

**SECOND CARNEGIE INQUIRY INTO POVERTY
AND DEVELOPMENT IN SOUTHERN AFRICA**

**Freehold title: Blind alley
in the homelands**

by

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FREEHOLD TITLE : BLIND ALLEY IN THE HOMELANDS

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1. INTRODUCTION

This paper offers an alternative to the conversion of all or part of the communally owned land in the homelands to freehold title, which is frequently recommended as a fundamental pre-requisite before agriculture in the homelands can enter into a growth and productive phase. Supporters of freehold tenure argue that it will bring about the following:-

1. Agglomeration of presently small and uneconomic parcels of land into economically viable units.
2. This will permit rational capitalisation both by virtue of sufficient land being accumulated to make it feasible, and the fact that freehold land can be mortgaged to secure capital.
3. Productivity per hectare will be increased.
4. Degradation of valuable land resources will be eliminated.

It will be argued in this paper that freehold title to land is neither a pre-requisite for any of the above things to happen, nor does it provide an assurance that they will.

The preparation of the paper was completed under severe pressure of time. It is not presented therefore as a complete argument, but as a starting point for further discussion. It has little depth in research and is an expression largely of the author's opinion.

2. SOME OBSERVATIONS OF THE PRESENT POSITION

To establish a base from which the argument can proceed, the following are offered as statements which most people would probably accept as being broadly true.

1. Indigenous land tenure systems vary both from state to state and from community to community, although a few principles are common.
2. Historical tenure systems were elegant solutions to the land/human problems of the time. Latterly, adverse changes in the man/land ratio, and political and institutional contamination have reduced their present day descendants to unhealthy travesties of

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original models.

3. Regardless of the de jure responsibilities of State Presidents or land trusts, it is reasonable to assume that traditional land is viewed as being communally owned by the tribe that occupies it.
4. While land may be communally owned, the right of usage is held under various forms of entitlement. Grazing land may be used only by certain groups, and arable land rights are individually held for the duration of the growing season. Once the crops are reaped, the land, and often the crop residues on it, revert to communal rights.
5. Despite the lack of formal paraphernalia accompanying land transactions in "developed" societies, land rights in the homelands are viewed as permanent and relatively inviolate.
6. Most critically important, apart from trivial levies to the chief for the granting of land, quit-rents and other minor payments, access to the land resource by users is free. Further, despite occasional vague attempts at the issue of cattle rights, access to grazing land is uncontrolled and limited only by the user's capacity to secure cattle. The introduction of a charge for use of the land, and control of access, would radically alter the present negative image of "communal" tenure.

The statements above are offered as broadly acceptable descriptions of the tenure systems which are found in the homelands. What follows is a personal analysis of the role of land in the developing societies found there.

The main function of land in these states does not appear to be, as it is in developed economies, that of the prime agricultural resource. On the contrary, it would seem to have four main functions, one of which only, is that of agricultural resource. It is firstly a security system, deeply integrated into the culture of the people who live on it, and an essential component of their physical and psychological well being. It simply cannot be arbitrarily divorced from this role in the interest of moving towards an ideal of freehold tenure, which would see community assets arbitrarily alienated into the hands of individual owners. Secondly, it is an economic support system for a greater economy, which is thereby relieved of major costs such as family housing, infrastructural development and pension plans, which it would otherwise have to bear. Thirdly, it is a political resource, used to gain political strength through granting of favours, and for the enhancement of income by the issue of land-rights.

Fourthly, what little of its substance is left after satisfying the three pre-eminent roles, it is an agricultural resource. The competing and conflicting demands made upon land in roles other than as an agricultural resource, would seem to be a major reason for its abuse and for the fact that productivity levels are so far below potential.

Basic to the three pre-eminent functions, are the mechanisms for allocation of land. In contrast to western systems where land has commercial value, is transferable and is subject to market forces, the allocation system in the homelands acts to prevent the agglomeration of land into the hands of those individuals who have both the ability and intention to make productive use of it. In the case of arable land, allotments of similar size are made quite impartially to all qualifiers, regardless of their intended use of the land. As a result those with no interest in agriculture are allocated too much land, and those who wish to become farmers too little. Because of the status imparted by the right to land, the security it represents, and the lack of a practical alternative system, allotments are jealously held, even though the majority of plots are not cultivated to produce crops.

It is these latter issues which by comparison, provide the attractions of the freehold alternative. In the next section the assumptions underlying the support for freehold title are critically analysed, and an alternative offered which is likely to be as efficient as freehold, while having fewer of its negative effects.

3. LAND REFORM ALTERNATIVES.

The issue of whether land reform is necessary or not is not addressed here. It is assumed to be necessary so that the discussion of alternatives can be advanced. For the sake of brevity, the arguments in favour of freehold tenure are taken to be those advantages claimed for land reform in general. The same list will be used for the alternative proposed.

The most recent and probably most lucid proposal for freehold tenure is to be found in the Swart Commission Report (1983) on Ciskei. Two unique features of this particular proposal are firstly the recognition that resistance to land reform arising from social or traditional factors exists largely in the minds of (mostly white) administrators.

Secondly, the Commission recommended that each community be encouraged to seek its own solution to its problems, facilitated by loosening regulations and placing responsibility for land squarely on the Tribal Authority (p.19) Attractive as it may appear, this proposal still suffers from

the structural defects which characterise the freehold system as applied to poor traditional communities.

3.1 Freehold Title

The specific objectives of land reform, which freehold title is expected to achieve are:-

1. Land Consolidation

The transformation of publicly-owned land into individually owned parcels will undoubtedly facilitate the rapid agglomeration of land into viable units, which will create a base for improved productivity. The social cost of this benefit needs to be considered however.

It is self-evident that the successful agglomerators will be the rich and powerful members of the communities, while the poorer members will be under pressure to dispose of their land. It is an economic reality that very poor people, in a crisis situation, will take action necessary for short term survival, even though through this action, their long-term welfare may be jeopardised (Crotty 1980). In this case, families in financial distress will inevitably be induced to realise their main negotiable asset; land; and in the process of solving the crisis, render themselves landless. Given the opportunity to secure employment, this would not be essentially serious, but in present circumstances, a landless population would present potentially grievous economic and human problems. It might be noted that the loss of land rights would probably be more rapid in grazing land than arable. The extremely small size of the units likely to result from sub-division would present insuperable problems in the provision of water and fencing, once again putting wealthier members of the community at an undue advantage.

It can be argued that the process of consolidation is a normal and acceptable feature of the modernisation of agriculture, and the seller after all, does secure the cash value of his asset. In a social system where the threat of sanction, or even physical violence, is an acceptable means of ensuring enthusiasm for a transaction, and where the seller has so little in the way of economic options, the argument has less merit.

2. Capital Formation

Again, undoubtedly freehold title will facilitate capital formation and the proper capitalisation of farm firms. By comparison with South Africa, however, the most startling feature of agriculture in the developing states is its almost total lack of debt. While this is as much a reflection of the non-existence of commercial agriculture as anything, due caution should be exercised before exchanging the present freedom from debt for the situation presently existing in South Africa, where farmers debt loads are becoming a source of concern. Since the problem has arisen in a situation where traditionally loans have been advanced on asset value, and less on capacity to repay, the use of collateral to secure loans is not necessarily the most desirable method. Using capacity to repay as an evaluation criterion removes the necessity for property as collateral and therefore the necessity for freehold.

3. Productivity

Freehold title is simply not a pre-requisite for increased productivity nor does its existence provide any assurance that productivity will increase. Both in Zimbabwe and Ciskei (ADA Report 1972, personal observation) there is no measurable difference in the output of peasants on privately owned land and those on tradition land. In KwaZulu, in the Ladysmith district, land converted to private ownership has been transformed into commercial squatter camps, yielding vastly greater returns per hectare for the landowner than agriculture. It is accepted that in the strict sense, residential use represents a higher form of productivity than agriculture, but the issue under discussion is agrarian land reform.

4. Resource Conservation

The most facile of all assumptions in land reform is that conversion of land from public to private property will halt resource degradation. The mere existence of the Soil Conservation Act in South Africa, and casual observation of privately owned land in the drier parts of that country should be sufficient to show that private ownership does not mean good conservation. Sandford (1983) (p.17 & p. 122) reports that in Angola, Botswana, the United States and Australia, degradation on privately owned land (or systems approximating it) is as bad as, and often worse than, that occurring on public land. He argues

that to attribute land degradation to tenure systems is simplistic and that it is the outcome of a complex of factors, including the economic realities of the land user and control applied by the state. In Zimbabwe up until independence, the Natural Resources Act placed such rigorous restrictions on the rights of land owners to abuse their land, that it became in effect a state-protected asset. The fact that freehold land in the country represented a model of good conservation was more the result of powerful legislation vigorously applied, than the fact of freehold ownership.

To summarise, the advantages claimed for the freehold option are not unique to that option, will not necessarily follow its implementation and have not been sufficiently carefully evaluated according to the criterion of social cost. An enumeration of some of the reasonably predictable social costs creates sufficient alarm to dictate that extreme caution should be exercised in proposing it.

3.2 Leasehold

Accepting the basic premise that land reform is a fundamental issue in improving the welfare of stagnating rural communities, a model of reform must be found which will achieve the following objectives:-

1. Expedite the agglomeration of land into the hands of those with the resources and skill to make it productive.
2. Take cognisance of the needs of the poor, and destitute, who have ineradicable tangible and intangible interests in the land.
3. Prevent the permanent alienation of public property into the possession of a rich and powerful elite, and its opposite face, the dispossession of the poorer sector.
4. Maintain or improve the tangible benefit derived from the land by all levels of the population, without destroying the intangible benefits, mainly security.
5. Create mechanisms for the proper use and protection of the public resource.

The leasehold option will satisfy all these objectives. In essence it is proposed to firstly return all land to the public domain, by freeing it from existing rights. Because these rights represent real value to the owner, compensation

will be necessary, and the scale used for the compensation of white farmers losing land for consolidation purposes would seem to be a reasonable starting point for estimation of payments necessary. With the land freed from entitlements, three categories of land-use would be established:-

1. Home gardens.
2. Commercial arable land demarcated by pedological survey.
3. Grazing land - balance of land.

The disposal of these categories of land would be as follows:-

1. Home gardens - one unit of 0,1 ha allocated to each registered family in the community.
2. Arable land - to be leased to entrepreneurs for a period of three years. Rentals to be determined by public tender.
3. Grazing land - to be leased to cattle owners on an annual cycle. Rentals to be determined by tenders on a per head basis.

Two critical issues remain, the disposal of rental income and the protection of the resource.

In regards to rental, most proposals to introduce charges for land-use pre-suppose that rental income should be directed to the State, to be included in the revenue pool. There is no conceivable justification for this. If, as is the basic premise of this paper, the land belongs de facto to the tribe, then the rental must go to the tribe, as the de facto landlord. The distribution of the rental would be directly to the individual tribal families in equal proportions. It may well be necessary to introduce a "brokerage" fee for the chief based on a small percentage of the total rental income, before general distribution

The particular merit of this arrangement is that, on balance, the higher rentals are driven up by market forces, the better. Those paying rental may object, but income to the poorer sections will increase, and for the national benefit, productivity will of necessity increase to meet the rentals. Since the extent of arable land will be strictly defined, and the number of cattle permitted on the grazing limited, (see below) the scarcity value of both resources will inevitably put rentals into the proper economic bracket.

In regard to the protection of the resources, conservation will be considerably facilitated by collecting the tribe's land area into blocks which can be rationally planned for conservation measures. The single act of restricting agriculture

to land meeting arable criteria will be an improvement over the present condition. Since by virtue of leasehold as opposed to freehold, the ownership of land remains in the hands of the tribe, it will be able to demand of the lessees that proper husbandry practices be adhered to.

The issue of grazing rights is too large and too locked into a tangential controversy on what constitutes proper rangeland management practices, to be fully dealt with here. The issue to be decided is at what level stocking pressure must be fixed, since fixed it must be, and if changes are proposed, who will benefit and who will lose. Suffice it to say that the perceptions of rangeland scientists are not universally accepted. The most well organised argument against the "mainline" thought has been assembled by Sandford (1983) who asks either explicitly or implicitly the following questions:-

1. How is "productivity" of rangeland quantitatively defined?
2. Is climax range carrying a livestock unit per five hectares more, or less productive than sub-climax range carrying a livestock unit to two hectares?
3. Has the degree of erosion caused specifically by "over-grazing" actually been measured?
4. Can observed changes in range composition be attributed directly to grazing pressure or seasonal climatic variations?

To Sandford, the answers to these questions are so much in doubt that to deliberately cause the destitution of already poor people, by stock reduction to some dubious theoretically acceptable level is not acceptable. In the leasehold option the issue is avoided by taking the existing stocking rate as the level. The rationale is:-

1. In almost all areas stocking pressure is already at the biological limit and cannot conceivably go higher.
2. This level has been achieved in the complete absence of even the most vestigial of range management practices, and often with little or no physical development. With improvement in either facet provided that stock numbers are kept constant, the condition of the grazing resource must improve.
3. In the absence of empirical evidence to the contrary, observation suggests that erosion damage in rangeland has been more the result of bad, or no physical planning than of stocking pressure. Given the public ownership of a revenue earning resource, the likelihood of corrective

action is greater than at present with non-owned, non-revenue producing land.

To sum up, it can be argued that instruments for the protection of the tribal agricultural resource can more easily be set up if the land is in public ownership, than if it were tightly held in freehold by a powerful elite.

4. SUMMARY AND CONCLUSION

Land reform is a necessary pre-requisite for the growth and development of stagnating agricultural systems. Whatever reform is proposed, it must allow for the change of status of land from a non-owned, free resource, to an owned, revenue producing asset. The freehold option proposes that it be permanently alienated into private ownership, which will inevitably turn out to be by a wealthy and powerful elite. The leasehold option proposes that land be converted to public (community) property with suitable compensation, and made available to land users on the basis of a market-determined rent.

This option will deliver all of the advantages claimed for freehold title, plus some additional benefits unique to itself. These are:-

1. Land will not be permanently alienated to individuals, but will be made available to all on a regular basis.
2. Those with the resources and expertise to make good use of productive land will be able to do so without the less well endowed losing all benefit from it.
3. Provided that the principle of distribution of rentals pro-rata to all families in the tribe is adhered to, it is advantageous to all that land values, and therefore rentals, should rise. In the case of freehold, only landholders will benefit, and as values rise, the number owning land will shrink.
4. Because land will belong to the tribe as a whole, no landless class will be created.

The leasehold option has the promise of increasing productivity of both grazing and arable land, while at the same time maintaining and improving equity throughout the social and economic strata of the tribe. It will secure some sort of income, even for those lacking resources to work the land themselves, and will permit those better endowed to create opportunities for profitable production. In regard to the capacity of freehold to create capital, this is not an unmixed blessing. The working capital required to make land productive is far more rationally advanced on the ability-to-repay criterion than on collateral derived

from asset value. No landless class will be created and the security role of land will not be threatened.

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