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The tragedy of the private: owners, communities and the state in South Africa's land reform programme

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‘ “The tragedy of the private”: owners, communities and the state in South Africa’s land reform program’¹ in Benda Beckmann, F von, K von Benda Beckmann, M Wiber (eds) *Changing Properties of Property*.

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Introduction

The distribution of property, as many of the papers in the present volume suggest, lies at the heart of debates over equity and social justice. This is particularly true at moments of political change when former property regimes are critically scrutinized and reforms proposed. In such settings, a debate of several centuries’ standing is continually replayed: between those viewing private property rights as the foundation of society’s economic and civil order and those advocating the restriction of private property in order to secure it for the “public good” (Hann 1998:13).

A modern-day version of this dispute is being played out between participants in South Africa’s post-1994 land reform programme. The state, while aiming to transforming the racial profile of land ownership, is committed to achieving this through the transfer of land from one private owner to another. Critics of state land policy, including human rights lawyers and NGO activists and those whose rights they claim to defend, have reservations about this. Although it was the apartheid regime that removed millions of people from tenancies in the white areas of South Africa into the African Bantustans (Platzky and Walker 1985), it did ensure some protection to land occupiers in these Bantustans through a racially distorted form of welfarism. It is to a future in which such forms of protection will be less assured, and to the associated threat of ultimate land alienation, that emerging forces in civil society have objected. Claiming that “we cannot buy what already belongs to us”, organisations such as the Landless People’s Movement demonstrate – ironically - a commitment to the apartheid model of communal landholding under the rubric of state ownership which formerly applied in the bantustans. This clinging to older ideas about property in the face of change is reminiscent of similar patterns in post-socialist Europe.

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The dispute thus counterposes two positions. One, in line with the assertion in “The tragedy of the commons” (Hardin 1968) that resources owned in common are misused since no-one takes responsibility for them, is that securing land ownership on a private and individual basis can provide certainty about rights and responsibilities. The other is that the true “tragedy” lies in ensuring or perpetuating the private ownership of land, since this threatens either to lead to its eventual alienation from its new owners, or to make it effectively unusable by placing it under “community” control without state support. It is anxieties about the latter which will be illustrated by case studies in this paper.

In disputes about land ownership, the new approach promoted by the state is pitted against putatively old-fashioned visions of landholding. The resulting dichotomy – between modern/private and traditional/state-owned - harks back to the apartheid era. Although the planned-for reforms will result in a wide variety of tenurial types, depending on whether the land in question is in the former communal areas or on the privately-owned farms of white South Africa, some land activists nonetheless express anxiety that a bipolar division looks set to be further entrenched overall. As is the case in other transforming regimes, however, the boundaries between these apparently opposed polarities are blurred (see Sikor, this volume). Neither “traditional” nor “modern” is quite what it may seem. The traditional models of landholding now defended by poorer landless people were less the product of pre-colonial experience than the result of apartheid’s extensive planning regimes.² Conversely, forms of ownership now endorsed by the state, although private, transfer land to communities rather than individuals.

State planning also involves a blurring of boundaries. While the present regime is committed to privatising land, like other assets, it currently relies on a public legal/bureaucratic planning apparatus in order to achieve this. Such has been the complexity of the new frameworks generated, however, that they have in turn required the intervention of private consultants for their design and implementation.

organizers of and participants in the Changing Properties of Property conference at the Max Planck Institute of Anthropology, Halle, Germany, for providing the opportunity to present this paper.

These private consultants nonetheless act on behalf of and are paid by the state. Here, as in post-socialist Europe, “new intermediate layers emerge between private actors and government, combining private and public elements” (Sikor, this volume) which interweave in a bewildering manner. Ownership becomes so complicated that some local actors, by contrast, idealize apartheid’s earlier system of custodial/state ownership.

Private ownership carries different implications for richer and poorer people respectively. For both, the promise of autonomy is tenuously counterbalanced against the dangers of operating with somewhat less state support. For poorer people – the focus of the present paper - a system of private property based on market forces has returned land to dispossessed communities, or encouraged aspirant owners to pool their resources to buy new land. The state aims to transfer ownership of farms to these groups, thus privatising responsibility for development, social services, and the adjudication of disputes. Activists point to the resulting lack of clarity on the nature of rights and responsibilities, on how disputes between communal owners are to be resolved, and on exactly who is entitled to make decisions about land use. Where communal owners do, despite such uncertainties, succeed in using landed property as loan collateral, debts incurred by individuals threaten to deprive whole groups of their land. Lobbying by NGOs has challenged the state in its intention to transfer responsibility for such lands, pointing out that it is the fully alienable nature of land entailed in unprotected ownership which renders its owners vulnerable. The role of chieftaincy is also now part of the debate. Despite the fact that chiefs were thought of as deeply compromised during the apartheid era, their obligation to protect their subjects is cited by many as a reason for retaining apartheid’s “customary”/chief-based models of landholding with state protection as a backup.

In South Africa, as in the New Zealand case described in this volume, “ownership, in the process of constant change, has become more ambiguous than ever before” (van Meijl, this volume). Owners must attempt to pursue the freedom of private ownership while safeguarding themselves from its vulnerability by calling for assistance from a state increasingly unwilling to supply it. They must juggle the demands of communal

² Murray (1992:132. *passim*). Apartheid planning is described by Bank, after Rabinow (1989), as

responsibility against the risk-taking of the individual entrepreneur. This entails balancing the promises of modernity against the security of the well-trodden path. What makes these interlinked juggling acts necessary, but what also renders them particularly difficult, is their setting in a transitional social context in which many institutional and legal apparatuses are being consciously and deliberately redesigned. The “extraordinary degree of planning” endured by Africans during apartheid (Crush and Jeeves 1993) has required equivalent levels of planning, by state officials as well as those in the NGO sector, in order to *undo* apartheid’s schemes. At the same time, the social forms of the old order – and the expectations which these engendered – have an extraordinary tenacity; in part because the elaborate designs to supplant these forms are taking so long to be realized. The aspirant black South African landowner of the early 21st century is like an explorer setting forth in a rickety old ship, relying on the stars for guidance because more complex technological navigational systems are still being perfected. Set against the promise of new lands to be gained is the fear of old lands lost.

Land Reform and Communal Property: laws, models and precedents

The symbolic and economic implications of South Africa’s land reform have been difficult to square. Arousing millennial expectations and exaggerated fears, land policies have been charged with conflicting tasks. The aim, on a symbolic level, is to restore lost citizenship and nationhood. On a practical level, land reform is counted upon to create a new and prosperous class of African farmers and to ameliorate unemployment and rural poverty. At the same time, it is expected to resolve racial tensions which it, itself, has partly created.

From the outset, the program acknowledged the diversity of land reform’s intended “beneficiaries” – and the complex interplay of moral and economic motivations - by subdividing its intended activities into three categories: restitution, redistribution and tenure reform. In theory, this would allow for the restoration of historical property rights as well as satisfying the demands of redistributive justice. In the program’s initial conceptualisation, lands were to be returned, not to “tribes” as in New Zealand, but to African titleholders who had lost their property during the apartheid era as a

embodying “middling modernism” (2002).

result of forced removals: both strategies excluded large-scale dispossession in the 19th century (van Meijl, this volume). Subsequent negotiations by land activists on behalf of their constituents broadened the remit of restitution to include the holders of “informal rights” – including some “tribes” - as well as the holders of formal title. But restitution has, in practice, proved so cumbersome a process that many of those convinced that their claims fall within its remit have been left to satisfy their demands for land by means of redistribution. This sub-category of land reform enabled people such as tenants and farm workers to pool their government grants and buy farms: it increasingly seemed the only effective way of transferring significant amounts of white-owned land to the historically oppressed. Finally, tenure reform aimed to safeguard the rights on residents of white farms and state land in the former homelands. It was designed to protect poor people from summary eviction by securing their existing rights, or buy alternative land on which they could live.

The programme has received inadequate funding, however, to make this combination of moral with material objectives possible (Walker 2001; Hall and Williams 2003:104). Nonetheless, the reform and/or restoration of land has remained a fulcrum for fierce disputes: over public responsibility versus private enterprise, welfarism versus self-reliance, traditional-style leadership versus egalitarian democracy, and private property versus land as an inalienable right.

During the first few years after the 1994 election, South Africa’s new “land reformers” – both in state and NGO sectors – designed new forms of legislation to provide a legal framework for the ownership of land restored to the communities who formerly owned it. The CPA (Communal Property Association) Bill was drafted and approved by Parliament in 1995, and the CPA Act passed in 1996 (SAIRR 1995-6:369; Klug 1996:194-5).³ It stipulates that each CPA must have a constitution, a system of governance such that individual members elect a committee, a means of transferring property upon the death of individual members, and the like.

Almost a decade after its original design, the CPA has been much criticized. It is seen, on the one hand, as inadequately geared to the needs of particular kinds of

communities for particular kinds of ownership, but on the other as attempting to cater for these kinds of special needs in a paternalistic way. Where one set of commentators calls it a land reform “ ‘product’... ill-matched with the real needs and capacities of the rural poor” and criticizes it for assuming too much in the way of experience and leadership on the part of rural leaders, another view disparages it for assuming that African people are different from other property owners in being inherently “communal”, and thus for stultifying all entrepreneurial initiatives.⁴

The new “land reform” ownership model is, then, both denounced for embodying an inferior ownership specific to Africans and for being too complicated for rural Africans to understand: it is either insufficiently - or overly - different from normal ownership. It balances communal against individual, and public against private, in an uneasy combination. As a model it is not unprecedented. But it would be inaccurate to see it as rooted in African tradition. Instead, it combines diverse - even contradictory - social, political and intellectual influences.

When dispossessed African titleholders struggled to reclaim their land during the decades before 1994, they interacted with land activists who took up their cause. The dispossessed were mostly converts to mission Christianity who had bought farms jointly at the turn of the 19th century. Having distanced themselves from tribal forms of religion and authority, they combined peasant cultivation with labour migration before succumbing to the forced removals of grand apartheid (James 2000a; 2000b). The lawyers and activists were mainly white, middle-class, left/liberal people outraged by the inhumanity of these communities’ resettlement. The dealings between these sets of actors – so different in their social origins and yet converging on this morally-charged issue - produced a series of convictions concerning the nature of communal ownership: particularly, and misleadingly, concerning its egalitarian and inclusive character.

³ In contrast, its twin legislation, the often-redrafted Communal Land Rights Bill, provoked major controversy concerning chiefs’ role and was yet to be passed at the time of writing.

⁴ For the first view see “Didiza’s recipe for disaster”, Ben Cousins, *Mail & Guardian* 22 August 2000, “We can’t deliver the land, admits government”, Sharon Hammond and Justin Arenstein, *Mail & Guardian* 21 January 1999; for the second see “Community projects drown in ideology” Saliem Fakir, *Mail & Guardian* 1 July 1999.

An NGO-published booklet *Botho Sechabeng/A feeling of community* (1992), based on interviews with African titleholders, reveals strong convictions about the moral benefits of communal ownership and a certainty that individual title would lessen “the unity of the area by undermining the feeling of community”. Such convictions sprang, in part, from the threat or experience of resettlement. Memories of an earlier existence, sharpened by the intensity of loss, had added an extra dimension to ordinary nostalgia (see Harries 1987). The insistence on community solidarity was also partly tactical in nature (Pienaar 2000:329). Human rights lawyer-turned-Land-Commissioner Durkje Gilfillan stressed the strategic necessity for concerted community action by all claimants if they were to persuade the government to take land claims seriously. Her advice did not constitute a mere machiavellian tactic, but was informed by ideas of egalitarian community central to a vision of reform shared by many South African activists. In its idealisation of African communality, it represents a misunderstanding - perhaps derived from a dichotomy between private/individual and communal ownership which prevailed in 19th century Western thought - of the collective element in traditional land tenure systems (Hann 1998:321).⁵

Interactions between activists and titleholders yielded other themes besides egalitarianism. Alongside the image of the harmonious community emerges the darker picture of those excluded from titleholders’ lands. Such lands had, in most cases, been purchased by groups of people wanting to set themselves apart from surrounding populations, often on the grounds that they, as mission Christians, eschewed the pagan ways of their neighbours. Restitution provided an opportunity for at least some claimants to restate their opposition to sharing their territory with non-owners. Human rights lawyers such as Gilfillan, despite a commitment to ensuring equitable land access for all, became aware in the course of their work with African owners that former tenants would have to be excluded in order to avoid reinstating the chaotic situations of uncontrolled land occupancy which had developed on African-owned land during the 1960s and 1970s (Gilfillan nd.:27-36). Such lawyers, helping to design the new ownership models, were mindful of the need to

⁵ Evidence similar to that presented in this paper has subsequently caused Gilfillan, along with others in the human rights legal fraternity, to refine their ideas on communal ownership: they now favour a model of individual rights encompassed within a broader collective (personal communication).

establish secure rights of private ownership at the same time as enshrining communal ideals. It became clear that the land hunger of these former tenants would have to be satisfied by the purchase of other farms for redistribution: a setting in which the same private/communal models were also to be applied.

Other precedents for the new ownership models likewise combined the demands of private ownership with those of communality, although initially privileging the former. These were provided by “development experts” schooled in third-world agriculture. Policy-makers from the World Bank, initially attempting to lead but later influenced by South African opinion, attended a series of local workshops during the early 1990s where they made proposals to liberalise agriculture and to transform land ownership. The resulting hybrid combined developers’ models, a reading of Kenyan land reforms of the 1950s, and a passing acquaintance with Bundy’s influential 1979 book *The Rise and Fall of the South African Peasantry*. The small family farm was initially proposed as the most efficient ownership unit, but subsequent persuasion by local land activists led to a modification of the proposal, allowing “communities and not only individuals to acquire land” (Hall and Williams 2003; Francis and Williams 1993:398-9).⁶ Through these policy workshops, land reformers’ image of “communal property” were further shaped.

The ideological and historical basis for South Africa’s new model of communal property thus stressed the value of community while suggesting the exclusivity of private ownership. One precedent – the interaction between lawyers and dispossessed titleholders - was based upon previous experiences of landownership. The other, based on a version of international development discourse, posits an intended ideal of the future. The two have become merged into a standardized framework which offers owners a limited range of fixed alternatives (LRC Cape Town 2001).⁷ The prospective beneficiaries of land reform projects are all advised that they need to choose one out of the range of possible alternatives. Once the choice is made, a standard set of bureaucratic procedures follows. A constitution is drawn up and

⁶ For joint analyses by World Bank and South African policy-makers, see Mbongwa *et al* (1996) and other articles published in Van Zyl *et al* (1996).

⁷ CPA “is not so much one size fits all, but .. in the early examples we ... did not realise that if you do not give attention to how allocation would happen and be managed *prior* to transfer and settlement, it is very difficult if not impossible to do it *later*” (Kobus Pienaar, personal communication).

committee elections organized, the CPA or Trust is registered, and a certificate of ownership is issued. The farm will now be officially owned – and governed – by its own particular “legal entity”.

The choice of model has changed over time. In restitution cases initiated early in the 1990s, the CPA, as an embodiment of the strong communal ethic involved in “getting land back”, was preferred and advocated by state and NGO officers alike. As time went by it was realized that CPA ownership often led to a paralysis of decision-making. Prospective buyers in a recent redistribution project, through a process of extensive “workshopping”, have instead opted for a Trust-style legal entity on the grounds that it will facilitate decisive action. They opted for a later transition to communal ownership “after land transfer, when the community has become close-knit” (Amos Mathibela, interview).

To give some idea of the contradictory nature of these newly-designed legal frameworks, and how far people relate to these as overly – or just sufficiently – modern or traditional, some case studies from Mpumalanga province will demonstrate their operation in specific contexts.

Restitution: “exactly what they had before”?

One case in which the interactions between restitution claimants and land activists produced an image of a strong community is that of the farm Doornkop, which in 1994 was restored to the descendents of its original titleholders, adherents of a 19th-century Lutheran mission. The CPA to which the land was restored is governed by an elected committee. Its members are called upon to exercise considerable expertise and judgment, in technical matters of ownership as well as political ones of representation and governance. The two areas often overlap.

What complicates the already onerous duties of this committee is the social division between it and its constituents. Socio-economic differentiation in the community, already entrenched when the farm’s occupants were forcibly removed in 1974, re-emerged after the farm’s restitution in 1994 and became entrenched in leadership/rank-and-file divisions. Those resettling on the farm relied on a mostly absentee elite – whom they elected to the committee - to represent their interests.

Apart from providing services like the water and residential housing, a major task for the committee was to deal with the re-emergence of tenancy on the farm. By 2001 Doornkop had been invaded by more than 100 families of shack-dwellers who claim to have lived there in the pre-removal period. Indeed, some poorer CPA members had “sold” plots, illegally, to these “squatters”, in an attempt to augment their meagre incomes. The rest of the community was divided over whether to evict or accommodate them. The resulting crisis of leadership was exacerbated by uncertainty about exactly which land was owned by whom. Residents claimed that if they had been certain of their specific property rights from early on (a matter of ownership), they – or their representatives, the CPA committee - would have been empowered to evict the squatters on their behalf (a matter of leadership) before the problem escalated. Lack of certainty about property rights likewise caused vacillation amongst co-owners about holding other members of the CPA accountable. Had there been less uncertainty, the illegal seller of land himself might have been more swiftly disciplined:

he should lose his position - and his membership - with immediate effect. Otherwise, where are people going to get their idea of private property? If the mayor comes and explains, they do not understand. Different people say different things, and no one is clear on the Government's policies (Amos Mathibela, interview)

Such a sense of uncertainty seems a far cry from the spirit of self-reliance which African titleholders pursued during the period of resistance against forced removals and immediately after reoccupying their land. The earlier independence of these farms, originally deriving from Christians’ longstanding suspicion of outside interference from the state (James 2003), has now been augmented – but distorted - by the effects of private/communal ownership. Ironically, at a time when restored owners are orienting themselves to take up full citizenship in the broader society, these farms have become, in effect, more separate than ever.

On this point, human rights lawyers, continuing to engage in debates over communal ownership models and now willing to admit to what they see as their former mistakes, have been critical of CPAs’ separation from the public realm and of the corresponding reluctance of the state to intervene in their affairs. They show how private/communal ownership induces uncertainty about the specific rights of individual members. Disputes between members, or inactive committees, may lead to the withholding of

the consent which is required by the CPA constitution in order for individuals to use or transfer their land, resulting in paralysis. The remedy to this, according to lawyer Kobus Pienaar, lies in holding the state responsible, as it formerly was, “in respect of the allocation and ongoing administration of the rights of individuals to use the land”. It also lies in a clearer initial definition of people’s entitlements to specific assets: people’s rights “to various kinds of assets within the broader communally-owned unit must be ensured” (Kobus Pienaar, LRC, interview). Effectively, this is a call for the individual “sticks” in the “bundle” of rights to be more clearly specified: for an eradication of what Verdery calls the fuzziness of property (1999).

These kinds of uncertainties, and the community conflicts which underpin but are also intensified by them, highlight the extent to which communally-owned “land reform” farms have come to be viewed as separate arenas -

. . . while the trust or communal property association tries to draw boundaries around itself to protect resources, it adds to the danger of creating an abnormally isolated zone (Lund 1998).

- despite their occupants’ wish to exercise the citizenship rights of those in the broader society.

Based on his experience with several CPA-owned properties, Pienaar asserted that such problems would be obviated by treating land reform beneficiaries as though they were governed by society’s normal legal frameworks, rather than by special forms of legislation. The implication of this, he said, would be to recognize that the state has a role to play in administering relationships, and regulating conflict, between co-owners, as much as it does between neighbours in a city context:

Other property relations in society do get a lot of state support from local government, which helps to define your relationship with the street, your neighbours, the area in front of your house, and so on. There are public institutions, like the Deeds Registry, the Surveyor-General’s office, which perform these functions. . . . It is presumed that people in CPAs must take charge themselves, but no-one would expect this in the case of normal individually-owned property. ⁸

The case of Doornkop shows that individual and communal aspects of ownership combine in ambiguous ways, resulting in many of the disadvantages of private

⁸ In his growing awareness of the problems of communal awareness Pienaar shares the attitudes of others in the human rights legal fraternity, such as Gilfillan (cited earlier). All have come to recognize a point made – independently – by Hann: that, although African patterns of landholding have some collectivist elements, these do not equate to communal farming a la African socialism (Hann 1998:321).

ownership with few of its concomitant benefits. A model of communality, combined with inattention to the precise nature and content of property rights, has served to paralyse leaders.

In reaction, landholders have reverted to models of chiefly authority and ownership: somewhat surprisingly, given their history. Doornkop's purchasers had separated themselves geographically from the wellsprings of chiefly power in the late 1800s, and had long insisted on elected rather than traditional forms of leadership. During the 1980s and 90s, the farm's claimants were speaking scornfully of all forms of patrimonial authority. But by the early 2000s they were sufficiently disillusioned with committee-style CPA government to be idealizing the chiefship in retrospect:

We thought there would have been a chief here - if so, he would have been responsible for everything (Eva Mankge, interview)

These sentiments were echoed by a claimant at another restitution farm:

Now we have no master. We are ruled by a hundred rats, not by one lion. There are many committees ruling us now - we prefer to be ruled by just one chief (Simon Tsehla, interview).

A land researcher to whom I mentioned these attitudes agreed that there had been a general reawakening of chiefship in South Africa, in reaction against the putatively "democratic" alternative

chiefs are seen as champions – strong people with clout, not people bogged down by bureaucracy. People think, "if only we had a strong leader".... One can relate this to the appeal of authoritarianism to the poor in other settings (Ed Lahiff, interview).

Such sentiments, rather than being seen as a wholehearted endorsement of traditional leadership, represent a critical commentary on the opacity and ineffectiveness of CPA committees: groups of (mostly male) office-holders whose deliberations and machinations are a mystery to most, who fail to deliver on numerous promises of development, and who in many cases do not even live on the restored farms but travel there infrequently from the cities where they reside and work. Similar problems, widely reported, suggest profound flaws in the assumption – enshrined in the original legislation - that communal landholding would automatically be translated into harmonious and conflict-free leadership. Instead, there is a "breakdown of communication between the leadership and members", as well as "inequitable allocation of assets based on self help; mismanagement; the squandering of opportunity; a disregard for internal rules". The result has been that "infrastructure

and land are left to deteriorate” (Pienaar 2000:327). In the face of such problems, chiefs appear to present an alternative model of ownership/leadership which contrasts favourably with government by committee.

The “tragedy”, here, appears to be that no-one has sufficient authority and clout to act in the way that truly “private” owners of land might do. Instead they revert to a misremembered past in which chiefs acted with decisiveness and authority rather than being crippled by indecision and doubt.

Redistribution: “future-oriented”?

In the new South Africa, as with other regimes focused on reforming land ownership, there has been consciousness of a need to provide distributive justice alongside reparative justice, since the latter focuses entirely on historical conditions without taking into account the dynamics of the present or the demands of the future (see van Meijl, this volume). If restitution was a backward-looking enterprise, redistribution appeared to promise new, future-oriented ideals of community, oriented towards progressive forms of social organization and exemplifying the best features that modern technical/legal planning could offer.

Planners have attempted to meet the challenge – along the lines outlined by Pienaar, above - by disaggregating the “bundle” and specifying the precise content of different kinds of entitlements and obligations. Enlightened policy should, it is thought, solve the problems posed by the failure of existing projects. The case of two redistribution farms exemplifies this. One is the earlier-settled – and “failed” – Sizanani. The other, Siyathuthuka, is presently being designed to forestall a similar “failure”.

Sizanani has been seen by many commentators as a casualty of the early, “rent-a-crowd” era of redistribution, in which beneficiaries have pooled their grants despite conflicting interests and taken over commercial operations which they have insufficient capacity to run.⁹ Problems have included mismanagement, financial shortages (insufficient funds remained after purchase to initiate an “agricultural

⁹ “Land Affairs Divides and Conquers”, Ann Eveleth, *Mail & Guardian*, April 20 1999; “Didiza’s recipe for disaster” Ben Cousins, *Mail & Guardian*, August 22, 2000; similar opinions were held by Philip Mbiba, Rosalie Kingwill and Chris Mulaudzi (interviews).

project”), and unsustainably large numbers (determined by the purchase price rather than by commonality of interests). The purchase was initiated by a member of the new political elite in the region on behalf of a group of farm labourers who needed a place to live. When extra members were then recruited so as to be able to afford the farm, this led to the inclusion of the names of people who did not intend to participate but had been persuaded to be listed in order that their government grants be accessed.

The prospects of effective representation were slim from the outset, but were made even more remote by the group’s members’ lack of experience of commercial agriculture, finance, or business. Although many had worked on farms, their habituation to a decades-old despotic regime as labourers for white farmers made egalitarian models of participatory democracy unfamiliar:

The problem they have is with management. There are seven families who are working on the farm from the previous farm owner. They do have experience with farming but the previous farm owner was in the position of farm manager and they were working by instruction. But now they need a person who can manage them - and they ... have this problem of not respecting any of their own members (JB Mahlangu, interview).

The remedy proposed in the case of this farm, as in that of many like it, was to appoint an outside expert with managerial and commercial farming experience to run the farm in the interim, and to share his knowledge with the new owners. In a somewhat grotesque caricature of earlier apartheid practice, the person proposed – in this as in similar cases – was the former white farm owner:

But not all CPA members were enthusiastic about accepting his help. In cahoots with a relative well-connected in the tourist industry he made proposals – while a neighbouring farmer competed for the post of manager by making counter-proposals - about running the farm. Each informed the committee about the fees, generated out of future profits, they would be charging. In the face of these conflicting ideas, the recently-elected CPA committee members felt bewildered and unable to assert themselves: and resentful at the promises made which, as they later said, were “never fulfilled”. They were thus relieved when development agents from the parastatal Eskom confirmed their suspicions by telling them

not to work with any white people, because they are going to rob us and later dispossess us of our farm. Whites are the ones who make us suffer (Driver Ntuli, interview).

Such assurances seemed to provide a sense of security by pointing to a mutually-agreed-upon enemy which could be blamed for the CPA's, and the farm's, misfortunes. But it remains to be seen whether Eskom's agents, who in turn plan to outsource the training of Sizanani's owners to two black-owned companies of "service providers", are more reliable than the earlier candidates for the position of manager. What will certainly remain true for the foreseeable future is the perpetuation of the CPA's present sense of dependency. Although the representatives of Eskom and of the Department of Agriculture were shrilly insistent that Sizanani's farmer/owners must now be independent rather than continuing to rely on employment by white farmers, many of the owners felt pessimistic about being able to make an independent living on the land and were hence reluctant to relinquish their jobs as labourers on white farms, as this extract from my field diary shows:

Meeting at Sizanani, 26th January 2003

George Mahlaela (from Eskom Development Foundation): You no longer work at *makgoweng* (the place of the whites) - *makgoweng* is here, work is here. You are the farmers - you are your own bosses. Your children are your eyes and your ears, they must be involved. Do not come and tell us that your children are in town working. You must get here in time for meetings. This place belongs to you.

Female CPA member: If we start farming, who's going to pay for this? Will we be paid if we start to farm here? ...What is the government going to do? When are they going to give us water, electricity, and so on? When is electricity going to be laid on here?

George: These things will be settled by the service providers. ...
(Some people get up and start to leave. Rose Msibi gets upset.)

Rose: We want to have a general meeting every month. ... We would like to have the meeting on a week day - this will force people to attend and thus to stop their work on farms. ... People should not be working on farms here. You're your own bosses - you are like whites.

Male CPA member: If you have it in the week, some will come, and those who are working will not.

George: We could have it at 5 o'clock, or 6 o'clock, to accommodate them.
(They take a vote to hold it on a weekday afternoon).

Male CPA member: (defiantly) I cannot make it in the week - I work on a farm.
(Everybody laughs).

This exchange shows the state and its agents attempting to foist the responsibilities of ownership onto beneficiaries. While employees of the state or of parastatal development agencies attempt to reshape reality by portraying Sizanani's members as independent owners responsible for their own future prosperity, the members themselves recognize that their poverty will continue to render them reliant on white farm employment and on state welfare, even though the former is dwindling and the state has shown itself increasingly unwilling to provide the latter.

The perceived failure of communal ownership and responsibility in projects such as Sizanani has led to an increasing emphasis on new models which allow for the

individualization of rights. Given that the CPA ownership model is flawed, there are increasing moves towards models of ownership which – as originally suggested by the World Bank – privilege the family farm or foreground the individual entrepreneur. But land functionaries continue to design projects for groups of “landless” people who still feel unable to own or run properties as individuals. In Mpumalanga, as elsewhere, many of these are displaced farm labourers. There were those who early on became the beneficiaries of Sizanani. There are the “squatters” who invaded Doornkop and settled there without any immediate prospects of a land reform project or CPA. These are the intended “beneficiaries” of Siyathuthuka. In this case, individual ownership within-the-commons has been perfected – at least in theory.

Planning: technical solutions to political problems

In the process of making new plans to overcome old problems, consultants gain considerable experience. They develop expertise at constructing “business plans” for use on communally-held lands. These plans, with their complex provisions for sub-letting of communal property and the like, made up for the failure of earlier CPA constitutions to specify individual rights to assets. Manifesting a pattern well-known in third-world development, technical solutions were thus beginning to substitute for legal or political ones (Robertson 1984; Ferguson 1990).

In preparing to purchase a redistribution farm where squatters would be settled, the consultants drew up a business plan. It allocated resources in such a way as to avoid a “tragedy of the commons” scenario in which a failure of responsible leadership results in wasting assets. The “commons” here have been conceptualized as an asset, owned by the Trust, which members must lease:

“the Trust will be responsible to collect rent from each beneficiary and people operating small businesses that will then be used to maintain infrastructure and to pay for services”.¹⁰

The specified grazing arrangements are similar:

an amount of R5 to R10 per month per head is paid to the Trust for the grazing. ... The reason why a rent should be asked is that the property belongs to all the beneficiaries collectively and that those that use the grazing use the assets of other individuals; it is therefore reasonable for the advantaged to compensate the others for the use of the Trust’s common assets (*ibid.*:11).

¹⁰ “A business plan for the settlement of the Siyathuthuka Trust of Doornkop”, Fundile Africa, Pretoria, 2002.

The consultant laid out the rationale for this co-operative ownership schema, claiming that its “somewhat autocratic” nature was necessary in the interests of sustainability.

This sophisticated model attempts to compensate, through elaborate technical specifications, for the ambiguities entrenched in the legal outlining of communal property arrangements. At the same time as guaranteeing the proper custodianship of “the commons”, it thus appears - though on a technical rather than legal level - to satisfy some of the requirements outlined earlier for a clearer initial definition of people’s rights over specific assets.

This plan entailed two drawbacks, however. It conceived of rights as something earned through continuous enterprise rather than guaranteed by the state. Using a commercial model, it seemed to embody an assumption that cattle-owners would be generating cash income from their enterprises, and would thus be in a position to pay rent to the Trust. In this way it seemed to be out of kilter with the priorities of most squatters, who kept cattle as a form of long-term saving but were reluctant or unable to make ongoing monthly investments such as payment for grazing. Instead of assuring the citizen’s inalienable entitlements as pledged by the state, the plan proposed a model of citizenship based on post-welfarist propositions about self-sustaining individual enterprise.

A second drawback lay in the plan’s misrecognition of existing social realities. In the same way that it seemed to take little account of members’ incomes by failing to recognize that few were in a position to pay rent for grazing, it also ignored both their aspirations and their shortcomings on the level of managerial or organizational skills. In both these respects, the consultant’s plan thus continued to fall into the trap of the communal property plans which it was attempting to transcend. Without extensive state intervention and agricultural support it was unlikely that its way of “privatizing the commons” would be able to be put into practice.

That squatters’ aspirations were being ignored had already become evident to me from several interviews:

... we don’t want it. ... In fact, they have gone behind our backs. Firstly, we were told to simply register our names and we later realized that our housing grants were used without our consent to buy the farm (Ephraim and Fanie Mabuza, interview)

Such objections, based on the communal/trusteeship model of the homelands (Murray 1992:132. *passim*), but newly-reconstituted as a form of resistance against the state's plans for private land ownership, were founded on a model in which the state should be the rightful owner and custodian of land.

That there was a misrecognition of the lack of managerial and organizational skills was suggested by the father of Siyathuthuka Trust's chairman. The problem with business plans, he said, was that they were too complex for ordinary people to understand. The "workshopping" beloved of both state and NGO practitioners in the land sector did little to improve matters:

Now we have people driving from Pretoria, They talk, talk, and not a single person will ask a question. Have they understood or not? Its not that they are scared, it's that they don't understand (Hendrik Mathibela, interview).

What made these workshops worse, he implied, was that the elaborateness of their abstract plans was matched by a failure to deliver any material, practical progress. Land for the squatters was forever being discussed at meetings but never handed over. He likened this to a meal much planned-for but never actually forthcoming:

You can't tell people "I have made food; I'm going to give you food", from the morning till the sun goes down – people are waiting. Tomorrow when you we say "we must go and eat", they say, "there's no food". . . (*ibid.*)

All-in-all, he was suggesting, the designing of complex plans for commercial farming was serving only to frustrate those for whom the plans had been made. While they would have been happy to settle for a much simpler solution, the process of planning was serving to render *all* solutions equally remote and hence promoting passivity among those planned-for. His account certainly confirmed squatter shortcomings on the level of "managerial skills", but suggested that to require such skills was inappropriate in the circumstances.

It would appear, then, that consultants' technical elaborations on the communal property theme, although seeming to promise a fine-tuning of the original crude model, were so complex as to be virtually incomprehensible to their intended recipients. Although they might, with much public support, have been realizable, it was precisely this support that was becoming increasingly rare under the new privatizing regime. While much was being invested by the state to pay for consultants

to *design* sophisticated property regimes, *implementing* these was generally left to communities with very little assistance or expertise. Indeed, the state's "hands-off" approach was being justified with such statements as "the point of land redistribution is to give a community their land, not run it for them" and the insistence that they "have to be more accountable for their own fate".¹¹ In the absence of "post-settlement support", the assumption was that plans could be conveyed to their recipients through "workshops". In a manner which has been widely noted in the world of development, this embodied a presumption that more effective channels of communication would enable planners' modernizing paradigm to be shared by those planned-for, and ignorance replaced by rational knowledge (Hobart 1993).

In the one-size-fits-all world of communal property, things are not as they seem. In the case of restitution communities, it was presumed that their origin in longstanding group ties would provide precedents for democratic communal ownership. Instead, members ended up crying out for a return to a traditional model based on chiefly custodianship. But this call for despotism disguised a demand for state involvement and for the continuation of apartheid's particular version – albeit a partial one – of welfarist, modernist planning. Redistribution groups, in contrast, appeared to promise a future untrammelled by communalist precedents: they provided a blank slate upon which consultants' increasingly sophisticated schemas of entrepreneurial modernity and private ownership could be drawn. Instead, and in reaction, participants longed wistfully for apartheid's model of tribal/custodial landholding. This apparently regressive vision, however, masked ideas about democratic-style modernity. Deriving from the election's promises of egalitarianism and participatory democracy, redistribution beneficiaries expressed their convictions that there should be wide consultation about future outcomes rather than allowing planners to "go behind our backs".

Inalienable or alienable land?

If landed property becomes alienable and short-term gain outweighs long-term considerations, the public aspects of property may atrophy (Hann 1998:33). It remains briefly to mention the risk to newly-installed private owners of alienating land altogether.

¹¹ "Shattered dreams of the San" Yolandi Groenewald, *Mail and Guardian* 10th June 2003..

The possibility of land loss through indebtedness has loomed like a shadow in the background of South Africa's land reform program, threatening communal/private ownership. One such case is that of the Khomani San in the Northern Cape Province whose land was restored in the 1990s. When CPA members incurred large debts from a local white shopkeeper (the former owner of one of the farms), the debtors decided, without the necessary mandate from all committee members, to auction that farm in order to settle the debt.¹² As an interim solution, the Director-General of Land Affairs was pressed into custodianship of the CPA. In the case of the "rural poor", then, the state has continued to intervene, partly under pressure from those in the NGO sector, in order to ensure that the gains made under land reform are not prematurely lost.¹³

It is too early in the "new look" phase of land reform to assess whether land alienation is occurring amongst the higher-income individual owners now beginning to be favoured as beneficiaries of the program. There are, however, suggestions that a cautious approach which combines Land Bank loans with leasing and long-term payback arrangements to former owners will safeguard at least some land redistributed to commercial African farmers. The state's increasing predilection for such schemes has, however, been criticized by those on the left who feel that it is neglecting "the poor". In defence of this new approach, officers point to its likelihood of greater sustainability than earlier rent-a-crowd schemes. But the history of African landownership tells us that even the middle classes, for whose identity and status landowning formed such a crucial basis, have fallen prey and might again succumb to land loss. Whether in 1890s Natal (La Hausse 2000), or during the 1930s in the Orange Free State (Murray 1992), the risk always existed that mortgage debts might be unrepayable and thus that land would be forfeit. Such owners, being reliant on sources of income other than farming, were susceptible to downturns in the economy which threatened their non-farm sources of finance, such as migrant labour, transport riding or "shack farming" (La Hausse 2000:161-4); or leasing land to whites who would farm it instead (Murray 1992:98). Both cases illustrate the exceptional

¹² "San risk losing their land" Yolandi Groenewald, *Mail and Guardian*, 15th September 2002.

¹³ It is possible in this case that the intervention of the state was perceived as more feasible – and more desirable – because it was a case involving indigenous people, often seen as closer to nature, more vulnerable, less likely to be able to protect themselves.

vulnerability of African farm owners in situations where the economic, legal and political odds were against them. Although African owners now enjoy greater favour than they did in earlier historical periods, the present setting has its own risks. Since well before the 1994 transition, the state has been unwilling to provide farmer support as it once did: indeed, many of the white farmers selling to the state for land reform have become heavily indebted since the withdrawal of such support in the late 1980s. Middle-class land loss thus remains a distinct possibility.

Conclusion

The context of property-holding in South Africa is one of political transition: a context in which all models of ownership appear to be negotiable and under redesign. The change of regime presented an ideal opportunity to unbundle the complex components of the property package, selecting only the most appropriate parts and streamlining property ownership to suit a changed dispensation. To the most utopian land activists and their constituents, it seemed to promise a chance for renegotiation of some of the most fundamental inequalities in society, by combining the independence of land-owning with the security of state support.

The resulting models combined private and public, modern and traditional, in unexpected ways. There is the still-resilient commitment to communal ownership by civil society activists, human rights lawyers and consultants, partly drawing on but partly being imposed upon their constituents' views. There is the co-ownership of property by better- and worse-off people, with the poor concomitantly dependent on their richer counterparts to represent them or serve as intermediaries. Different models of property thus converge and their boundaries blur.

Historical struggles and contemporary disputes over land and the way it ought – or ought not – to be owned have left their imprint upon present-day policy and practice. The past weighs heavy and leaves its imprint, enshrining a view of apparent communality which leaves in place many of the features of individual property. When the private/communal model was found to be problematic and unsuited to the demands of redistributive justice, planners attempted to refine it by specifying individual entitlements in greater detail. But the resultant models of property-holding

are overly complex. They also rely on a presumption about the capacity of poor people to behave as investors and rent-payers. As a result, the poor and landless appear to be excluded as real “beneficiaries” of land reform. Unable to benefit from private ownership, they press for protection from its dangers. They affirm apartheid’s familiar model of customary landholding, which seems to promise land as an inalienable right. Resisting the state’s insistence on private property, they insist on their own interpretation: that “land cannot be bought and sold – it is for everyone”.

References

- Bundy, C 1979 *The Rise and Fall of the South African Peasantry*, London, Heinemann.
- Crush, J and A Jeeves 1993 Transitions in the South African Countryside (review) in *Canadian Journal of African Studies* 27(3) 352-9.
- Ferguson, J 1990 *The Anti-Politics Machine: 'development', depoliticization and bureaucratic power in Lesotho*, Minneapolis and Cambridge, University of Minnesota Press and Cambridge University Press.
- Francis, E and G Williams 1993 ‘The Land question’ *Canadian Journal of African Studies* 27(3):380-403.
- Fundile Afrika 2002 “A business plan for the settlement of the Siyathuthuka Trust of Doornkop”, Pretoria, mimeo.
- Gilfillan, D nd "Common-law and customary land-rights in the context of section 28 of the constitution", unpublished dissertation, University of Pretoria.
- Hall, Ruth and Gavin Williams 2003 “Land reform in South Africa: problems and prospects” in Baregu, M and C Landsberg (eds) *From Cape to Congo: Southern Africa’s Evolving Security Architecture*, Boulder, CO., Lynne Reiner: 97-129.
- Hann, C 1998 *Property Relations: renewing the anthropological tradition*, Cambridge, Cambridge University Press.
- Hardin, Garrett, 1968 “The Tragedy of the Commons” *Science*, 162:1243-1248.
- Harries, P 1987 “A forgotten corner of the Transvaal: reconstructing the History of a Relocated Community through Oral Testimony and Song” in B Bozzoli (ed) *Class, Community and Conflict*, Johannesburg, Ravan Press: 93-134.
- Hobart, M 1993 “Introduction” to M Hobart (ed.) *An anthropological critique of development: the growth of ignorance*, London, Routledge.
- James, D 2003 “ ‘A sentimental attachment to the neighbourhood’: African Christians and land claims in South Africa” in D James and A Schrauwers (eds) “An Apartheid Of Souls: Dutch Colonialism And Its Aftermath In Indonesia And South Africa”, special issue of *Itinerario: European Journal of Overseas History*, 3-4 (forthcoming)
- _____.2000a "Hill of thorns: custom, knowledge and the reclaiming of a lost land in the new South Africa" *Development and Change* 31(3):629-49.
- _____.2000b " 'After years in the wilderness': development and the discourse of land claims in the new South Africa", *Journal of Peasant Studies* 27(3):142-61.

Klug, Heinz 1996 "Bedevilling agrarian reform: the impact of past, present and future legal frameworks" in Van Zyl, J, J Kirsten and H Binswanger (eds) *Agricultural Land Reform in South Africa: policies, markets and mechanism*, Cape Town, Oxford University Press; 161-98.

La Hausse de la Louvière, P 2000 *Restless Identities: signatures of Nationalism, Zulu Ethnicity and History in the Lives of Petros Lamula (c1881-1948) and Lymon Maling (1889-c1936)*, Pietermaritzburg, University of Natal Press.

LRC (Legal Resources Centre) Cape Town 2001 "Draft Report on 'Communal' Property Institutional Arrangements" presented at joint Department of Land Affairs/LRC workshop.

Lund, Francie 1998 *Lessons from Riemvasmaak for land reform policies and programmes in South Africa, Volume 2: Background study*, London, Programme for Land and Agrarian Studies (PLAAS), University of Western Cape and Farm Africa.

Mail and Guardian, Johannesburg, 21 January 1999, 1 July 1999, 22 August 2000, 15th September 2002, 10th June 2003.

Mbongwa, M, R van den Brink and J van Zyl 1996 "Evolution of the agrarian structure in South Africa" in Van Zyl J, J Kirsten and H Binswanger (eds) 1996 *Agricultural Land Reform in South Africa: policies, markets and mechanisms* Cape Town, Oxford University Press: 36-63.

Murray, Colin 1992 *Black Mountain: land, class and power in the eastern Orange Free State 1880s-1980s*, Johannesburg, Witwatersrand University Press.

Pienaar, K 2000 " 'Communal' property arrangements: a second bite" in B Cousins (ed) *Cousins At the Crossroads: Land and Agrarian Reform in South Africa into the 21st Century*, Cape Town and Johannesburg, University of the Western Cape and National Land Committee:322-39.

Platzky L and C Walker 1985 *The Surplus People*, Johannesburg, Ravan Press.

Robertson, A F 1984 *People and the State: an anthropology of planned development*, Cambridge, Cambridge University Press.

Sikor, T "Land as asset, land as liability: property politics in rural Central and Eastern Europe", this volume.

Small, Janet and Harald Winkler 1992 *Botho sechabeng/A feeling of community: a description of forms of tenure in Transvaal rural communities*, TRAC (Transvaal Rural Action Committee), Johannesburg.

SAIRR (South African Institute of Race Relations) *Survey 1995-6*, Johannesburg, South African Institute of Race Relations.

Van Meijl, T "Who owns the fisheries? Changing views of property and its redistribution in postcolonial Maori society", this volume.

Van Zyl, J, J Kirsten and H Binswanger (eds) 1996 *Agricultural Land Reform in South Africa: policies, markets and mechanisms* Cape Town, Oxford University Press.

Verdery, K 1999 "Fuzzy Property: rights, power and identity in Transylvania's Decollectivization", in M Burawoy and K Verdery (eds) *Uncertain Transition: ethnographies of change in the post-socialist world*, Oxford, Rowman and Littlefield: 53-82.

Walker, C 2001 "Relocating Restitution" *Transformation* 44:1-16.