

Constitutional Tenure & Taxation



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THE BIRTH of the Ethiopian Constitution differs from the usual course of events following revolutions. Ever since Charles I trespassed into the House of Commons with 200 or 300 swordsmen to arrest Colonel Pym and four others, the sequel to revolution has tended to be tiresomely similar. First the coup, by whatever means, peaceful or violent. Then, sooner or later, things settle down into their old course, and the tedious process of sitting down to make new laws or draft a new constitution begins.

Everything is said to be done "in the name of the people", but is in fact done by the intellectuals of the new ruling party aided by experts of one sort or another. Consultation is much trumpeted. But ordinary men and women inhabiting the country where the revolution occurs have very little say in the matter.¹ There is no real depth of thinking or investigation. Recent fashions in philosophical and political thinking prevail.

Throughout the last century, Marxist socialism had been the usual inspiration for change, and the command economy is still the source of ideas for reform even in conservative circles. Only the recent past is looked at for new ideas. Few dare go back

to the basic question of how to manage the relationship between the people and their share of the planet earth, which by grace of the Creator is in their control – the earth on

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which their survival depends; on the surface of which they perform must live; and which is the sole source, under on or above² its surface, of material needed for their labour. The result is a lot of fine phrases, the correction of some perceived wrongs,

but usually only by the institution of other wrongs which grow over the years like a dangerous disease.

For example, modern attempts to relieve poverty rather than abolish what causes it have created a "welfare state" involving a burden of taxation the dangers of which are only now becoming apparent. In Britain, we have yet to experience the effect in practice on the freedom of the Queen's subjects of a Declaration of Human Rights. Of what practical use to anyone who cannot find a job is a right to work? Of what use was it to an American slave between the Declaration of Independence (1776) and the Civil War (1861-5) that all men are created equal, and endowed by their creator with inalienable rights of Life, Liberty, and the pursuit of Happiness?

THE RECENT Ethiopian revolutions appear to have been quite different. Between 1991 when the Derg was deposed by a comparatively peaceful process, and the draft constitution of 1994, there was time for considerable debate right down to village level. Because the Derg had already nationalised the land in 1975, the people had by then had 15 years experience of the State's ownership of land. Accordingly, the consultation seems to have been dominated by the land question.³

As a result, the draft constitution of 1994 is probably the first of its kind to break new ground by boldly facing the question of land use and land ownership, and thereby attempting to eliminate the prime cause of the never ending territorial disputes – wars between nations and within nations driven by the necessity to gain or to defend land; conflicts in which each side is fortified against the other by differences of race, religion, language, history, and culture, exemplified recently by the Eritrean war (1998). The Ethiopian constitution, if successfully tested, and perfected by experience, may well turn out to be a guiding beacon for other African peoples, and may eventually influence the nations of Europe and the Americas in their blindness to this basic question.

Gail Warden points out that there is little practical difference between a Freehold and a Leasehold ownership.⁴ She is quite right. She quotes the Ethiopian Prime Minister's discussions with ex-serfs who hold their land as tenants from the government as leaseholders. They were all telling him:

We have everything we need about land ownership: it's ours, we till it indefinitely; it's ours; we can pass it on to our own children; it's ours, we can lease it out.⁵

Land produces nothing until it is used or worked, and the abundance of unworked land in Ethiopia is obvious. But as soon as it is used or worked, in the nature of things it will produce a revenue or bonus in the shape of a surplus if the land happens to be superior to other land used for a similar purpose. What matters is who takes that bonus – the land revenue. It naturally comes first into the hands of those in possession. If they are landowners they keep it. If they are leaseholders they keep it only until the owner claims it as rent under the terms of the lease.

State ownership should be a great help. But of itself it is not enough. It must be linked to the State's exercising its right as owner to collect the revenue. It must take a fair rent from whoever is in possession, be he freeholder or leaseholder. Otherwise the rent disappears into private hands with most unfortunate results.

The Ethiopian constitution gives land free to some, and provides for legislation granting leases to others on *payment*. The payments illustrated in the tables at the end of Gail Warden's essay appear to be once for all payments. The leases are for periods

varying from 50 to 99 years (Table 3). If that is the case, the rising values over the years will accrue to the lease holders.

This link between the revenue from land and the revenue of the exchequer is of vital importance. It has to be a constant link. The English experience illustrates just how vital this is. The land of England, every inch of it, is owned by the Crown. It is public property.⁶ A small part of it is in actual occupation by the Crown. For the rest, with very few exceptions, the Crown does not exercise the rights of an owner. No rent is paid to the Crown in recognition of this legal reality. This is so even in cases where rent would and should be the

'The basis of English land law is that all land in England is owned by the Crown. A small part is in the Crown's actual occupation; the rest is occupied by tenants holding either directly or indirectly from the Crown (1 P & M 232, 233). *Nulle terre sans seigneur* (no land without a lord): there is no allodial land in England, (Co. Lit. 1b.) i.e. no land owned by a subject and not held of some lord.'

– Extract from *Megarry's Law of Real Property*.⁷

consideration for holding land yielding immense revenues.

The failure of the Crown to take a fair rent began when feudal dues were converted into money. In the struggle between the King and the barons who were his head tenants, the barons shrugged off their feudal dues, *while retaining the dues of their own tenants*. The consequent impoverishment of the Crown forced the Kings to levy taxes on wealth, which the rich largely avoided, and the poor could not escape. The Crown's attempts to raise taxes to replace its lost revenues were among the causes of the Civil War which was largely a contest between Town and Country. The rich urban trading centres⁹ helped Cromwell. The poorer country people (whether landowners or tenants) sided with the King. The division was between those on valuable land and those nearer the margin in terms of land value. It is ironic that during the Commonwealth Colonel Pym (the revolutionary whom Charles I had tried to arrest) was the instigator of what in the next century Dr Johnson was to call "the hated excise".

The Constitution

THE OVERRIDING philosophy of the Ethiopian constitution is to equalise rights to land.

These rights include ownership, but no less importantly they ought to include the revenue, i.e. the tangible benefits, in cash or in kind, which derive from the control of land, with or without ownership. These can only be effectively equalised by relating both ownership, and tenure, to taxation. It is this link which seems to be missing in the Ethiopian Constitution. The most important measures from this point of view are those contained in Articles 40 and 41.

Article 40

The intention of this article is to ensure, in the first three paragraphs:

- that all Ethiopian land is *public property*
- that every Ethiopian has the right to own *private property*, and

■ *private property* is defined in paragraph (3).⁹

So far, so good.

Paragraphs 4, 5, and 6

These provide that Ethiopian farmers and pastoralists should, *without payment*, have the use of land on which to pursue their callings. Private investors too will have the use of land, but only *on payment* of an amount to be determined by law. (4) & (5).

These provisions make a distinction between entrepreneurs, who are to pay for land they use, and farmers and pastoralists, who are to have land without paying for it. Insofar as they allow farmers to obtain the use of land for an indefinite period of time without payment, as they appear to do, then they in effect transfer the benefits of ownership to the farmer until he relinquishes his tenure. So long as he does not pay rent, he has all the powers of an owner. This appears to clash with the words "shall not be subject to sale or to other means of transfer" in para. 1 (italics added).

Government may nevertheless grant use of land to private investors on the basis of payment. (6)

The concluding words are ominous.

Payment for Land

THAT LAND IS VALUABLE and must be paid for is fully recognised by the draftsmen. Under para. 6 "government may nevertheless grant use of land to private investors on the basis of payment arrangements established by law". One's thoughts fly to the possibilities of corruption, and to the spate of scandalous cases of corruption in relation to land and planning permission which made their appearance in the English criminal courts in the 1960s.

It is important that all land use is paid for. The administrative bodies, some in Addis Ababa, and some in the Regional States, who drafted the legislation set out in the tables in Gail Warden's essay,¹⁰ are obviously aware of the importance of the position (or location) of land. They are aware of the immense variations in value of different lands. They have tried to take these into account by financial provisions in

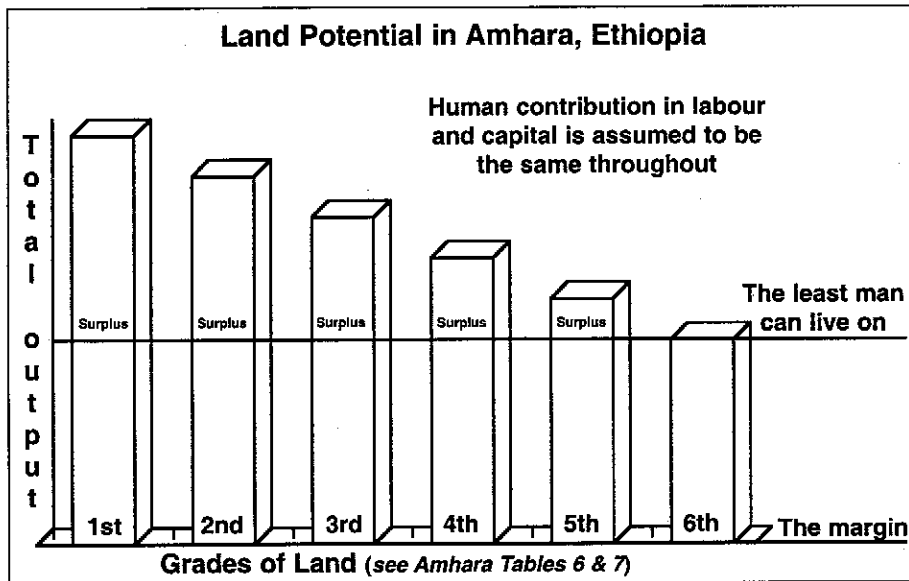
each region which are illustrated in the tables. But they do seem to have omitted mention of the vital link between the revenue from land and the collection of revenue for the public purse. They do not appear to have provided for the huge changes which are likely to occur in the longer term. What will happen in the 50 to 90 years covered by the leases? What changes may occur in the ever shifting land values in that time!

A very elementary Bar-graph which has been used for many years to illustrate the basic principle of land use as the classical economists saw it, serves to remind one of the clarity with which they realised it. It is, however, a principle much overlooked by today's "dismal science" of economics. The one shown opposite was derived from the empirical evidence supplied by the Ethiopian region of Amhara.

This simple diagram demonstrates from left to right the unequal amounts produced in locations of diminishing advantage, until beyond the margin (on the right) the soil, climate, and topography of the ground, and remoteness of the position cannot yield a living. All other locations yield to labour and

capital a surplus above what is produced at the margin; the amount of the surplus varying in the different locations. In an entirely agricultural community, this is very obviously a matter predominately of climate, aspect, fertility, water resources, nearness to markets, availability of roads, and other means of transport, etc. This is how the classical economists saw it, and it certainly applies with full force to land for cultivation or grazing which is the subject of sub-Articles 4 and 5 of the constitution.

If the farmers and pastoralists get their land free, then those with a surplus will soon become a class superior to the unfortunates who use land near or at the margin. In time, some will be able to lease out some or all of their land and draw rent from letting others work it. This superiority then becomes the basis for ethnic discontent and regional conflict as the losers perceive that others, on more fertile or advantageously located land, are accumulating material resources faster than they are, for reasons unrelated to their skill, enterprise, or endeavour. By contrast, if the surplus at each location is taken by the owner (which in Ethiopia will be the government) in the form of rent, then:



1. The means from which to make a living will be equalised, so that differences in wealth will be the result only of differences in personal ability, harder work, greater skill, or longer hours worked etc. This is a natural and proper result.
2. The surpluses paid into the exchequer as rents will replace much of present taxation, and because these surpluses are not due to any contribution by labourers or capitalists, will soon demonstrate that rent for resources is the natural source of public revenue.

However, those who drew up these tables have also realised that the surplus arising from superior location does not apply only in agriculture.¹¹ It applies also to the location where a shop, a factory, a petrol station, an office, a consulting room, a theatre, or indeed a business of any kind is situated. The bar graph can therefore illustrate the differing rewards of any type of commercial undertaking. In every kind of productive activity – farming, industry, trading, commerce or professional or financial services – there is a varying degree of surplus of this nature, from the centre down the scale to its margin. At the heart of that part of society which makes use of the goods or services produced there, in Addis Ababa for example, labour will be more profitable than in positions further out; and again a point will come at the margin, where there are not enough clients, patients, customers, audience, or whatever else the particular occupation depends on, to make it worth while trying to get a living there. Where the margin lies is different for every occupation, and depends on many other factors besides custom; for example, nearness to suppliers, to transport, to particular raw materials, to international connections, and so on.

If all users of land pay the appropriate rent to the government then the land, urban and rural, and all natural resources available at different locations are effectively shared; and all have equal freedom and opportunity to make a living. This is the principle which has been missing from Western market economies, and has

been the root of recurring problems such as cyclical instability and institutionalised poverty.

Nomadic tribes

THERE IS ONE difficulty which is not covered by the above analysis. It concerns the position of nomadic tribes. They have often fought to defend their traditional tribal lands, or to take over new lands, and this is as much a cause of war as the territorial ambitions of settled peoples. Some means ought to be added to the constitution to deal with their payment for land use. This requires on the spot investigation and consultation. They appear to be taxed at present. But a method needs to be devised to relate these taxes directly to the value of their tribal lands. If there is no surplus, then they should be exempt, not only from rent, but also from taxation, direct and indirect, in recognition of the fact that they are living on the margin. If they are near the margin for this type of activity, then the amount they pay into the public exchequer should reflect that position. It should be minimal.

Article 51

This link between the revenue from land and the revenue of the exchequer is all-important, and ought to be expressed in the constitution. Article 51 (10) empowers the Federal government to raise taxes. Here paragraph (10) will need to declare that the *prime source of revenue* is to be the rent of land and resources. A corresponding amendment may have to be made to paragraph 2(e) of Article 52, which deals with "State Powers and Functions". But it does not at present seem to be necessary.

Adam Smith

THE UPSHOT of these suggestions is to relate land to taxation in the manner indicated by Adam Smith in the first of his well-known maxims of taxation:

The subjects of every state ought to contribute to the support of government, as nearly as possible in proportion to their respective abilities; that is, in proportion to the *revenue* they enjoy under the protection of the state.¹²

Note the use of the word "revenue". Smith almost certainly derived the first sentence of this passage from the French statesman A-R. J. Turgot's *Reflections on the Creation and Distribution of Wealth*. But while Turgot always restricted the word *revenue* to the *produit net* – the "surplus" in the bar graph – Smith unfortunately uses the word *revenue* elsewhere in his work to include other forms of income, and so obscures the meaning of this vital sentence. Adam Smith goes on:

The expense of government to the individuals of a great nation is like the expense of management to the joint tenants of a great estate, who are all obliged to contribute in proportion to their *interest in the estate*. In the observation or neglect of this maxim consists what is called the equality or inequality of taxation.

By comparing taxation in the second sentence with "the expense of management to the joint tenants of a great estate" Smith probably knew exactly what Turgot meant, and intended it to be so understood by the initiated. It fits in very well with the intentions of the Ethiopian government. The Ethiopian peoples are the tenants of the great estate of Ethiopia, and each must contribute in proportion to their interest in the estate: namely the *revenue* they enjoy under the protection of the estate. Smith's obscurantism may have been deliberate. He relied for his living on a generous annuity from the biggest landowner in Scotland, the Duke of Buccleugh.

The Ethiopian government has taken a very important step forward in the making of constitutions. At present many African countries are in a turmoil of territorial disputes. The government of Great Britain, having the ownership of all land except possibly in Scotland, lacks the will to exercise its rights of ownership by raising revenue from it by means of a direct charge. Germany is planning a European constitution for publication in 2004, but has not awakened to the basic question of land use and its relevance to revenue.

The Ethiopian Constitution of 1994, as it

evolves during experience of its use in practice, may establish the vital link between land ownership and public revenue. It would then be a guide to constitution-making throughout the world.

References

- 1 Peter Gibb, "Civil Society, Governance and Land Reform", *Geophilos* 2000 No. 00(1), discusses the Abolition of Feudal Tenure Bill in the Scottish Parliament.
- 2 E.g. airspace and cyberspace are now of great saleable value, bits of which have been bought and sold.
- 3 See Gail Warden, "The Ethiopian Model: Equal land rights in a unique social development", *Geophilos*, Spring 2001, No. 01(1), p.72.
- 4 *Ibid.*
- 5 *Ibid.*, p 77.
- 6 *Megarry's Manual of the Law of Real Property* London: Stevens. Introduction, Section 6; p. 23 in 6th Edn. 1982. See also *Halsbury's Laws of England* Vol. 39 para. 304, and notes thereto.
- 7 *Ibid.*
- 8 Notably London, Hull, Bristol and Plymouth.
- 9 The order of the paragraphs has been changed in this summary by putting para. 3 first.
- 10 *Geophilos ubi sup.* pp.83-87.
- 11 See, for example, Tables 6 and 7 grading urban land, prepared by the Amhara Regional State.
- 12 *Wealth of Nations*, Bk V, Ch 2, Pt. ii, Everyman Edn. p. 307 (emphasis added).