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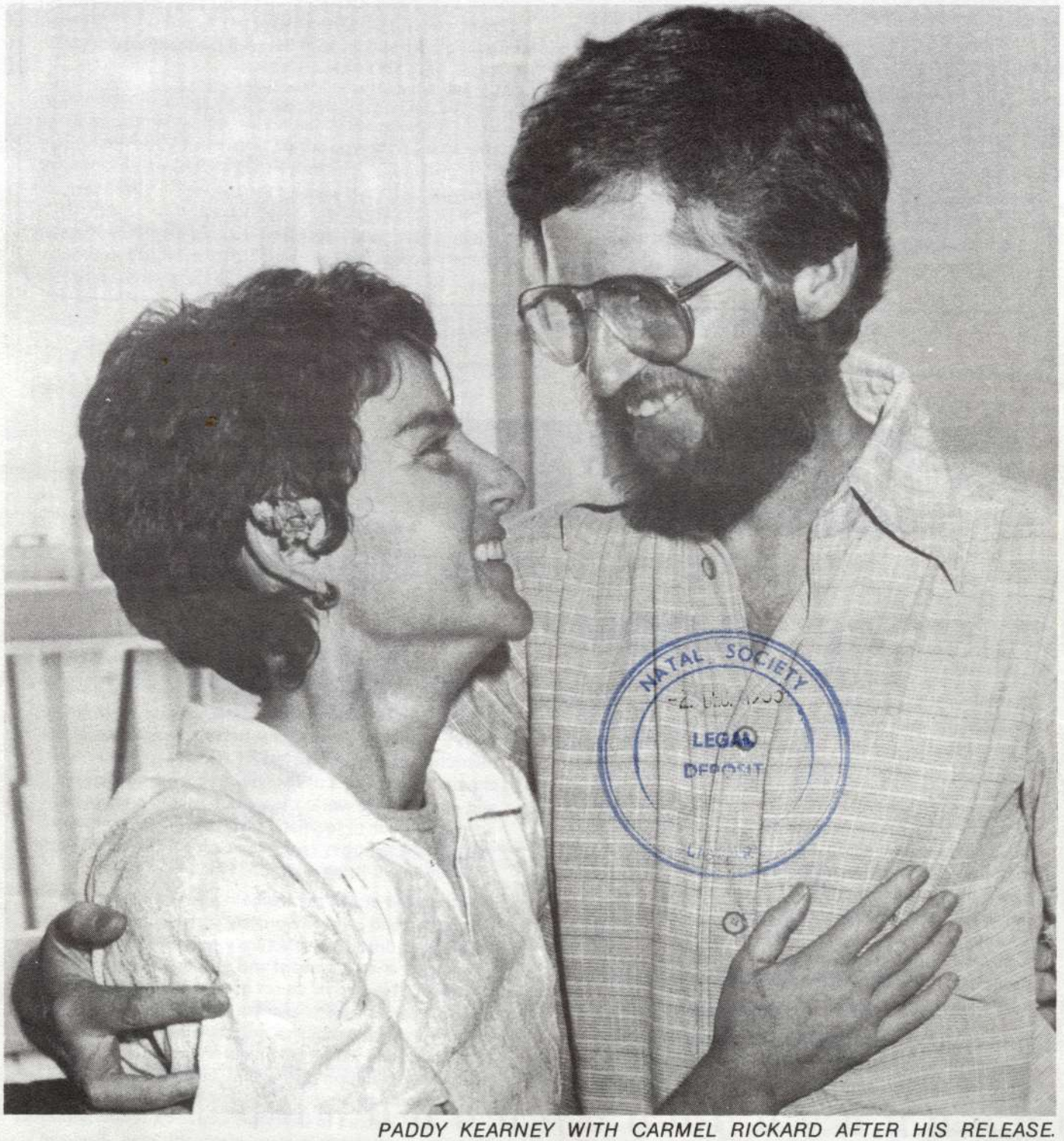

PADDY KEARNEY WITH CARMEL RICKARD AFTER HIS RELEASE.

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in this issue . . .

ERRATA:- We apologise for the error in our last issue. W. L. McConkey should have read Dr W. G. McConkey.

EDITORIALS

1. MORE GLOOM

The financial crisis; highly questionable activities in Angola and Mozambique; the emergency; violence and upheaval in one area after another – as if all this did not cast enough gloom over the South African scene, the Nationalists must add to it.

At a time when we had almost been persuaded that re-settlement for ideological reasons was a nightmare of the past, new consolidation proposals for Kwa-Zulu threaten to set the whole cruel process in motion again. The Consolidation Commission itself seems to have no idea how many people its plans affect. What one does know is that fear, uncertainty and apprehension have again swept into many homes in Natal, and that it is the Commission which has let them loose.

Quite apart from threatening to uproot settled tribal communities, many of them still living where they were when the first white men appeared on the scene, the proposals imply the resettlement of almost every single black freehold area in the Province. In every case the land was bought legally, at the cost of great financial sacrifice on the part of those involved, often more than a century ago. Many of these places have become over-crowded and agriculturally debilitated over the years, but the people living in them argue, and it cannot be disputed, that this was an inevitable consequence of the restriction placed by the 1913 Land Act on black purchase of land in 87% of the country. In an uncertain and often hostile world the black freehold areas became havens of security for many black people. They were one place where they could escape from the harsh, daily implications of living under the white man's laws.;

Overcrowded or not the freehold areas remain to this day settled and generally orderly communities – something increasingly rare and surely to be treasured and given every encouragement and support in South Africa in 1985? It would be an act of absolute madness to now tear such places to pieces to serve an ideological blueprint which has been a miserable failure and which is being abandoned bit-by-bit everywhere else. The cost of this consolidation plan would be enormous. That money would be an important investment in our future if if was used instead to develop the areas it is now proposed to destroy. Nobody in Natal wants this plan. Pretoria should publicly abandon it before it does everyone who lives there great harm. □

2. SOME LIGHT

This past year has seen some really important judgements in the South African courts. Led by the Natal Supreme Court they have struck some powerful blows for the citizen against the state.

The Natal Court's judgement which led to the release of the UDF leaders in Natal from detention a year ago, and its later ruling that they should be allowed bail, has been followed by perhaps the most important judgement given since the inception of the present security system. That judgement is discussed in detail in an article in this issue.

Its importance is not simply limited to the legal issues involved and to the fact that it led to the release from detention of Paddy Kearney. To the layman it seems almost to have put new heart into the judiciary. It has been followed by the release, under threat of similar approaches to the courts, of other detainees, but as important, by a series of court rulings, not limited to Natal, restraining the security police from using improper interrogation methods against a whole series of detainees. A little ray of light and hope has been introduced into those dark corridors where the security police have often seemed free to do as they pleased.

The Supreme Court is a powerful body of eminent men backed by an office and tradition of independence which makes it possible for them to give judgements the state won't like and still enjoy the support of their colleagues. Dr. Wendy Orr was in no such position. She was a 24-year-old District Surgeon amongst whose duties was the medical care of detainees in two Port Elizabeth prisons. Her immediate superior was one of the Biko doctors. There was no precedent, so far as we know, for any District Surgeon challenging the security police. From this unpromising background she became the main applicant in a successful application to the Supreme Court preventing the security police from assaulting detainees in the two prisons for which she was responsible. Her judgement was that this was what the Hippocratic Oath required of her. Her reward from her colleagues for this lonely act of heroism seems to have been their silent hostility. But to many others her action has come as a challenge and an inspiration. □

3. UNIVERSAL SUFFRAGE IN AN UNDIVIDED SOUTH AFRICA

This is what the State President told the Cape Congress of the Nationalist Party was now official policy. We hope that it is. Because if that objective is really accepted there is plenty of room for negotiation over the details of the framework within which it might operate, and at the end of it all could lie peace. □

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by LAWRENCE BAXTER

SECTION 29 OF THE INTERNAL SECURITY ACT AND THE RULE OF LAW

Of all those who fall prey to the powers exercised under the Internal Security Act 74 of 1982 surely the most wretched are those detained under section 29. If a policeman of or above the rank of lieutenant-colonel "has reason to believe" that someone has committed or intends to commit one of certain offences referred to in section 54 of the Act, or is withholding information relating to the commission or intended commission of such an offence, he may arrest and detain that person without warrant. The relevant provisions of section 54 create a number of widely-defined crimes ranging from terrorism to the promotion, by certain specified means, of constitutional, political, social or economic change in South Africa.

The detainee may be held indefinitely, subject only to the requirement that he or she be held in accordance with the general or specific directions of the Minister of Law and Order, that a detention of more than 30 days be authorised by the minister (every 30 days), and that the minister must entertain (though not necessarily follow) the advice of an administrative review board if the detention extends beyond six months. The Commissioner of Prisons must order the release of the detainee when satisfied that the latter has satisfactorily answered all questions or if he decides that no further purpose will be served by the detention. No one other than the minister or a properly authorised state official is entitled to any information concerning the detainee, and the only visitors he or she may have without the permission of the minister or commissioner of prisons are a magistrate and district surgeon, who must visit every 14 days, and an inspector of detainees, who must visit "as frequently as possible". In effect, the detainee languishes in solitary confinement and at the mercy of his or her gaolers, enjoying only the token protections prescribed by the Act.

Yet the Act does not even guarantee that its provisions will be observed. As in the case of its infamous predecessor, section 6 of the Terrorism Act 83 of 1967, it was clearly the government's intention to preclude any form of judicial intervention on behalf of the detainee. Not only does subsection 1 of section 29 place the decision as to whether the detainee has breached the relevant provisions of section 54 in the discretion of an official, but subsection 6 states that "no court of law shall have jurisdiction to pronounce upon the validity of any action taken in terms of this section, or to order the release of any person detained in terms of the provisions of this section".

Section 29 rudely mocks the Rule of Law; it flouts the principle that individuals should be governed according to clearly formulated rules, that breaches of these rules should be determined in courts of law, and that personal liberty should be safeguarded by habeas corpus. In short, section 29, if left to our executive-controlled Parliament alone, would violate the most fundamental principles upon which Western legal systems are based.

Fortunately, the law is not left to Parliament alone. It has to be interpreted by the courts. And, as it turns out, section 29 is not all that it would appear to be. Acting Deputy Judge President Leon's courageous decision in the Kearney case[1] has placed significant curbs upon the operation of the section, thereby ameliorating, at least in part, its vicious operation.

THE KEARNEY CASE

Gerald Patrick Kearney is the director of DIAKONIA, an agency established by eight churches for the purpose of fostering Christian social concern among their congregations. On 26th August 1985 Mr Kearney was detained on the instructions of a Colonel Coetzee of the Security Branch. The colonel thought he had "reason to believe" that Mr Kearney had committed an offence contemplated by section 54.

A few days later the Chairman of DIAKONIA, Archbishop Denis Hurley, and Mr Kearney's wife, Carmel Rickard, successfully brought an urgent application in the Durban and Coast Local Division of the Natal Provincial Division of the Supreme Court for his release. They made numerous averments in their affidavits as to the detainee's background, character, personal beliefs and current activities, and they averred that no reasonable person could possibly conclude that Mr Kearney had committed an offence contemplated by section 54. Hence, they claimed, Colonel Coetzee could not have "reason to believe" that such an offence had been committed, that he had therefore failed to satisfy a vital requirement of section 29, and that the detention was accordingly invalid and unlawful. They averred, further, that subsection 6 did not prevent the court from drawing the same conclusions and ordering Mr Kearney's release. In his reply, Colonel Coetzee stated that, having carefully considered the facts known to him (which, for security reasons, he could not divulge), he had reason to believe that the detainee had indeed committed a section 54 offence. He averred, moreover, that subsection 6 absolutely precluded the court from either reviewing the matter or ordering the detainee's release.

Lay readers may be forgiven for assuming that the applicants faced a well-nigh impossible task in persuading the court to agree with them. After all, they had no evidence (and did not claim) that Colonel Coetzee was lying, and it is difficult to imagine a clearer ousting of jurisdiction than that contained in subsection 6. If Parliament is sovereign, surely the applicants had no hope of success?

But there was indeed a way out. It had been taken by the courts in other areas of the law, and writers such as Tony Mathews had long argued that it should be adopted in the present context[2]. Nevertheless, it was recognised that to follow such a course when interpreting security legislation would require considerable judicial courage. Most South African judges have shown exceptional restraint when reviewing security matters.[3] Judge Leon was therefore faced with a daunting decision.

THE ISSUES

He had to deal with three main issues :

(i) given the wording of subsection 6, could the court possibly have jurisdiction to review the legality of the detention and order Mr Kearney's release?;

(ii) if so, was the Colonel's "reason to believe" that Mr Kearney had committed a section 54 offence subject to judicial evaluation?; and

(iii) if so, was the Colonel's belief indeed invalid?

The success of the application required an affirmative answer to all three questions.

Despite its appearance, the ouster clause was perhaps the least difficult obstacle. Under the South African system of judicial review, the roots of which lie deeply imbedded in English constitutional history, the Supreme Court derives its power to review not from any statute but from its role as a high court of law possessing general jurisdiction. The function of such a court is to interpret and apply the law in the case of concrete disputes, whether between individuals alone or between individuals and the state, and to award appropriate remedies. If action does not comply with the law, the court cannot recognise it as valid. Hence the power of review is a logically inherent feature of the court's jurisdiction.

This principle applies to a statutory ouster clause as well. Since the court's jurisdiction exists independently of such statute, an ouster clause can only be recognised by the court if its statutory preconditions are met. If they are not, the ouster clause is ineffective. Ouster clauses are therefore simply tautologous! And this is more or less what Leon ADJP concluded – on the basis of very respectable judicial authority. It will be recalled that subsection 6 refers to "action taken in terms of this section". Yet the very basis of the challenge to the validity of the detention was that the action had *not* been taken in terms of section 29. It therefore followed that if this claim could be proved, the ouster clause could not prevent the court from declaring the detention invalid and unlawful and ordering the release of the detainee.

SECOND ISSUE

The second issue is more complex. There are two broad methods by which one might show that the Colonel's action was invalid: first, if he had failed to comply with some objectively ascertainable requirement of section 29; or, secondly, if he had abused his discretionary powers in some way (eg. by acting improperly or dishonestly, by taking into account completely irrelevant factors when reaching his decision, or by reaching a conclusion that no reasonable person could possibly have taken). The latter form of challenge is usually difficult to sustain because the necessary evidence is hard to come by, especially where the official concerned is under no duty to give reasons for his decision. On the other hand, the first basis of challenge is easier to establish if the statutory prerequisites are clear. But even here difficulty can arise if the prerequisites have been placed within the discretionary assessment of the official himself: objective factors shade over into subjective ones and the degree to which the court can evaluate the action concerned becomes uncertain. What the court cannot do, as part of its inherent jurisdiction, is directly substitute its own opinion on a matter clearly committed to the official's personal discretion.

In the **Kearney** case the Court took the view that the requirement in section 29 that the policeman should "have reason to believe" that the individual had committed or intended to commit a section 54 offence was a prerequisite that was subject to objective review. In other words, the mere assertion on the part of the officer that he *had* such reason to believe is insufficient: the court has to satisfy itself that this belief has some objective basis.

In reaching this conclusion, Leon ADJP joined a number of other South African judges in rejecting an English wartime decision to the contrary, **Liversidge v Anderson.**[4] In that case, the majority of judges in the House of Lords took the view that the subjective opinion of the official is sufficient to satisfy the legislative requirements. The majority decision in **Liversidge** has since been completely rejected in the English courts and the celebrated dissent of Lord Atkin, which Leon ADJP endorsed, is now accepted as the law. As Lord Atkin observed in his speech, the words "If a man has" cannot mean "If a man thinks he has", just as "If A has a broken ankle' does not mean and cannot mean " if A thinks that he has a broken ankle'". Hence "if he has reason to believe" cannot mean "if he thinks he has reason to believe".

In terms of this approach, the mere *ipse dixit* of the official is insufficient to establish compliance with the section; what is required is some evidence tending to show that the belief has a reasonable basis, though, as Judge Leon observed, "they do not need to go the distance of producing additional information to show that their belief is correct".

Judge Leon placed great importance upon the precise wording of section 29 (1) ("has *reason* to believe"). This, he contended, connotes a greater degree of objectivity insofar as the belief is concerned, and serves to distinguish the requirements of section 29 from those of other statutory provisions, including section 28 of the Internal Security Act,[5] in which phrases such as "if he is satisfied" or "if in his opinion" are employed. The former phrase, unlike the latter phrases, connotes "belief based upon reason" and, hence, said the Judge, is objectively reviewable.

Here Judge Leon was unnecessarily cautious, I think. All of these phrases are designed by Parliament to confer discretion upon officials, and in all of them one must

surely assume that the "belief", "opinion" or "satisfaction" is intended to be "based upon reason", not arbitrary whim,[6] as section 28, for example, itself makes clear.[7] The difference in wording seems purely semantic. This has now been recognised in the English decisions that have rejected **Liversidge v Anderson,** including, ironically, one which Leon ADJP cited in his support.[8] What really matters is the *degree* to which the elements of the discretionary decisions are susceptible to objective determination: the more factual and clear cut they are, the more they are subject to objective review; the more dependent they are upon personal evaluation, assessment and opinion, the more the challenger must rely upon review for abuse of discretion.

FINAL ISSUE

Be that as it may, the way had been cleared for the resolution of the final issue, namely, whether the applicants had succeeded. Here the Judge had to consider the question of *onus:* did the applicants have to establish that the prerequisite *had not* been met, or did the Colonel have to establish that it *had* been?

Two opposing views are to be found in the cases. One favours individual liberty, holding that the person infringing liberty must show that he is entitled to do so, beyond merely asserting such entitlement in his affidavit. The other applies the principle that "he who alleges must prove", thereby casting the *onus* of showing that the action was unlawful upon the party who makes such assertion. The difference can be of great practical importance. Leon ADJP appeared to favour the former approach. Indeed, that view might well be an automatic consequence of the conclusion that "reason to believe" is subject to objective review. In the end, however, Judge Leon did not have to make a choice because he found that the applicants had, in any event, made out a strong *prima facie* case which Colonel Coetzee had simply not attempted to controvert. As the latter had furnished no evidence of his own, the *prima facie* proof became conclusive.

THE DECISION

Mr Kearney's detention was accordingly declared unlawful and he was ordered to be released. A few days later Wilson J, also sitting in the Durban and Coast Local Division, followed the **Kearney** decision and ordered the release of three members of the End Conscription Campaign who had also been detained (purportedly under section 29).[9]

It is no exaggeration to say that Judge Leon's decision is one of the most important ever to be given in the field of human rights in South Africa. It has done what many believed impossible. By increasing the degree of judicial control over the decision to detain, and by clarifying the effect of the ouster clause, it has resurrected, even if only in part, some of the most important elements of the Rule of Law. The decision, together with Judge Wilson's, forms part of a group of recent rulings by a number of Natal judges, as well as some judges in other divisions, which have gone some way to restoring the credibility of the South African judiciary as defenders of liberty in the face of an arrogant government and autocratic Parliament.

One must be realistic and recognise the decision's limitations. Section 29 still authorises extremely far-reaching powers of detention, even when its provisions are strictly complied with. And, of course, there is a possibility that the Kearney decision will be reversed on appeal. But it demonstrates a deeper aspect of our constitution which the dogma of parliamentary sovereignty has long tended to obscure: for as long as the Supreme Court remains the final oracle of the law there is always scope for ameliorating, and sometimes even emasculating, the cruder manifestations of executive and legislative power. The judges are able to interpret legislation against the background of a "higher" or "fundamental" law[10] over which Parliament can never have complete control.

Short of abolishing the independence of the courts altogether, which was indeed once unsuccessfully attempted,[11] there is a little that Parliament or the government can do in response. □

1. **Hurley and Rickard v The Minister of Law and Order, the Commissioner of Police, and the Divisional Commissioner of Police for Port Natal,** DCLD, 11 September 1985.

2. Anthony S. Mathews **Law, Order and Liberty in South Africa,** Jutas, Cape Town, 1971, pp 148–149; "Public Safety", in W.A. Joubert (ed) **The Law of South Africa,** Volume 21, Butterworths, Durban, 1984, para 361.

3. Ibidem; John Dugard **Human Rights and the South African Legal Order,** Princeton University Press, Princeton, NJ, 1978, p 119.

4. (1942) AC 206 (HL).

5. Which provides for "preventative detention".

6. See Lawrence Baxter **Administrative Law,** Jutas, Cape Town, 1984, p 468, esp in n 535, where cases supporting this view are discussed.

7. Section 28 (3) (b) requires the minister to state his "reasons" for issuing a detention order.

8. **Secretary of State for Education and Science v Metropolitan Borough of Tameside** (1977) AC 1014 (HL), where the phrase was "is satisfied". See also **Attorney-General of St Christopher, Nevis and Anguilla v Reynolds** (1980) AC 637 ("is satisfied").

9. **Steel, Kromberg and Brittion v The Minister of Law and Order, the Commissioner of Police and the Divisional Commissioner of Police for Port Natal** DCLD, 20 September 1985.

10. Cf Marinus Wiechers "The Fundamental Laws Behind Our Constitution" in Ellison Kahn (ed) **Fiat Iustitia: Essays in Memory of Oliver Deneys Schreiner,** Jutas, Cape Town, 1983, p 383.

11. See **Minister of the Interior v Harris** 1952 (4) SA 769 (A) (the "High Court of Parliament" case).

by M.J. DAYMOND

THE REPRESENTATIVE

Ellen Kuzwayo
Call Me Woman Preface by Nadine Gordimer, Foreword by Bessie Head. Pp 266 plus 16pp photographs. Ravan R13.50

> This work is not for yourselves – kill that spirit of 'self' and do not live above your people, but live with them. If you can rise, bring someone with you.

In this spirit of selflessness, Ellen Kuzwayo has written her autobiography. The words she quotes were uttered some 50 years ago by Charlotte Maxeke in her Presidential Address to the National Council of African Women, and it is their outlook, their optimistic focus on communal well-being, which Ellen Kuzwayo has determined, despite the debilitating consequences of oppression, to celebrate in telling her story. There is considerable tension between such selflessness and the potential ego-centricity of autobiography, a tension which raises some of the most interesting questions about this book. To reconcile her selfless purposes and her concentration on her own story, Ellen Kuzwayo asks her reader to see her as a representative figure.

> The courage, generosity and support of my people have over the years helped me to carry a load that under ordinary conditions I would not have found easy to bear. I am amazed when I observe the power, strength and self-confidence that are born of involvement in work on behalf of one's own hard-pressed people.

The self-evident importance of such representative autobiography for people who have been denied their heritage is born out by the number of life-studies, sometimes in fictional form, which are being published by black writers today. But it is still relatively rare to find black women producing such work – until this publication, only Noni Jabavu had written autobiography. In her writing too, the focus is decidedly not on self.

Granting Ellen Kuzwayo representative status is not to ignore that she is a remarkable woman, nor is it to imply that she does not know that hers is a remarkable story. The first notable, comparatively unique feature of her life which she identifies is that she was born into a family which had had freehold possession of a large farm at Thaba Patchoa, near Ladybrand, for several generations. When the area was declared a 'black spot' in 1974, the family were stripped of 60 000 acres of land which they had farmed for over a century. But the narrative's focus is not solely on the terrible inequity of such acts; what is even more important to Ellen Kuzwayo is that through her family's once settled conditions she knows what it is to possess her history. She knows too that her grasp of communal origins and of potential direction is rare for a black person in this country where a megalomaniac dream has given the power to destroy centuries of vital tradition to mere bureaucrats. The psychic effect of such dislocations on several generations of people is something South Africa is just beginning to have to recognise.

While she traces her descent (her maternal grandfather, Jeremiah Makoloi Makgothi, was politically active with men such as Sol T Plaatje, and assisted in the translation of the New Testament into his own language, Serolong) and while she depicts the customs of her people, Ellen Kuzwayo also describes her education. She attended St Paul's School, Thaba'Nchu; St Francis' College, Mariannhill; Adams College, Durban; Lovedale College, Alice; and finally, as part of her mid-career change from teaching to social work, Jan Hofmeyr School of Social Work, Johannesburg. The number of schools she had to attend and the distances she had to travel indicate the courage and faith she and her family invested in education, but, even if they wish or can afford it, the opportunity to gain an education they respect is not available to black children today. It is to record her own advantages compared with contemporary deprivation that Ellen Kuzwayo has gone into print:

> The story of my life, my education, you see, cannot be buried quietly and safely in the past. How can I remain quiet when I see the choices open to the younger generation constantly restricted, their hopes fading into dreams, and the dreams becoming nightmares?

AS A WOMAN

Ellen Kuzwayo's third reason for telling her story lies in her experiences as a woman. Again she presents herself and her achievements as representative of the programme of organisations such as the NCAW. She records how, at her first national meeting, the members

> pledged themselves to serve their race and to liberate themselves from the shackles of humiliation, discrimination and systematic psychological suppression by their own menfolk as well as by the state through its legislation and administrative regulations.

These aspects of her story have already found public expression through the medium of film. In 1980 Ellen Kuzwayo was involved in the making of *Awake From*

Mourning which presented the work of several self-help groups for women in Soweto, and in 1983 in the making of *Tsiamelo: A Place of Goodness,* "which tells the story of our family, the dispossession of our land and the history of the great men and women who preceded us."

Now, in her written narrative, Ellen Kuzwayo turns to a more sustained account of herself and her role as opponent of two mighty forces: white racism and her own people's customary oppression of women. In confronting this country's racist laws and practices, she can be sure that she speaks for all of her people, but in confronting the cultural traditions which have failed to equip black women for the realities of contemporary western life, she is making a potentially more divisive plea for change. In this light, her treating both issues in the same forthright but tactful way is striking. Although the personal note does not dominate this autobiography, some of her own experiences are used to illustrate what black women are up against. For instance, she records her anxieties when asked to be Chairwoman of the Maggie Magaba Trust. Despite her years as organising secretary for the YWCA, and her experience as a social worker, she, as a black woman, felt so unused to responsibility on that scale that she did not relish the job. She also records events which illustrate attitudes much more subtle and more difficult to counter, which rob women of self-hood. In 1977 Ellen Kuzwayo was detained and, in the familiar pattern of intimidatory arrests, was released without charge five months later. Shortly after her release, she was asked to be a witness for the defence at the trial of eleven students charged with terrorism and facing a possible death sentence. Her role, which she undertook very reluctantly in view of her own recent imprisonment, was "to get through to the humanity" of the judge by creating for the court an understanding of the circumstances of daily life in Soweto which drive young people to despairing protest. During cross-examination the State seems to have dwelt on the menace of Black Consciousness, seeking to discredit Ellen Kuzwayo because of her sympathy for its function. She does not dwell long on the content of her testimony, but it is clear that although giving evidence was an ordeal, she spoke authoritatively and effectively. She concludes her picture of the trial thus:

> I had hardly taken my seat with the rest of those who had come to court when suddenly someone took me in his arms and crushed me . . . As I turned to see who this very brave person was, I saw a man who looked beside himself, as if under some strange influence. All he said to me was, 'You are not an ordinary woman, you pleaded like a man, only a man could speak the way you did.' Before I could respond or ask a question, he was kissing me and thanking me.. He was one of the parents of the eleven appearing in court that morning.

After a brief reference to the comparatively light sentences passed on the students, Ellen Kuzwayo moves on to other matters. Nothing more is said of her achievement; and the curious denial of her being, entailed in the thanks she got, is allowed simply to speak for itself.

RETICENCE

Such reticence is the most striking characteristic of Ellen Kuzwayo, the narrator. She is consistently forthright in that she never avoids an issue or its effect on her, but she can also be unexpectedly reticent, either in limiting the extent of her comments or in avoiding a detailed presentation of an event. The reason for such self-effacement when she is dealing with her public life and achievements is clear: she is to be responded to as a representative of her people. But what is challenging to a reader used to the conventions of direct immediacy which are used in the name of realism in western writing, is that considerable restraint is also exercised in the account of some crucial private events. Her personal life story contains much drama – her parents separated soon after her birth; her mother died when she was fifteen; her stepfather then married a woman, her own aunt, who subsequently forced her to leave the family home, compelling her to seek shelter in Johannesburg with a father she had never known; her marriage brought her much pain and humiliation, and disintegrated after six years, forcing her to leave home again, this time leaving two young sons behind her; some years later she saw her younger son hounded for his work in literacy programmes, arrested and eventually banished to Mafikeng; her second husband died, a comparatively young man, after only fifteen years of happy marriage; finally she herself was imprisoned for reasons that have never been revealed. But, drama notwithstanding, in recounting many of these passages in her life, Ellen Kuzwayo provides little immediate detail of what actually happened. For example, the breakdown of her first marriage, which drove her to the desperate step of abandoning two young children, is not pictured graphically. It is easy enough to infer what happened, but the narrative chooses to remain in the distancing language of summary and judgement such as "torture" or "humiliation – degradation". Partly this is explained by Ellen Kuzwayo's saying, "Even now, I find I cannot write in detail about it." But, however understandable is her reluctance to open old wounds and however impertinent the reader's wish for intimate detail might seem, when one remembers that the narrative has to prepare the reader for the abandoning of two children, then the absence of explanatory, self-justificatory detail is surprising. The initial strangeness, to a western reader, of this omission becomes even more thought-provoking when, a little later, she writes:

> It is going to take a long period of time to eradicate those harrowing traumatic events I went through in Rustenburg. The fact that they did not leave me with a warped mind and unending bitterness is in itself a great blessing. The writing of this book has offered me an opportunity to relive these past experiences with a certain amount of objectivity and maturity, as I struggle to understand analytically why what happened, happened. Talking about such experiences in a way I have never done before will hopefully air them and expel them from my whole system.

As "talking" refers to what has been recounted in the pages of *Call Me Woman,* Ellen Kuzwayo obviously feels she has written with unusual frankness about the episode. For this reason is it clearly wrong to attribute her distanced account of her suffering to restraint – a reader with western expectations needs more than notions of a voluntary censorship stemming from personal pain or from a tactful desire to protect others, to understand why this writer who has said so much less than she might, feels that she has been unusually explicit. It is in its power to convince

the reader that the style of narration speaks of both an individual temperament and of a cultural tradition that Ellen Kuzwayo's writing is most memorable.

SELF AND SOCIETY

Quite what the cultural traditions which are still deep in Ellen Kuzwayo's psyche are, is difficult for someone from a different culture to know, but an emphasis in Noni Jabavu's *The Ochre People* (recently reissued by Ravan Press) seems enlightening here. In recounting a bus journey through the Transkei, she returns to her preoccupation with the concept of 'self' and its relation to society in her culture. She attends particularly to the way this manifests itself in public speech, especially in that form of speech that is story-telling. Of a passenger who talked about himself in order to illustrate the characteristics of his tribe, she comments, "As usual the impression was not of an inordinate egocentricity but that he was using a personal experience to illustrate the variety of life's circumstances." Then, as the bus crosses the Great Kei River the subject of her narrative changes from the upholders of tradition to those who break with it. A young woman with a child in her lap is moved to tell her story. She had been jilted and in despair had left her people to go to town to find work. After some months, having a good job and having turned against marriage, she had deliberately "conceived a baby as provision for (the) future" and was taking the child to be reared in her family home. Noni Jabavu comments, "the cynicism, the anti-social aspect, the amorality of it affected everybody; not so much the personal case but its wide implications" and she reports the reflections of one woman who spoke for them all:

> We mourn the passing of the days when girls behaved nobly because the *community* so behaved . . . Nobility does not presuppose queasy petty sensitivities. *That* attitude belongs to *isiLungu* — Europeanness. It is not related to the *sensibility* which belonged to *IsiNtu* — Africanness: which was what we strove after, even if indelicate, crude. The ideal of *nobility-in-living-with-people* was served by, among other things, society's demand that a man who transgressed the code about virgins be disgraced, disgraced! The matter had to do with the symbols of our self-respect.

It may be that, a generation or so later, western individualism would prevent Ellen Kuzwayo from feeling quite as this speaker did (and Noni Jabavu indicates that her own feelings were somewhat different) but the sense of what should be said about transgression, and of how it should be said, which informs the narrative and its silences seems to have its roots in the selfless, heroic nobility of which the woman in the bus was speaking.

The reason that Ellen Kuzwayo's account of her failed marriage may seem to western readers to contain inappropriate silences (one reviewer in a local newspaper has, incomprehendingly, termed this picture "too scanty" and "mediocre") is that from within an age of post-Romantic individualism, it is difficult to comprehend a self-respect which still derives in good part from a selfhood defined in relation to the needs of the community. Noni Jabavu's woman was beginning to register the passing of an heroic, communal age and of the identity it gave people, but, in what seems at first like an inappropriate reticence, Ellen Kuzwayo shows that in her most intimate as well as in her public life, her experience of self, let alone her presentation of it, is still rooted in traditions alien to the western reader.

Besides the challenges in the telling of her private story, what is memorable in her claims to be representative is not the extent of her sufferings as a woman and as a black person, but the way in which she has surmounted them and has triumphed. As the assertive note in *Call Me Woman* indicates, Ellen Kuzwayo is a potent presence expressive of indomitable courage. Whether or not she deliberately chose her title to challenge that of Mtutuzeli Matshoba's short stories, *Call Me Not A Man,* (published by Ravan Press and recently unbanned) she comes to embody a resolute communal will to survive and to triumph which is not available to Matshoba's angst-ridden observer narrator. He records, with compelling power, the degradations of township life, focussing usually on exploitation by whites or on the helpless or wary distrust of others that is necessary for survival in Soweto. Although their experience of oppression is similar, Matshoba's view of life is profoundly different from that of Ellen Kuzwayo. Both are authentic and both are necessary. Without a Matshoba, Ellen Kuzwayo's strengths would afford too much general consolation; too much reassurances to the oppressed and too easy an escape from responsibility for the oppressors. Without a Kuzwayo, Matshoba's stories deny too absolutely the possibility, let alone the value, of an inner resilience of spirit. □

CONSCRIPTION

Every young lad should spend two years in the army.
That, after all, is what will make him a man.
Let him learn to endure, to contain his emotion;
let him learn to face death, and to deal it out too.
Who would not wish his son to have such virtues?

So, every girl should spend two years in a brothel.
That, after all, will make a woman of her.
Let her learn to endure, to contain her emotion;
let her learn to face pain, and to deal it out too.
Any parent of sense must rejoice in such a daughter.

by Vortex

by ANNINKA CLAASSENS AND MARIE DYER

DRIEFONTEIN & KWANGEMA — RELOCATIONS RECONSIDERED

Many people have heard of Driefontein and KwaNgema, and the tenacious struggles of their people to stay on their lands; lands which as 'Black Spots' the Government seemed equally determined to 'clear'. Driefontein achieved tragic fame in April 1983 when at a meeting to protest against the proposed removal, a community leader, Saul Mkize, was shot dead by a policeman; KwaNgema became well known when its elected committee wrote to the Queen and Margaret Thatcher, asking them to intercede with P.W. Botha on their behalf during his visit to Britain in 1984.

Both are very old-established communities. The Ngema family acquired their land from the Boers before 1902; Driefontein was brought in 1912 by Pixley ka Isaka Seme (a founder member of the A.N.C.) for the Native Farmers' Association. They adjoin each other in the Wakkerstroom/ Piet Retief district of the South-Eastern Transvaal, a fertile and beautiful area. They accommodate something over 20,000 people, of whom about 400 own the land.

DRIEFONTEIN

Driefontein was under active threat from 1970, when numbers, the ominous precursers of removal, were painted on houses by Government officials. More numbers were painted on in 1975. Since the community is ethnically mixed — Swazi and Zulu with some Sotho — the first idea seems to have been to divide and sort the people into the separate ethnic 'homelands'. Then there were rumours of a proposed mass relocation to a place called Skaapkraal, with further rumours that this had fallen through because the White farmers there would not sell. Finally Oshoek in KaNgwane was suggested. There seemed relentless determination to move the people **somewhere.**

As with many other threatened communities, sudden pounces, followed by silences and long delays in reply to questions and communications, constituted a demoralising process of attrition. Letters from the authorities varied from the peremptory to the unctuous:

> I wish to give the assurance that the matter regarding the resettlement of the Driefontein people was properly dealt with by the South African Parliament and re-consideration of the removal is not possible.
> (P. Koornhof to S. Mkize, 13-10-81)

> Only the terms under which removal will take place are negotiable . . . . I must stress that like you there are many whites who also had to leave land which they have owned and occupied for generations and on which members of their families were born, raised, and subsequently buried. Everyone of us has to make sacrifices in some way or other to further peace and prosperity in this beautiful country of ours.
> (Deputy Minister of Development to Chairman: Driefontein Community Board, 18-12-81)

In 1982 the Government painted still more numbers, this time on gravestones. The total crassness of this action caused outrage in Driefontein and evoked sympathy for the community further afield. An interview with Saul Mkize was published in the New York Times. He said:

> When we bury our dead we expect them, as all other people do, to rest in peace . . . We paid for our land and we wish to keep it.

On instructions from Pretoria, the gravestone numbers were erased. But life was continually made more difficult for Driefontein people in apparent attempts to squeeze them out. Black people are subject to so many regulations that they are extremely vulnerable to bureaucratic pressure. Pensions did not come through, young people's reference books were not issued, trading licences took an excessively long time to get renewed. Roads were not repaired (some became impassable in wet weather). A clinic built by the community was not used: the local hospital was told not to provide back-up services for it, as the community was 'soon to move'. For the same reason, the community was refused permission to build extensions to their overcrowded schools with money they themselves had collected. The community is not a tribe: they administered their affairs first through an elected Community Board and then through an elected Council Board of Directors. However, the authorities refused to negotiate with the Council Board, and at one time chiefs from the Piet Retief district were required to endorse reference book applications from Driefontein. The worst and most tragic act of harassment was the refusal to allow community meetings; and it was when the police entered the area to break up such a meeting that Saul Mkize was killed in April 1983. The police version of the shooting was that the people had become aggressive and were advancing on the police. Eye-witnesses declared that when the shot was fired the police were separated from the meeting — which was already dispersing — by a six-foot fence.

Saul Mkize's death and the acquittal of the policeman who shot him did not daunt the community. By 1984 they had engaged lawyers, and under threat of legal action new pensions were paid, passes issued, and permission for meetings granted. Subsequently extensions to the school were allowed and a quotation given for the repair of roads.

The completion of the Heyshope Dam on the Assegai River late in 1984 brought the community and the authorities nearer to a confrontation. This dam was to inundate about 20% of the area of Driefontein, and early in 1985 the waters began to encroach on some properties. Notices to residents in the path of the waters instructed them to move to higher ground. Queries were sent back 'What higher ground?' but no replies were received.

KWANGEMA

Many of the same threats and tactics as those against Driefontein had also been practised in KwaNgema. Some of KwaNgema's struggles had focussed particularly on the recognition of a community leader. The landowners constitute an extended family, not a tribe; and also here a committee – the Ngema Committee – was elected to act on the community's behalf. But since this committee was resolutely opposed to the removal, the authorities continually attempted to by-pass it and negotiate with arbitrarily-chosen, compliant, persuadable senior family members whom they styled 'chiefs'. Gabriel Ngema was the first candidate, and on his death in 1984 the choice fell on Cuthbert Ngema. The Committee brought actions in the Supreme Court contesting Cuthbert's status; but in March 1985 it was ruled that since according to definitions in the Oxford dictionary the Ngemas could be called a 'tribe', the provisions of the Black Administration Act applied, and the Government could appoint and give authority to anyone it liked. Cuthbert was known to be willing to negotiate a removal; and if he as 'chief' agreed to it, a removal could go ahead as 'officially negotiated' and 'voluntary', with protests attributed to "internal community disputes".

The Ngemas, although dismayed by this judgement, had not been inactive in the meantime. They had written to Margaret Thatcher and the Queen; and – even more significantly – together with the people of Driefontein, when it seemed established that they were all to be relocated at Oshoek in KaNgwane, they had appealed to Mr Enos Mabuza, the Chief Minister of KaNgwane, to refuse to co-operate with the removal. In an unprecedented step for a homeland leader, he agreed to their request. He declared, indeed, that he would 'never administer any resettlement camp which the Pretoria Government deposited on his doorstep; that he would not incorporate the Driefontein and KwaNgema people in his homeland; that he would ban from his territory any truck carrying displaced people or their possessions'.

Parts of KwaNgema were also to be inundated by the Heyshope Dam. In December 1984 the KwaNgema lawyers applied for an interdict against the Department of Water Affairs, preventing them from allowing the water to rise, on the grounds that the community's right to the land was entrenched, that no discussions or arrangements had been made with them about the construction of the dam, and that their lives and properties were endangered. But a significant compromise was reached in this action. The Minister of Co-operation and Development agreed to pay compensation to all households below the purchase line of the dam, to enable them to 're-build houses above the purchase line in KwaNgema should they so choose'. The KwaNgema community dropped their action to obstruct the dam.

URGENT DISCUSSIONS

This agreement could not apply to Driefontein which is more closely settled, with no vacant land available on higher ground. In February 1985, as the water and the tension rose, urgent discussions were held between the Driefontein Council Board and the Deputy Minister of Land Affairs. The minister offered compensatory money to households within the purchase line. But the Council Board insisted on compensatory land, since money would be of no value to people who were not allowed to buy land with it. 'Money is not a bed', as one resident said. After consultations with a community meeting – the largest ever seen in Driefontein – the Council Board presented a carefully-worked-out, specific challenging alternative proposal: that adjoining state-owned land, parts of the farms Grootspruit and Sobbeken lying between Driefontein and KwaNgema, should be offered as compensation to the 84 Driefontein landowners affected by the dam; and that they should move themselves and their tenants on to it.

Bold as this proposal was – that a 'Black Spot' should not only be allowed to remain Black, but should actually be extended in area – it succeeded. The threat of removal was totally removed from these two communities, and the compensatory land granted. Details were finalised in August 1985 – and it emerged that 'big business' had also been involved. The compensatory land proposed had proved insufficient; and Lotzaba Forests, a subsidiary of Barlow Rand, had made extra land available to the Government for the full compensation amount.

Barlow Rand, international publicity, Mr Enos Mabuza, the dam – all these contributed to these communities' reprieve. But their own energy, enterprise, and undaunted determination through years of threats and harassment had been even more significant. Mr Pickson Mkize, brother of Saul and Chairman of the Council Board of Directors, said in a statement to the Transvaal Rural Action Committee that his brother did not die in vain. 'This is what my brother was fighting for. In fact he always said he was prepared to die for our land. At many times since his death we have seen that the Government was ready to move us by force; we told them we would rather all die and be buried with him. Now eventually the Government has agreed to leave us peacefully in Driefontein. This is a wonderful day for us but it is also sad. Our leader was killed when in the end; all that is needed is sitting down and talking like responsible people.□

AFRICAN RURAL LAND-TENURE REFORM

1. ROUNDING OFF THE DISCUSSION

Since the September 1984 issue **Reality** has been host to a debate on issues raised by proposals for reforming African land tenure in the homelands. It was initiated by our reprinting of a paper by Professor David Tapson of the University of Fort Hare. In it he critically assessed arguments for freehold tenure (having noted that the Swart Commission Report (1983) had made "lucid" proposals along these lines for the Ciskei). Tapson concluded that the best-available arguments for freehold were unconvincing and proposed a leasehold scheme with rental incomes accruing to the local community.

In March 1985 Catherine Cross from the Centre for Applied Social Sciences at the University of Natal responded to Tapson's proposals, referring to them as "collective leasehold" (i.e. the landlord is in some sense collective, not the tenants). She accepted his critical stance in relation to freehold while noting that in the areas of KwaZulu with which she was familiar "prevailing tenure appears to be moving steadily toward a condition which is close to freehold, but which recognizes the community land ethic and uses it to control some of the dangerous tendencies of laissez-faire freehold tenure" (p. 7). As regards the leasehold proposals she was sceptical because she saw the real binding constraints on homeland agriculture as not involving the tenure system. Reforming that system would not therefore by itself produce a profitable commercial agriculture. The promised rental incomes would not actually accrue to rural families who would however have suffered a loss of control over land and hence a reduction in their scope for devising individual household strategies for survival and improvement. Her own proposals were really for "stabilizing prevailing tenure" in its evolutionary forms. (It is not possible to go into more detail in this introduction and not really necessary since Catherine Cross returns to the question in her contribution in this issue).

Leon Louw of the Free Market Foundation, a member of the Swart Commission and involved in economic policy formulation in the Ciskei, wrote a response to Tapson and Cross in the May 1985 issue. He stood by the Swart Commission Report freehold recommendations but insisted that their **local option** and **non-coercive** character should be emphasised. The attack on freehold deriving from the belief that poor rural dwellers would be 'separated' from their land which would pass into large agglomerations he rebutted by arguing that subdivision was as much a land-market reality as agglomeration. Moreover he claimed that it was a form of "paternalistic injustice" to deny to people the right to transfer from rural landholding to an urban way-of-life by selling up their rural assets. Against Tapson and Cross he pressed the point that it was not clear what they were in favour of. In particular, should rights to hold and use land (whatever the institutional context in which they were exercised) be able to be exchanged (i.e. sold and leased), mortgaged and inherited? Might a member of one of Tapson's "collective landlords", for instance, "transact" his right to share in land rents in these ways? If so, then at least on the land-**holding** side (as distinct from land-**using**) his right had much in common with ordinary freehold. Since Cross apparently approved of the evolution of traditional tenure in the direction of incorporating such rights of transaction of land (or land-rights) he felt that her position was not clearly distinguishable from that of freehold.

Without having access to the Louw article Chris de Wet of the Department of Anthropology at Rhodes University contributed a piece to the special July 1985 issue of **Reality** which dealt mainly with the Eastern Cape. In his discussion de Wet concerned himself with land tenure, local government and agricultural development in the Ciskei – and commented on the articles by Tapson and Cross in that context. He endorsed Cross's view that the introduction of leasehold-rental schemes would run into feasibility problems since the constraints on agricultural production are not fundamentally concerned with the tenure system. He emphasised the additional point that one is unlikely to have "efficient and corroption-free administration of the rent" by the tribal authorities in the Ciskei. These bodies are not always efficient, are not obliged to be fully responsive to their constituents, are seen as being "in the pocket" of the Ciskei Government and are likely to have their power over ordinary citizens strengthened by their increased role in land administration. De Wet did see a niche for agricultural development based on freehold tenure in the released areas – which consist of previously white-owned farms now incorporated from South Africa into the Ciskei.

In this issue we carry a substantial reply to Leon Louw by Catherine Cross. In it she claims that freehold tenure when applied in underdeveloped rural areas "jams up solid" and does not promote access by efficient producers. She also takes issue with Louw's account of the classical land system and provides a more detailed description of the "informal freehold" that is evolving in some areas. She then turns to the question of alternative approaches to **land-based** development and sketches some of the requirements that new land-tenure legislation must meet if it is to support the type of rural development she proposes.

This article by Cross was made available to other contributors to the debate and final comments were called for. We carry in this issue short responses by Tapson and Louw. We are now bringing this particular debate among our contributors to a close, but we should be happy to publish reactions to the issues from the wider circle of our readers.

by CATHERINE CROSS

2. INFORMAL FREEHOLD AND THE FREE MARKET (REPLY TO LOUW)

1. INTRODUCTION

Following the Swart Commission, Leon Louw makes a remarkably sweeping series of claims about the working of indigenous land systems; according to Louw, capitalist accumulation and the free exchange of land rights between individuals were characteristic of early black society, paving the way for free-marketeers (sic) to restore these lost rights to Ciskeians and achieve economic takeoff. Louw's view is that anyone who disagrees must be confused.

With respect, I have to hand this one back. Louw is mistaken about why I disagree with him – where I part company with the Swart Report is not through wanting to preserve indigenous tenure as some kind of endangered species[1]. The disagreement is at base because I think the Swart Commission's approach to rural development is badly flawed, and particularly their formulation of the land options.[2]

Depriving most of the rural population of their land rights is the express purpose of the Swart Commission land plan:

> " . . . it is clear that there are presently too many people living off the land . . . a successful program of land reform will be characterised by a reduction of the population on the land and a migration into villages, towns, and cities . . . " (p. 21)

In this formulation, it sounds like applying freehold to remote and impoverished rural areas will automatically produce a solution to underdevelopment.

The Swart Commission's approach to the rural situation relies on the same logic as the 1954 Tomlinson Commission report, and suffers from the same problems. It still attempts to promote a rural economy based on full-time agriculture, and it tries to do it by removing "the inefficient" from the land (the Tomlinson Commission simply called them "the rest") and expecting them somehow to find themselves a living somewhere else – theoretically, in wage employment in the urban areas. This strategy is not likely to get past its own internal contradictions. In trying to get people off the land, the Swart Commission approach is likely to remove the wrong ones, further impoverish those who are left, and run a risk of ending up worse off than before.

Louw's reply to Tapson and myself doesn't comment on any of the points that have been raised about real-world chances for development. Louw seems to be maintaining that freehold is a very adaptable economic institution capable of curing almost anything, so the specifics of the case do not matter much; the points Louw does put forward amount to a close recapitulation of the Swart Commission's version of the indigenous tenure system.[3]

The question then arises, why this archaic focus instead of the real-time world? And for that matter, why should the Swart Commission report spend four and a half involved pages on the same issue?

Ostensibly, Louw and his colleagues want to establish that freehold is fully compatible with the indigenous land systems – but this doesn't seem to be the whole agenda. It is a basic principle of economics that free-market systems do not work without free competition: the real aim of their discussion seems to be to claim free competition as a pre-existing principle of the black land systems in Southern Africa.

By the terms of their own argument then, Louw and his colleagues are resting their case on the points that:

(1) the indigenous land systems worked on the same economic lines as Western capitalism; and

(2) all the necessary conditions obtain for freehold to unleash successful commercial agriculture.

2. DOES FREEHOLD WORK?

The overwhelming force of the evidence is that individual tenure in itself does not do anything for agricultural production [4, 5, 6, 7]. Louw has not really disputed this one, other than to say he disagrees with Tapson and myself about definitions. This is a fairly breathtaking omission – whether or not freehold can succeed in establishing a successful agriculture-based rural economy is the point where the Swart Commission land recommendations must stand or fall.

Cases in Southern Africa suggest that **freehold has been consistently unsuccessful in either promoting the free exchange of land rights or in raising agricultural production**[8,9,10]. In the numerous instances where individual tenure has not worked, Louw's argument appears by implication to be that these cases do not apply because the type of tenure involved was not really true freehold, where the landowner can really do whatever he wants with his land freed of all use restrictions. In other words, the landowner has to be wholly free to go for the best market solution.

It is doubtful if this is really the point. On what is now known freehold is clearly not a requirement for raising rural incomes[11,12]; if crop production is the goal, it might be a better idea to spend less time working out whether freehold is really "true" or not, and instead **concentrate on whether individual tenure is a guarantee of agricultural output or not** – or even a precondition for it.

The only case Louw mentions which qualifies in his view is Eastern Cape black freehold in the 1880's, where successful peasant-type production certainly did take place. What Louw does not mention is that similar agricultural development took place in Southern Africa in many other times and places, but was never exclusively linked to private landowning. **Successful peasant production took place on freehold land, but also on tribal land, and on white farms** under various types of tenancy arrangements[13].

This makes it difficult to use the historical data to support a specific link between formal freehold and agricultural success. A major reason appears to be that in underdeveloped rural economies where subsistence risk is the main constraint, the necessary freemarket conditions simply do not obtain.

On the contrary – evidence from various places suggests strongly that if the conditions for a successful rural economy do not already exist, freehold is likely to do more harm than good. In a depressed rural economy where the cash value of agricultural land is low, **freehold seems to go straight for the best market solution in the form of tenancy and shack farming,** with or without absentee landlords[14,15,16].

This kind of tenancy seems to have nothing to do with successful agriculture; people are paying for residential rights chiefly, and running the household economy as usual on migrancy. The results do not help development. In the old rural freehold areas in Natal, the outcome in a weak rural economy seems to be that title becomes so comfortably secure that it rarely changes hands[17,18,19,20].

Landowners are then able to maintain a large following of tenants who may continue to rent from them over generations, but who never obtain secure land rights of their own. Tenants then remain perpetually subjugated to landlords in a system which combines the worst features of laissez-faire freehold and classical tribal tenure. Meanwhile, development is conspicuously absent.

This does not add up to a "free market" in land, but it looks like the real outcome of freehold under unfavourable conditions; freehold does not work everywhere. Instead of facilitating the free exchange of land rights in a dynamic system, freehold in underdeveloped rural areas appears to jam up solid.

3. HOW DOES INDIGENOUS TENURE WORK?

This brings us to freehold and the indigenous tenure system, Louw, de Wet, and our editor have all queried what the actual differences are between formal and informal freehold: last time out, I commented that modern forms of indigenous tenure readily develop their own form of individual land rights, then added that these informal freehold systems **"also recognize the community land ethic and use it to control some of the dangerous tendencies of laissez-faire freehold."**[21] To explain the regulatory aspects of informal freehold, it is necessary to get straight about the basic structure of the classical indigenous land systems, from which informal freehold emerges.

Briefly, Louw claims that **all assets, including land, were privately owned,** and that the right of **free contract prevailed** without any form of coercive power to limit it; that **any tribal citizen could amass wealth** as much as he was able; that **central institutions were very weak,** without the power or the inclination to tax, expropriate, or interfere with private accumulation; also, that no one could be **dispossessed of land** or other assets without a full public hearing. In addition, Louw seems to be implying that this system was equally **open to all;** he winds up by remarking,

> "The true nature of substantive tribal law is more puristically unfettered private ownership than western "freehold" . . ."

and adds that the indigenous population of the time were passionate adherents of individual freedom. On this last point only, Louw is perfectly right.

3.1 THE CLASSICAL LAND SYSTEM

The single basic principle underlying the indigenous land systems is commitment to the interests of society. In indigenous social thought, the private striving of the individual is always potentially in conflict with society's interest. The demand for personal autonomy is deep-rooted, but the other side of the equation is **an equally rooted distrust of individual motivation and a demand that self-interest be controlled.**

The community ethic is an informal code which is not always enforced by law. Public opinion and informal process control activity which is not against customary law but is also not acceptable past a certain point. The powers of the chief and the community over land show up in this light – they are rarely used but are legitimate and perfectly real. Deprivation of land is one of the means the community uses to control people seen as selfish and unscrupulous. Land rights have therefore always been heavily restricted for reasons which have nothing to do with scarcity, and the following **do not** apply to the classical indigenous land systems:

- **Free right of contract;**
- **Free accumulation of wealth;**
- **Free competition**

1. **Classical tenure did not and does not allow a free right of contract.** The landholder can only initiate transfers; his descent group, his heirs, the previous owner of the land and the neighbours could all block the transaction if they were not satisfied with it. **The right to transfer land permanently to anyone other than direct heirs was always limited by what can be called "over-rights",**[22] representing the interests in the disposal of a given land parcel held by other individuals or groups in the land-based organization of the tribe.

2. **Classical tenure did not allow free accumulation of wealth.** In a society with no developed commercial tradition, the only practical use for wealth was political, for collecting followers. The chief and the old families were the economic centre of society; community members could claim on their wealth in case of need. In this kind of economy, for people with low standing to accumulate wealth is divisive and can break up the community. **Private accumulation becomes anti-social and suspect.** Under classical tenure, it was allowed strictly in line with the system of land-based seniority, and attempts to beat the system were arrested by levelling mechanisms[23].

3. **The classical land systems do not provide for free and fair competition.** The economic system was not equally opened to everyone. **The community ethic views open competition as destructive;** under classical land-based organization, access to strategic resources went by seniority. High-ranked families held old-established land rights; new families stood as subordinates, meaning they were expected to stay quiet in community politics and not to attempt to get rich – until, after generations, their descendants had built up standing in the system.

Space forbids citing much evidence here; but in researching the origins of the modern black urban elite, Mia Brandel-

Syrier collected family histories that highlight the status of individual enterprise.[24] One reason why families who wanted to participate in the modern economy tended to end up in town was that their attempts to collect wealth were systematically blocked under the indigenous political economy. The "jealousy of the chief" cited here is institutional, not personal, and is only one of the forms of levelling mechanism:

> "Grandfather said, when asked how he got to the Orange Free State, that his grandfather was quite a generous man; he had plenty of cattle and so he did not see eye to eye with the chief. He was too popular and incurred the chief's displeasure. (The cheif) was jealous, and they organised against him and wanted to kill him. So he escaped from Zulu-land . . . my grandfather was full of enterprise . . . the Dutch farms gave one a chance. My grandfather worked under the Boers. He became rich . ."(p.22)
>
> "On the white farm father had a big herd of cattle. It went down when he moved to the reserve . . . Father was not on good terms with the chief of M.'s location. The tribe were buying a piece of land and all the people had to contribute. They used to come in and choose whatever they wanted from our stock to contribute to the price. They came to my father several times and that decreased our stock. It was because the chief was jealous of my father's stock. Also, my father liked progress . . ."

Brandel-Syrier's accounts also confirm Bundy's implied point that tenure on Boer farms was thought preferable to indigenous tenure in terms of opportunity for economic advancement.[25] Clearly, this would be an impossible state of affairs if Louw's version of early indigenous capitalism were accurate.

3.2 INFORMAL FREEHOLD

Consequently, the answer to Louw's question about whether formal and informal freehold are the same thing, is no. The **community land ethic is maintained by restricting the free right of transfer;** it provides that **every family is entitled to land,** and after that, the **accepted types of land use take priority:** these are residential use, cultivation, and grazing, though modern forms of economic land use such as stores and creches are also acceptable. The land ethic also makes it difficult for a family to sell their dwelling site if they have no other land; and over time it gradually transfers title to the occupant.

As the land ethic adapts to the modern context, economic pressure opens up the restrictions on accumulation of wealth and breaks up the status inequalities of the classical rank system. Over-rights fall away, and the individual is left able to hold and deal in land privately. But the community ethic is very sinewy and resilient – the KawZulu evidence suggests that it will never totally mimic the western property ethic. Informal freehold provides individual property rights **as long as they are seen as reasonable and not dangerous to the community.**

Even in its more open modern form, **the land ethic seems to hold back agglomeration and speculation,** which are apparently still seen as anti-social. Results suggest that field size declines drastically with subdivision, but nearly all families retain some arable land. A determined farmer can obtain four or five fields, but informal density limits tend to close off more because of the needs of others. If a speculator somehow succeeded in getting a sizeable tract, his right to hold the land probably could not be defended against informal challenges. Knowing that the social ethic supports them, people can simply move onto the land.

This kind of system is not, as Louw suggests, identical with formal freehold; social judgement is built into it, and it relies on informal process having the force of law. Sales and leases are certainly provided for, but mortgaging does not fit in easily. Whether or not informal freehold systems promote development probably depends on what assumptions are being made, and what the alternatives are: keeping the land right with the occupant is better suited to integrated rural development than formal freehold systems intended to separate most of the rural population from land assets.[26]

4. ALTERNATIVE APPROACHES TO LAND-BASED DEVELOPMENT

The Swart Commission approach to rural development seems to be based on the principle of the disappearing poor. Cost factors seem to dictate the time sequence: as it costs comparatively little, shift the tenure system to freehold now to get the inefficient off the land, then provide the expensive factors – transport, market supply network, jobs – at some indefinite point in the future, very much depending on persuading the South African government to part with more money. The "inefficient" – i.e. the poor – are apparently expected to disappear into thin air in the meantime.

Forcing up the rate of rural-urban migration is likely to affect the rural areas adversely. Those who leave are the strong viable young families, and those who remain are the poor and weak. A worst-case scenario would then leave the rural Ciskei populated only by a small category of older families who hold land, their economically marginal tenants, and the poverty underclass.

It is highly questionable if the dispossessed rural poor are likely to end up gainfully employed in town as a result of selling off their land. Since they are already marginally employable or unemployable, and lack the human and economic resources necessary to move[27,28], they are much more likely to stay where they are and face starvation in familiar surroundings. If the Swart Commission's land strategy cannot provide economic space for these people in their rural communities, then it will probably harm rather than help development.

In this light, the case for formal freehold doesn't look convincing. If the idea is to keep access to land dynamic and fluid, rural freehold in a marginal economy is not the way to do it. If "true" freehold in Louw's sense is then tried, as seems very likely in view of the high level of anxiety and the insecure land situation in Ciskei, the poor are likely to be dispossessed fairly quickly. In a weak economy, landlessness is not the same thing as development or "being allowed to urbanize" – it can easily mean tenancy, debt, and entrenched poverty[29].

4.1 USING MIGRANCY TO FUEL THE RURAL ECONOMY

The alternative to relying on the land in underdeveloped areas is likely to be relying on wage work instead. **Migrant work is the only effective money-transfer system now operating between the rural community and the urban sources of cash.** Only when the inflow reaching the locality rises above the level needed for basic subsistence

can the classic trickle-down model begin to get past the effects of underdevelopment, and a local economy in its own right begin to emerge through successful informal enterprise. This is the point at which the Swart Commission initiative for job creation may be vitally significant; but the same doesn't hold for their land plan. The economy which appears is not agrarian.

On this alternative model, development doesn't rely on farming – it is spatially determined, and depends on achieving the status of a peri-urban area relative to centres of wage work. "Peri-urban status" here obviously does not depend on physical location, but on elapsed travel time into town, and the efficiency of the physical transport network. There is evidence that successful rural communities can emerge where they have free access to the urban sphere; instances in Zambia, Nigeria and Greece come to mind[30, 31, 32]. Since there is no other way to bring the outlying districts close enough to the cities for development to take place, **the first priority is the improvement of transport, specifically and immediately, rather than tinkering with the tenure system.**

4.2 USING LAND TO INCREASE HOUSEHOLD OPTIONS

Against this background, my own position is that the heart of rural development strategy is **opening up the planning space of the household:** multiplying the lines of support accessible to the rural family till the household as a planning unit obtains room to maneuver, and can use its several economic enterprises to capitalize and to insure its ventures into others. [33]

True to their contention that freehold is the best strategy to benefit the rural community as a whole, supporters of the Swart plan would probably argue that the whole purpose of the exercise is to do exactly this. This is the point: the results of the Louw/Swart rural strategy are likely to be counterproductive here.

Separating most of the rural community from control of their only capital assets and throwing them out of the community doesn't multiply the economic options of the majority. Louw argues that a competitive market in land rights will enventually gravitate toward optimality; but land markets in impoverished underdeveloped areas are not freely competitive, and are likely to gravitate firmly toward the rich controlling the land. In view of the attitude of the Swart Commission toward speculators, this may appear to them as optimality[34]. In practice, a completely free land market in an underdeveloped rural area only multiplies the options of the well-off, and cuts down the plan space of the majority.

If one means of entry into development is differentiating the household's means of support in an economy based on urban wage work, then it would clearly help to forget about consolidating agricultural landholdings. Agriculture assumes its natural position as one of several family support strategies – and immediately, as if by magic, it is no longer necessary to assume that there are too many people on the land. Wage work can support any number up to urban densities.

More than farming, one of the most hopeful ways to open lines of support is through **economic land options,** and the Swart report duly endorses leasing. But the Swart Commission tenure plans are not likely to open up renting or leasing options to the weak.

KwaZulu field results indicate that **leasing land is a very precarious and marginal alternative for the poor,** who are exactly the ones who most need secure leasing options. Louw's discussion here ignores the informal pitfalls – lease agreements can be broken and rented land is frequently stolen. If they rent, the weak resignedly expect to lose their land together with their prospects of getting food, income, or any other benefit from it. Consequently, **the poor are pushed by their desperation into selling their land instead of leasing it,** as their only realistic means of realizing any gain from their land resources[nnn]. In a context of favoritism and corruption, land registry alone is not an answer here – the problems are at the informal level, and the whole system needs to be made more accountable.

4.3 WORKING TENANCY INTO A STRATEGY FOR RURAL DEVELOPMENT

Finding a solution to **allow the poor to use economic land options while still discouraging the practice of tenancy from jamming the land system** may be the single most difficult hurdle in adapting tenure reform to the needs of rural development. Taking land away from the "inefficient" is the last way to assist development in this context. Stabilizing the land system would mean reinforcing the indigenous land ethic where it asserts that all families hold land, and the modern consensus that gives the landholder the right to enter into commercial land contracts to support his family.

Attention is needed here to the institutional aspects and controls. The recommended legislation Louw asks for appears in a forthcoming publication[35] and space forbids a summary here, but I can briefly identify some of the problem areas, given that adequate enforcement at ground level is likely to be the single greatest difficulty:

1. Providing the disadvantaged – women and the poor – with effective access to the institutions that administer tenure;
2. Providing for secure administration of leasing and rental agreements;
3. Providing for community control over settlement density;
4. Keeping the land system fluid and responsive without allowing it to settle into entrenched tenancy.

If Louw isn't worried about agglomeration and landlessness, I am, having seen the system working. On the other hand, the subdivision of arable land is not a problem if no one expects the rural population to support itself entirely off agriculture. The same holds true for mortgaging land to get agricultural loans. For small plots, the risks and the administrative costs can easily outweigh any benefits, and other forms of credit will probably turn out to be more effective.

An overall land strategy for the rural homelands would then amount to working intensively on rural transport to try to shift the base structure of the space economy, while opening up household plan space in every way possible. This means raising urban wages and deregulating to assist the informal sector, but **also stabilizing the land system to try to ensure that the modern land ethic can be en-**

forced – that all households can both keep their land rights and use them to help support themselves. This will be difficult enough under some variation of informal freehold – true freehold is likely to make it impossible.

5. SUMMARY AND CONCLUSIONS: FREEHOLD OPTIONS IN AN UNDERDEVELOPED ECONOMY

The present rural "homelands", as Tapson notes, nearly meet the conditions of land reform that other parts of the Third World are hopefully striving toward – most families still have land.[36] At the same time, the economy of the South African region has reached a point where some cash returns above bare subsistence are beginning to flow from the white economy back into the homelands. There may at present be a window of opportunity in the developmental trajectory of the indigenous land systems.

But as the homelands are drawn right into the modern cash economy and land values rise, new risks open up on all sides – outside speculators, absentee landlords, pyramiding subtenancies, and others. Freehold offers no protection here – as long as the poor are the majority of the rural population there is a high risk that the land system will entrench poverty rather than serve as a force for change. Freehold systems in Third World marginal economies don't work the way they are supposed to – most rural families are not competing in the market economy on fair terms. Optimality is a long way off.

Rural development is normally thought of as serving the poor. The idea is not to guarantee the survival of the fattest, but to try to see that everyone, the weak as well as the strong, are able to make economic use of land resources – even, if possible, to make land the base of a diversified household economy. Or, if this is not possible, at least to make sure that it doesn't slip back to having no income at all.

This is a very difficult trick – once economic forces get loose, the poor tend to lose out by the nature of the economic process. Informal freehold systems may offer more hope to the disadvantaged, but they are not an answer in themselves.[37] As they stand, they only seem to slow down the rate at which the weak can lose their land. Some thorough debate over strategies and options is needed here – especially, perhaps, over rental options and the disadvantage of the poor in the land system.

Putting aside these considerations, other economic questions remain. For instance, are Louw and his colleagues prepared to find the level of welfare funding necessary if agricultural development fails to materialize and nothing else does either? In impoverished rural areas, people characteristically don't take risks they can't afford unless forced to do so – but planning for the rural poor based on freehold requires them to stand the entire risk. If the basic premise of the free-market approach is that risk-taking must be unfettered, and if free-market advocates in the homelands want to encourage tribal authorities to offer freehold in the hopes of removing the inefficient from the land, then whose liability is the risk taken by the poor? □

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1. Louw writes generously that while I claim to be anti-freehold, this may be due only to "an inadequate understanding . . . of the real nature of different land tenure forms . . ." If so, the problem must be a common one. The Swart Commission's very singluar interpretation of indigenous tenure can only proceed from a highly ideological reading of the documentary sources – helped out, perhaps, by not asking live informants the right questions.
2. This is a pity, because the free-market approach to industrial development has one significant advantage: as a method for giving disadvantaged areas some competitive edge, it often works. Reports on the free-market experiment in Ciskei suggest a real rise in economic activity; this means at least a chance of genuine development occurring. But the Swart Commission's understanding of the formal macro-economy seems to be better than their insight into underdeveloped rural communities.
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6. Mills, M.E. & Wilson, M., Land Tenure: Keiskammahoek Rural Survey, vol. 4. 1952, 57.
7. Allan, W, The African Husbandmen, 1965, Edinburgh, 427-8; and see also Sorrenson, Land Reform in The Kikuyu Country, 1967 220-236
8. Bundy, C., The Rise and Fall of the South African Peasantry 1979 London, 52.
9. Wilson, M., The growth of peasant communities in Oxford History of Southern Africa, 1969. London, 60.
10. In cases where individual tenure schemes appear to have had some success, the actual determinants at work appear to have been factors other than the tenure system. Success depends on good land with adequate access to markets, qualified and motivated participants, realistic access to technology and credit, and a crop which finds a real opening in the market. Success seems most frequent in settler-farmers schemes where the other supporting conditions are adequate. The critical factor then may easily be setting the system up from scratch with all needs supplied – the new lands, new people approach. In contrast, attempts to rewire an existing land system – one in which people are not self-selected, experienced or motivated, and are almost certain to have economic agendas of their own – usually seem to fail under the weight of the pre-existing local economy.
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12. Ardington, E., "Decentralized Industry, Poverty, and development in rural KwaZulu," SALDRU, 1984.
13. Bundy, op. cit., 238.
14. Cross, C.R., "Land tenure, labour migrancy, and the options for development in KwaZulu", evidence to the Buthelezi Commission, 1981 unpublished, 19.
15. Report of the Select Commission on Land Tenure in KwaZulu, 1976. Ulundi, KwaZulu Govt. Service
16. Louw remarks that he has no evidence that freehold is linked to "undue agglomeration"; but tenancy neatly solves the problem of agricultural risk, and economic opportunity obviously lies in this direction; I can also refer him to a respected colleague and friend who lives in Durban but also maintains a rural home, who remarked to me recently, "You're writing about freehold? Ha, I'm just hoping for them to start freehold in KwaZulu. I'm going to buy out all the little people around me and get them to pay rent . . ."
17. Watts, H., and Laredo J., unpublished data collected and analysed for the Three Rivers Survey, 1968. I.S.R. Dbn.

18. Cross, Fourie, Bacon, Jenkins, Scogings and McLaughlin, Zulu Land Tenure and Development : The Adaptation of Contemporary, Institutions. 1982 C.A.S.S.., D.S.U. and Department of Surveying and Mapping, Durban, 12.

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20. Mail, L. "The contribution by social anthropologists to the study of changes in African land rights", in Studies in Applied Anthropology, London, 1957, 59.

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22. Cross, et. al., 1982, op. ert., p. 5.

23. For a quick summary of land rights and the adaptation of indigenous tenure, see Zulu Land Tenure and Development.; Ibid.! For more detail, including the land ethic in relation to land use and land transfer, refer to "If you don't have land you are not a man at all; social thought and the mechanics of land systems in modern KwaZulu" C.A.S.S., 1985 forthcoming.

24. Social processes which remove unnecessary wealth from those who are not supposed to have it. Visibly well-off families are expected to be conspicuously generous; any who are not come to be seen as stingy and anti-social. Hostile gossip, demands and accusations, law cases, and threats of violence mount up until the offender either co-operates or leaves the community. See Wolf, E., Peasants, Englewood Cliffs, 1966.

25. Brandel-Syrier, M. Coming Through: The search for a new cultural identity, Johannesburg, 1970, 22-27

26. Bundy, op. cit., 34,45,52-4, 166-172, 204.

27. Umohele, "Designing rural development programs; lessons from past experience in Africa" in Hunter, ed, Policy and Practice in Rural Development 1976. London, 267.

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30. Todoro, M., Economics for a Developing World, 1977. London, 235-8.

31. Botes, R., Rural Responses to Industrialization, A Study of Village Zambia, 1976, New Haven 17.21, 54.5.

32. Uchendu, V., The Igbo, New York.

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34. Smith, T., "The agrarian origins of modern Japan" in Dalton, ed, Economic Development and Social Change, 1971, Garden City, 425-460.

35; Swart Report, op. cit., 18.

36. Cross, C.R., If you have no land you are not a man at all, 1985 forthcoming.

37. Tapson, D.R., Freehold title – blind alley in the homelands?" Reality, vol. 17, no. 5, 1984.

38. Cross C.R., If you have no land you are not a man at all, op. cit.

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by LEON LOUW

3. FREEHOLD LAND RIGHTS, OTHER FREEDOMS AND THE FUTURE OF THE RURAL POOR (REJOINDER TO CROSS)

It has not been possible to find the time required to respond fully to Cross's "Reply to Louw". I regret this because there are aspects of her account of the "classical land system" which I should have challenged had there been a little more opportunity to consult sources. As it is, I confine myself to issues which are closer to my daily working experience of attempts to redesign institutions in South Africa and elsewhere in ways which set agents free to create wealth and pursue happiness.

1. Cross gives an account of how freehold is supposed to work (or rather, **not** work) when it is introduced from outside into underdeveloped rural areas. It "jams up solid". There is little exchange by sale or lease; rental, if it does exist, takes the form of "shack-farming"; and there develops a strange amalgam of landlordism and the traditional system – generally immobility of resources amongst potential alternative users but an arbitrary rent-exaction transferred to the new class of landowners. The problem Cross says is that there is **no competition** – those "potential alternative users" aren't queueing up to bid against each other to use or obtain profitable land. They're in town working for wages (or hoping to) and the land isn't profitable in a market sense when used to support agriculture.

2. There is an important issue here that Cross raises, but it needs to be correctly understood. The lack of competition on the supply side has to do with restrictions on the rights of Africans to buy land in freehold. Similarly the intense competition on the

demand side from people wanting sites for residential purposes, which makes "shack-farming" profitable, is the consequence of restrictions on African residential rights in town. The lack of competition among potential agricultural users to buy or hire such land no doubt has to do with 'underdevelopment', the locational disadvantage of the areas, and the availability of more remunerative and less risky wage work. But it also has to do with the whole series of restrictions on movement, settlement and enterprise which have slowed the economic growth rate, lowered average incomes in rural areas as well as elsewhere, raised rural population densities, lowered average land-holdings and substantially increased the value of land in its non-agricultural uses.

3. Perhaps the point could be put as follows. I doubt that I would accept a brief to design a Black rural land-tenure system in South Africa **in isolation.** In the Ciskei freehold was proposed as one component of a whole package of economic reforms – basically designed to **deregulate** that relatively small economy and set it free to grow. That is how the tenure question should best be tackled.
4. There is encouraging evidence coming in from the Ciskei that the approach adopted there is working. Despite the fact that bureaucracy is still improperly applying old licensing procedures and that people are not fully aware of their new economic rights, our evidence is that new business starts are rising, sales tax receipts are on the increase and unemployment has been reduced. There is an unambiguous reduction in unemployment registrations at labour bureaux, and this is not simply the result of "discouraged work-seekers" – since labour shortages are being reported at growth points such as Dimbaza.
5. My vision on employment and economic growth is a fundamentally optimistic one. I believe that in an environment such as the South African one, where the desire for material improvement is widespread, once people are freed to transact with each other the rate of growth of both formal and informal enterprise and employment will increase – obviously within some very general constraints which set limits on what is possible in any time-period. In the face of much scepticism about such claims, it is possible to point to the actual reality of a Hong Kong, and to other similar growth achievers.
6. Within such a vision the future of poor rural dwellers lies away from the land. The pressing problem is not to devise safeguards for them, inventing types of **land**-based development suited to their requirements. The right to realize the sales-value of their rural assets at some stage and quit the rural areas is an "historically progressive" right for them. The promise of the ascent from relative rural poverty **via** the switch to wage employment in urban areas is not limited to the nineteenth century and the historic core of capitalist countries. It is available today. But of course it cannot be fully achieved within a framework of influx control, Group Areas legislation, pervasive restrictions on the acquisition and use of land, and much stultifying regulation of the economy – both racially and non-racially based. Some of these obstacles are on their way out; some are likely to go; but the removal of others will have to be fought for. It is within such a reform movement that the advocacy of freehold rights in land (and the removal of discrimination against Africans in this regard) belongs.
7. I should like to say in conclusion that I look forward to the **details** of the legislative proposals that Cross refers to. She has said the various rights to transact in land have been developing "informally". The correct procedure is certainly then to legitimise and legalise what has been found to be advantageous. But it would be unfortunate to stop the evolution by building in formal but unnecessary "safeguards". □

by D.R. TAPSON

4. FREEHOLD TITLE: BLIND ALLEY IN THE HOMELANDS — (A REJOINDER)

My original paper was written mainly to provoke debate, and having seen it sink without trace at the Carnegie Conference, the volume and quality (far exceeding the original) of the subsequent contributions, has been gratifying. The experience of being tarred with the "betterment" brush by Cross (in print) and de Wet (in private) was traumatic – far worse than being warned against by Louw (in print) as an arrogant academic inhabiting an ivory tower. Plainly the issue of freehold touches some responsive nerves.

There is very little I can add to the debate, but I appreciate the opportunity to clarify a few points, and restate others.

1. Cross's clear statement of the classical and modern tenure system and the rights and limitations involved has alarming implications for the technical problem which is the basis of my approach. The problem is that there is at present only some 3,2 ha of arable land in **Southern Africa** (excluding B.L.S.) per family

(of all races) (Tapson 1985). Population growth and land abuse are inexorably narrowing that ratio. Unless we are to become permanent net food importers soon, land destruction must cease and the difficult task of increasing output must start. If we are lucky and diligent, the inevitable lag in both processes will be over before our current agricultural surplusses become shortages, and there is no land left worth saving.

2. My proposal was offered as an attempt to create socially acceptable conditions which would permit a technical solution to the technical problem to develop. The only link between mine and the Tomlinson proposals was the perception of a **technical** problem which was present in 1954 and still is in 1985, except on a scale that probably not even Tomlinson could have foreseen. Solutions to technical problems tend to be generically similar – I did **not** propose to "dislocate the entire rural population . . . a matter of eight million people or more" (Cross 1985 p3) I refer readers to the opening sentence of my article: "This paper **offers** an alternative . . ." (emphasis added). The option of making a voluntary choice between alternatives still exists even for poor rural people. My approach is that any proposal for agrarian reform should be exposed to communities as an alternative to what they have now. Given a choice, their own good sense and knowledge of their social institutions and limitations will guide them to the right choice, **for them.** Given an alternative, selection of the status quo is a choice. Without an alternative, they have no choice except the status quo. I comfort myself with the knowledge that thoughts of "betterment" and enforced removals exist in the minds of the readers and not the writer.

3. Cross does not seriously address the technical problem, particularly the aspect of land deterioration. This simply cannot be ignored. Turning to choices again, the decision (by Cross) to promote adherence to the status quo is a decision to continue with land degradation – I am certain that is not her intention, but the present system and land deterioration are fatally linked. Her target for the expanded "household plan space" is attractive, but my point is that most households **already** have more land than they can properly use. I reiterate, properly designed and serviced rural villages with plots of say 0,1 ha in size, supplied with water, would not only be a more appropriate means of helping families to support themselves, but could accommodate a far greater density of population in better conditions than the present system. **Provided** that the village option is an **option** (Option: choice, thing that is or may be chosen, liberty of choosing, freedom of choice . . . The Concise Oxford Dictionary, 6th ed., Oxford, Clarendon Press, p770) i.e. an alternative to the status quo.

4. I do not now endorse Swart (Louw 1985) nor have I ever rejected, or even commented on the Swart proposals – except for a brief mildly complimentary reference in my original paper. My objection is to freehold tenure as a solution to the technical and human problems in the homelands. In the circumstances therefore I could hardly endorse "Swart" or any other freehold proposal.

Finally, thank you to the Editor for space to respond and for allowing the debate to continue for so long. □