances where there was little to pass on and where a surviving spouse was often the sole beneficiary.

In practice, the clear avenues provided by process are often illusory, especially at the expanding formalisation frontier. This is, first, because the system has been stretched for a new era. Against a backdrop of widespread fraud, bringing formerly disenfranchised South Africans into a regulatory system promises protection against illegal dispossession and eviction. But the deracialisation of deceased estates meant requiring Master's Offices to take on radically more work – the Johannesburg branch was created to take some of Pretoria's overflow, and it now has the highest load nationally (as of 2017, over 32,000 estates each year). That extra work does not include the black estates already open when racially segregated inheritance ended, following Constitutional Court direction in 2000; around 80,000 estates sit in the Johannesburg magistrate's court.

20. *Ibid.*

What is more, any notion that the small estates process is an avenue to simplify matters for surviving spouses no longer holds. Today, an estimated 85 per cent of estates are categorised as small.[21] While the threshold for small estates remains the same threshold that leaves surviving spouses as sole beneficiaries, the deceased is often not formally married.[22] Many marriages are customary and unregistered – legally recognised but hard to prove when disputed in families. The stripped-down process does keep estates from winding endlessly through the administrative system. But this is because, once appointed and issued with a Letter of Authority, Master's representatives are essentially left to their own devices – they distribute the estate without official supervision.

A second reason is a deeper lack of coercive capacity. Short of calling the police, which Master's officials do in cases of manifest fraud, they rely on persuasion and people's own interests to keep them in the administrative process. If they do not like the way things are going, senior kin may apply pressure for families to withdraw. Unlike the courts, there are no subpoena powers. If a complaint from beneficiaries meets the bar for cancelling a Letter of Authority, it is difficult to have it returned and by the time it is, the assets may have been sold or spent. There is also a lack of capacity for verifying information. Some can be checked against the Home Affairs database, but access is recent and the database contains errors. Much of officials' discretion is less about the rules than deciding what to believe: about the extent of surviving kin and of assets, and the trustworthiness of would-be representatives.

All of this is exacerbated by the disjuncture between legally enshrined norms and those appealed to by many Johannesburg residents. Intestate rules since deracialisation extend a model of kinship legislated by and originally largely for the white minority. They prioritise 'the value of the nuclear family, drawn from the common law idea thereof'.[23] Township houses, in which families resided under permits listing all members, are often regarded as the collective home of a group of siblings, the listed children of an earlier householder. Typically, when title was transferred to residents, families sent a 'custodian' on their collective behalf, but the state registered that person as sole owner. Now, when the titleholder dies, siblings expect to come first, as the core members of a patrilineal group – not last because they fall outside a nuclear unit. In practice, parties in inheritance disputes draw on both sets of principles situationally.[24] But, across the field of legal administration and assistance, an understanding pertains that many South Africans' distance from legal rules impedes the

21. E. Morrison, 'Rescue Plan for the Master's Office', *GroundUp*, 20 November 2023, https://www.groundup.org.za/article/rescue-plan-for-the-masters-office/, accessed 1 February 2024.
22. At the time of the research, a partner had to be married to count under intestate rules. This has recently changed. But unmarried partnerships risk denial by the deceased's natal family in disputes over the estate.
23. S. Mnisi Weeks, 'South African Legal Culture and its Dis/Empowerment Paradox', in M.-C. Foblets, ed., *The Oxford Handbook of Law and Anthropology* (Oxford: Oxford University Press, 2020), 66.
24. Bolt, 'Homeownership, Legal Administration, and the Uncertainties of Inheritance'.

system and its possible protections, leading to confusion and distrust that leave many vulnerable to expropriation and even fraud.

In this context of overstretch, lack of coercive capacity, and popular dissensus, officials' mediatory and pedagogical work is key. Moreover, it connects them to the wider legal field. Both mediatory and pedagogical modes are central to the work of practitioners in and outside the state, in the name of bringing the system 'to the people'. The centrality of mediation itself is unsurprising. At one level, as Bourdieu notes, it is fundamental to the positionality of legal practitioners: 'a superior power appears before the litigants, one which transcends the confrontation of private world-views, and which is nothing other than the structure and the socially instituted space in which such confrontations are allowed to occur'.[25] In the instance described here, the field of practitioners is especially broad. Moreover, in South Africa, mediation has a more concrete valence: many institutions operate as 'dispute management forums', while even those with substantial authority such as 'chiefs' courts successfully resolve only a fraction of the cases that come before them'.[26] In a range of fora beyond the Master, disputes can be aired, often without clear resolution. What I wish to emphasise here is how those efforts draw people to the formal system.[27] This is where the persuasion and pedagogy come in. The rules and the classifications that establish entitled beneficiaries are explained, process is delineated, and parties are connected to administration.[28]

A range of forms of professional legal assistance interlock here, and the organising role of the legal NGO in the opening vignette helps understand some of those links. While some organisations offering legal assistance do not take deceased estates work, and state-funded Legal Aid does so only if minors are involved, the legal NGO is preeminent in doing so. How it came to do so, and the understanding it brought, illustrates how the shared legal field operates and post-apartheid practitioners' grounding in clients' broader issues.

The legal NGO's deceased estates work grew out of underlying problems in domestic violence matters. Dineo, a paralegal, was head of housing and led work pertaining to township family house inheritance during my fieldwork. She explained:

> We noted a lot of the domestic violence matters were actually related to deceased estates, were actually related to people not being able to access their family homes and having to get protection orders against their siblings because they can't access the family home.

Domestic violence was often associated with attempted eviction and with struggles over homes across generations. After approaching the Master's

25. Bourdieu, 'The Force of Law', 831.
26. Mnisi Weeks, *Access to Justice and Human Security*, 27.
27. See S. Engle Merry, *Getting Justice and Getting Even: Legal Consciousness Among Working-Class Americans* (Chicago: University of Chicago Press, 1990).
28. Elsewhere I have elaborated on disputes in their encounters with legal administration. See Bolt, 'Homeownership, Legal Administration, and the Uncertainties of Inheritance'.

Office around 2012, the NGO established a weekly help desk in a conference room of the government building.

The legal NGO's mode of operation involves building and sustaining connections across the field. The help desks illustrate collaboration with government institutions – and, as we have seen, they now also regularly share a stage with those institutions at community events.[29] Meanwhile, the Master's help desk is staffed by attorneys or candidate attorneys employed in Johannesburg firms. They offer initial consultations that often become mediations, and refer matters to the NGO offices, where they are largely handled by legal interns completing their training at well-regarded universities. From there, and from walk-in sessions at the NGO offices also staffed by interns, eligible matters are referred again to attorneys. The NGO presents itself partly as a 'clearing house' for lawyerly assistance. The attorneys are listed in a panel of available pro bono support, and they are also available to draft wills based on information gathered at workshops or walk-in consultations. On the other side of the NGO's access-to-justice work – outreach – community advice officers are crucial in establishing the infrastructure for public engagement in particular township localities.

Most of the organisation's client's – around 80 per cent, in Dineo's estimation – are not 'economically participatory', with little beyond access to a family house. For assistance, earnings must be less than ZAR 7500 per month and assets must not exceed ZAR 350,000. As with other practitioners in the field, distance from the law is understood to entrench marginalisation, meaning that inheritance-related work is bridging work. In that view, while many family house inhabitants want to preserve the family and its material realisation in the home, defending entitlements means understanding the law. In Dineo's words, 'you cannot ignore, if a person feels hard done by the system […] [but] knowing what you know now, what would you like to see going forward?' From the outset, there was a tension between taking seriously moral frameworks beyond the law and promoting people's own proactive engagement with the authorities. Dineo elaborated:

> When people come and they say, 'Look, our brother stole our parents' house', they do mean the brother stole the parents' house because the brother didn't consult with them [in his role as custodian] […] But when you're looking at it from a legal perspective, he had absolutely no obligation, the onus rested with the person who had an interest in the property to come forward and say, 'Well, I want to claim this house as well'. So you had that disjuncture.

There is basic uncertainty built into such assistance. Mirroring the concerns of Master's officials,[30] this is the question of what weight legal process carries

29. The NGO has also pioneered help desks elsewhere.
30. See also Bolt, 'Creature of Statute'.

when clients leave the office. Legal intern Bongi, who worked on the frontline of walk-in consultations, reflected on this:

> Some of them will be open to mediation. Others, well, they'll give up, but you don't know what happens when they leave […] whether the fight still continues there, and police get involved […] then also community leaders are involved, and it just becomes now a different mess altogether. So, I'm really not sure where they end up, if the fight ever ends.

In that broader extension into people's everyday affairs, community advice officers –paralegals with roots in apartheid-era protection – are central. They, too, are networked across the field. Some are attached to parliamentary constituency offices of the African National Congress, albeit in different ways. One I worked with was a non-governmental civic foundation, sharing a building with a constituency office where each augmented the profile of the other. The office was able to connect queries and concerns from disputing parties directly to state officials (for example, a magistrate) who could weigh in with advice. Another was a government-employed community development worker in the uniform of Gauteng Province Cooperative Governance and Traditional Affairs. She had her own direct connections to administrative officialdom – she was able, for example, to bring the Master's Office right into client mediations by phone. She was so effective at using connections and getting things done, she said, that she would field referrals from other parts of the city. Such connections, as already noted, are central to ensuring spaces and audiences – 'drawing the crowd' – for outreach events.

Location and approach bring community advice officers closer to their clients than government or NGO services in the city centre. Yet those advantages can also place them at a distance from an interconnected practitioner field; the range of legal advice extends even beyond the diverse interconnected field set out here. One practitioner I interviewed, based in a portacabin behind a major Soweto police station, worked as a volunteer peacemaker in a Gauteng Department of Community Safety shirt. Peace-making involved going out to disputes in homes, the police providing his transport, and word-of-mouth brought a stream of clients to his office. Like other community advice officers, he convened mediatory meetings – a first move towards formal process, a place to explain the law and its consequences. Yet, ultimately positioned as an outsider, he dramatised the gulf between popular experiences and legalism. His talk generically of 'Mandela's law' – deracialised property and succession law – underlined distance. His interpretations, such as that only banks, lawyers, or churches can draft wills, diverged strikingly from official rules.

Thus far, I have worked outwards from Master's officials to consider how a diverse range of practitioners realise a legal field, thrown into relief by the field's

limits. Meetings with prospective beneficiaries, hosted by officials and other practitioners, tack between fact-finding, education about rules, and mediation of disputes. Equally important are the connections through which clients can be guided. These elements contribute to getting people into a room, bringing them closer to the law, and helping them navigate the system.

Such work in some ways resembles a longer history and a wider South African context of assistance. It means navigating a state whose processes appear bewildering and unpredictable. And inheritance assistance is closely related to addressing domestic abuse and thus tracks a primary and enduring focus of community advice office work more generally.[31] Yet the post-apartheid legal assistance I describe here has a distinct character. Driven by the goal of helping people realise new rights, it involves state arrangements that have changed substantially. Crucially, the field of assistance includes officials, who themselves help people navigate the state. A new, attuned generation of legal administrators offers advice and mediation like that provided by civic organisations. Moreover, they have been part of the very establishment of deceased estates as an object of broader support.

The change points to a difference of ethos: the post-apartheid legal field prepares citizens for formal administration – the pedagogical dimension already mentioned. It is most clearly sharpened in encouraging inheritance planning through wills, to which I turn now. The interwoven state and non-state work of promoting testation provides a cementing focus for the field.

Estates planning as proto-formalisation

Different parts of the legal field have converged on a particular vehicle for public access to a legal-bureaucratic system: testation to bring people, plans, and property transfer into formal arrangements. This in a context where post-apartheid formalisation increased the public prominence of wills. Templates are sold in stationery shops, although specialists complain of inexpert, inexecutable plans: too imprecise (vague, conflicting groupings of property) or excessively precise (a specific asset, later sold). Financialisation more substantially increased testation, and banks reached out to the unbanked through a free wills campaign.

In Johannesburg, after the inheritance system was desegregated, the Master devoted attention to public outreach and education, to create citizens prepared for the deceased estates bureaucracy. That included exhorting people to write wills, which promise to give people control over the future of their property under freedom of testation, protected by formal process. After death, wills promise to avoid the disputes that occur when intestate succession law and family expectations diverge. And, with rules governing testation, executable

31. Dugard and Drage, 'To Whom Do the People Take Their Issues?'

wills standardise wishes for entry into administration. As the Deputy Master responsible for outreach during research explained, an emphasis on testation prioritises care over streamlining:

> The wait is much more than when you die intestate because when you die testate, it's your intention, basically you are ruling from the grave, you know. If the will is valid, […] you'll even rest in peace because you will have no worries because everything will go in accordance with the plan.

The Master is restricted to public education. As this official put it, while 'it's good to have a will […] [to] protect […] those people that you want to protect', 'as a Master of the High Court, we don't draft wills because we cannot be a player and a referee at the same time'. There is thus a complementary relationship between an enthusiastic state institution and other parts of the field.

Across the field, outreach is central. The Law Society of South Africa organises an annual National Wills Week, advertised in the press and on the radio, during which wills are drafted for free. Practitioners do their own promotion. Efforts to encourage testation also extend year-round. Public education brings together state and civic figures, and performances of professional authority reinforce one another.[32] On one occasion I attended, the Deputy Master leading outreach appeared with Lindiwe from the legal NGO on a Zulu-language daytime television programme on SABC1. There, in conversation with an interviewer, the Master's official explained that 'iwilli incwadi' (a will is a letter), but not an affidavit, an electronic document, or the same as having life insurance. The panel grappled with familiar views, responding to phone and online 'call-ins': that wills invite death; that testation is suspect because potentially secretive, while determining families' fates. The conversation ranged from fraud, to safeguarding wills, to Lindiwe's advice to keep them up to date, particularly within three months of a divorce.[33] Highlighting the assistance available, both guests delineated an integrated field. The Deputy Master spoke of Wills Week and drew attention to the legal NGO's provision of free wills throughout the year; Lindiwe profiled the public education work of the Master's Office, including the panels their institutions share at township community events.

The interconnection of state and non-state projects is fundamental. Practitioners attempt to persuade previously marginalised people to be testators, which means convincing them to engage with formal property arrangements – ensuring that title deeds are transferred from the deceased to the living. As Dineo emphasised, wills offer more flexible formalisation, as testators accord legal protection to their own ideas of fairness:

32. See Bolt, 'Creature of Statute'.
33. A grace period during which, if a testator dies, the Master does not simply accept the former spouse's beneficiary status in the will.

> [N]ot having legislation or legal rules that actually identify with […] the bigger part of our society's understanding of laws, we found that wills are actually a substitute […] instead of waiting for the day when […] certain African beliefs and customs are actually now made into law.

The exhortation has an impact. In Lindiwe's estimation, if 60 people attend a wills workshop of the kind in this article's opening, at least 25 or 30 will sign up to make wills. Bongi, a legal intern, contended that success has partly to be understood in relation to the insecurity that people see around them, and the hope that formalisation through wills offers some surety:

> I think they never understood the importance of a will and that's the trend now, that they are seeing children fight, they are seeing, you know, houses being taken because there's no will and, you know, now there's corruption, you know. The houses are being sold and you don't know how the house that's been sold, the children are being evicted and stuff.

For the legal NGO, unlike for the Master, promoting and explaining wills is connected to recording and translating plans. The wills workshops draw on an established infrastructure for testation assistance, which links the NGO to private legal practice. In a year-round walk-in service, legal interns use intake sheets to record people's wishes, passing them on to attorneys from the panel to draft wills. Assuming the wills that come back are satisfactory, NGO staff act as witnesses for clients signing them, there and then in the office.

How information is gathered is crucial. Translating wishes into a will depends on asking the right questions. Giving a legal existence to the notion of the family house would mean separating it off from the rest of the estate – whether to ensure the right kin own it, or to use something like a trust to set ownership itself apart. Dineo put it like this:

> It's always very important to find out from the client if they've got any properties that are registered in their name, whether they believe they own those properties or not […] [T]hat's two different concepts for a majority of our clients where some will think, yes, the title deed of a particular house might be in their name, but they identify and they know that house as being a family house […] [W]hether or not they're bequeathing an estate just to make sure that the right person that they feel deserves to inherit, inherits, or whether it's a question of trying to preserve a certain family legacy of some sort.

This understanding, of how legal avenues might be pressed into service, inflects the field of assistance that I have described. A shared commitment to formalisation – bringing legal administration 'to the people' – is grounded in practitioners' personal experience, which is itself often inflected by professional awareness. That is illustrated by attending more closely to the NGO practitioners discussed here – an attorney, a senior paralegal, and an intern – and to their counterpart in a law firm.

A post-apartheid generation in wills assistance

For a generation of post-apartheid practitioners, professional, personal, and family trajectories together shape the significance of legal assistance work and the focus on wills. As members of a new black middle class, Lindiwe, Dineo, and Bongi from the NGO have grown up with asset accumulation, alongside acute awareness of the uncertainties and complexities of post-apartheid change. Their family experiences have led them to emphasise forms of detachment: from established ideas of family homes, and from entanglements in extended families. They share concerns with clients they encounter, while also having been able – partly through economic advantage – to establish distance from their clients' circumstances. Their positioning, in turn, inflects how they understand the field of deceased estates assistance, particularly their roles connecting between clients and more removed law-firm attorneys. That said, similar bridging work occurs in private legal practice, to which I turn in closing through the example of Rita, a pro bono-focused partner in a major firm.

Paralegal Dineo's parents encountered the bewildering exclusions of inheritance law at the very moment when the allocation of township homes made property ownership possible. On both sides a grandparent remarried, and entitlement shifted to their new spouse. As Dineo reflected, 'most people have that kind of interaction where you have another spouse coming into the picture and then suddenly they own the property and then there's, you know, a whole history of family and then suddenly it's just broken'. Her relatively well-off parents, forcibly detached from their respective family houses, bought a home with a mortgage in an upmarket section of the township. Dineo's immediate family's world is one of purchased assets. She herself wants to disabuse her children of 'the notion that we must preserve the house'. And she wants to keep her plans private except for her husband, a scientist, plus a close friend with the expertise to act as executor: '[I]mpressions are very dangerous […] somebody feels that by virtue of you having that conversation with them […] that there's some sort of a benefit for them.'

For Lindiwe, the attorney, it was her work that drew her to make a will: 'when I actually learnt and saw [and] experienced what happens, actually when you don't have one.' Lindiwe subsequently tried to convince her siblings, but with a lack of success, which Dineo also encountered. This resistance sharpened Lindiwe's frustration that wills are objects of suspicion even as funeral policies are embraced – as much in her own family as in society at large. In her family, her father died intestate, but her mother – a law school receptionist – could call on expert support. An octogenarian uncle was warned off, her sons and daughters renounced their shares, and the estate was shepherded through smoothly with Lindiwe's mother as sole heir. Collective care and agreement

have continued, but Lindiwe's professional experience has convinced her that goodwill cannot be taken for granted. Like Dineo, her will is a secret between her, her mother (who is her executor), and the bank – she does not want her siblings asking what they are getting, particularly given that she has allocated unevenly based on need. And, like Dineo, Lindiwe and her siblings try to steer clear of imbuing the house with undue significance:

> It's a main house, because the main parent is there, which is my mum. But because we are all educated, and […] nobody at this point in time wants to lay claim to the house […] Even when I'm staying there, and my sister, we both have intentions of moving out. […] We acknowledge the existence of ancestors, maybe once in a while we'll have a ritual […] but it's not something that is done constantly that needs everybody to be constantly at that house.

Twenty six at the time of interview, Bongi, the legal intern, had not yet accumulated assets, but she understood her role in family improvement generationally: 'what we're trying to do, I guess, as young, black people […] [is] even out the playing field, so that, if I get a child, when they turn 21, why not have a trust fund, you know? Why not have a car'. More than her colleagues above, she comes from a home life rich in testation. Her parents are divorced, and she is distant from her father, whose inheritance will anyway be complicated – 'he's got so many kids that I don't even bother'. But her maternal grandparents have written a will, leaving their assets to her mother and mother's brother. That simplicity has been carved by formalisation out of another complicated configuration of property and kinship. Rather than the Soweto family house shared amongst six siblings' descendants, it pertains to a plot of agricultural land turned suburb outside Johannesburg, with children outside the marriage kept out by the will. The Soweto family house itself – unusually – is governed by a will, albeit a more intricate one. Bongi's great-grandmother left it to all her children, weighted towards one who made renovations and another who continued to reside there. But perhaps unsurprisingly, at the time of research, two years after the great-grandmother's death at the age of 93, the house remained untransferred and in her name. Continuing the pattern, Bongi's mother bought her own house, in Roodepoort, and she, in turn, has written a will to divide assets between Bongi and her sister: 'it's a known thing and it's been put on paper as well'. Unsurprisingly, Bongi's family experience, of carving plans out of the complexity of kinship, inflects her commitment to testation in her work:

> I really prefer wills, especially if you're a lady who's got many children or a husband who also had children outside of the marriage, because then […] all your children, you sort them out or you don't sort them out, but you do something. But in intestate succession, when you've got people coming out of everywhere saying, 'That's my dad! I have a share! I have a share!', then it's a problem.

Embedded in the legacies of Johannesburg's townships, these practitioners' experiences are informed by family success. There is a degree of socio-economic distance between those providing legal assistance and clients who are by definition poorer and more marginalised. From the perspective of members of an upwardly mobile middle class, greater formal participation can have the wider significance of improvement through asset planning and a proper state-citizen relationship. Lindiwe made the case for testation in these terms:

> It also helps them take care of their estates even better, knowing that I want to leave something worthy for my children. For instance, these houses, they may be owing municipalities [for local taxes] and you find clients now starting to shape up and like, 'Okay, I'm going to start paying', you know? 'I'm going to start being a good citizen, to make sure that […] [my children] don't have the burden of inheriting this house, that cannot be transferred because it's owing'.

The tension between proximity and distance plays across the legal field. It informs the pedagogical stance already noted and the claims to grounded expertise. NGO practitioners see themselves as closing some of that distance, and this locates them within the field. As Dineo explained, they are positioned vis-à-vis the remoteness of well-resourced attorneys in law firms:

> When you are matching them with a pro bono client, you almost have to mentally and I think emotionally prepare them that this is something that you've never come across […] this part of South Africa is something that you haven't encountered and this is how you would ordinarily deal with it.

That sensitivity is in clear evidence when it comes to preparing wills. Drafting wills is popular pro bono work, Lindiwe explained: 'it draws more volunteer attorneys than any other project, because the attorneys are more happy sitting in their offices […] just drafting the wills'. But seclusion has risks, especially given the intricacies of what people try to achieve with wills. Lindiwe's elucidation at length is instructive:

> Without us being there to make sure that attorneys actually hear what the client is trying to say, the clients most of the time don't actually get what they actually want in the will. So it's very important, the packaging role that we play, where we draft a brief and we say exactly what is it that the client wants, in the language that the attorney understand[s] – if that is not done, sometimes you do find issues where […] you don't actually understand what is going on […] [For example,] the woman owns two properties. One property is what she deems to be her own property and the other property is what she deems to be a family property. If the attorney doesn't get that concept, that she identifies differently with each property and doesn't make provision for it in the will, both properties would go to whoever is the nominate[d] heir in her will and obviously that would then create problems for the family who are all of the same understanding that this property is actually a property of the family.

I encountered such detachment from the complexities of clients' circumstances, but this is only part of the picture. In major law firms, too, there are

efforts to bring legal administration 'to the people'. One law firm partner was especially well known for her sustained engagement in the work of formalisation. Hailing from a working-class Indian area of another city, Rita ran a department responsible for pro bono work, leading a small team of junior and candidate attorneys – all women and from historically disadvantaged backgrounds. How lawyers are grounded is an important aspect of the field of legal assistance of which Rita understands herself to be part. In this regard, she is attuned to the different orientations that lawyers may bring into their professional commitments:

> We interview law students, white students will tell us, they love the law, they love the development of the law or the philosophical debate and what-what-what. The black student will say, 'No, when my father died we had to deal with his estate, the lawyer did this-this, and I realised I knew so little and then I decided I was going to be a lawyer to know the law better, to help people, because you know, they charged us a huge fee.'

Rita took pride in her outreach work. When we spoke, she had run workshops promoting and drafting wills in Johannesburg, most recently in the inner city at a church venue. She subsequently organised a series of similar workshops over three days in her parents' neighbourhood. I attended to observe and to draft some of around 100 wills the team produced. Much of the work in advance was unromantic: ensuring venues had electricity and enough plug points; preparing 200 booklets, and setting up laptops and printers for hard-copy wills; providing food for large numbers waiting for hours for consultations. Instead of community advice officers, Rita relied on Christian congregations, a hospice, and a senior citizens' group. The work of drafting wills looked much like that led by the legal NGO, rapidly seeing client after client, grappling with complicated accounts of kinship and property. People's plans were often a bad fit for formal testation. There were unenforceable wishes to make inheritance conditional on long-term commitments (insisting a beneficiary could not remarry). There were legally unworkable attempts to engineer multi-stage succession (an asset going first to a spouse then after her death to a brother).

The workshops were grounded in Rita's understanding of people's realities: not only that many owned little more than their house but also that many houses remained in the names of titleholders from the 1980s, much like in formerly black townships. Rita views her Indian background as offering an understanding relevant to South Africa's black majority. When we discussed this, she drew parallels, such as people viewing wills as 'a self-fulfilling prophecy' vis-à-vis death. She was keen to underline similarities between township experiences, and she took her team to the city where she grew up partly to impress on them 'that there were more things that brought us together than that separated us'. She also acknowledged differences: despite a family emphasis, no collective entitlement to land informed by African rural residential patterns.

Rita is alert to the perspectives that poorer South Africans, more distant from legal rules and processes, bring with them to interactions with lawyers. Many think 'the Constitution is only for rich people, or white people, it doesn't belong to us', she reflected, and they find the experience of being talked at in legal principles deeply alienating. This drives her commitment to her work: 'our pro bono mandate is to really take the law to the people'. She elaborated, speaking from her position in a law firm, but once again exemplifying commitment to a wider field of assistance:

> We go out and we teach and we empower people, we give them the Bill of Rights, […] as lawyers we need to interact with people, with society, with community. There is a stereotype that lawyers are liars, they are crooks, they're out to do you down […] so, in a way we're kind of changing the stereotype. […] And for me it's important to interact with community, which is why we have the pro bono walk-in centre. When someone has a legal problem, they want the answer now. They don't want the answer in two or three weeks when you have time to take their instruction.

Conclusion

Spanning institutions, a post-apartheid generation of practitioners sustains Johannesburg's field of deceased estates legal assistance. They range from lawyers to legally trained officials, and from paralegals and interns in an NGO to paralegals in a wider ecosystem of community advice offices.

This article has argued that, unlike many depictions of social justice-oriented legal assistance, this field is not antagonistically positioned against an unsympathetic system. To be sure, practitioners grapple with the law's and the administrative system's historical legacies, featuring both rigid process and breakdown. Yet those practitioners include state officials. An ethos of access unites them, even as many bemoan that system's failings.

I have centred a government department and an NGO where legally trained practitioners, beyond lawyers, play key roles in holding the field together. There are figures I have not had space to discuss, such as attorneys in smaller practices. Where discussing a large law firm, my example illustrates the reach of the legal assistance field along with the ethos on which it relies.

That ethos and the work it underpins – most starkly revealed in wills advice – invite a fresh view of post-apartheid legal assistance. Alongside work in a defensive mode, whether dealing with domestic abuse or navigating a bewildering state, is the work of formalisation to bring legal administration 'to the people'.

Acknowledgements

I am very grateful to my interlocutors for their participation in the research. For invaluable engagement and suggestions as this article developed, many thanks to Jonathan Klaaren and the workshop on 'The History of Black Lawyers in South Africa' at the Wits Institute of Social and Economic Research; the Ethnographies of Work group in the Oxford

Department of International Development; the guest editors of this collection, with especial gratitude to Tim Gibbs for his close attention; and Laura Phillips as journal editor. The research was funded by ESRC Future Research Leaders grant ES/N003071/1.

Disclosure statement

No potential conflict of interest was reported by the author(s).

Note on the contributor

Maxim Bolt is Associate Professor of Development Studies in the Oxford Department of International Development, University of Oxford, and Research Associate at the Wits Institute of Social and Economic Research, University of the Witwatersrand. He is the author of *Zimbabwe's Migrants and South Africa's Border Farms: The Roots of Impermanence* (Cambridge University Press, 2015; Wits Press, 2016). His current research explores inheritance in Johannesburg.