

You can't combine constitutional reform and problems of transition

M<H91-10-6-4

More time will be needed.

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### CURRENT DEBATES ON CONSTITUTIONAL REFORM IN GERMANY

2<sup>nd</sup> period of transition - until end of 1994

#### I. The Process of Unification

Art. 146

New Const. for unification.

Treaty of currency, social welfare, then through Bundestag

1. Unification Treaty (UT)
2. Implementation of the UT
  - a) Unification of the Legal System
  - b) Unification of the Administration Bodies
  - c) Unification of the judiciary

Art. 23

Accession without new constit.

#### II. The Constitutional Reform

##### 1. The General Reform of the Basic Law

###### a) Reasons:

- Unification of the two German States
- Modernization of the Constitution
- European Integration

Problems of financial structures

Data protection

New media

Pollution

Social Rts.

Equal rts

more than non-discrim.

###### b) Agendas:

- Fundamental and Social Rights
- Federal System
- Direct Democracy

###### c) Procedure:

- Common Constitutional Law Commission
- Amendment Procedures in the two Houses (Bundestag Bundesrat)
- Referendum (?)

Mid-life crisis of the Basic Law

We doubt whether we have a federal state any more

32 Bundesrat  
32 Bundestag.

##### 2. Constitutional Reforms in the States (Länder)

###### a) "New" States

- Bill of rights
- Parliamentary procedure
- Direct Democracy

###### b) "Old" States

#### III. Problems of Federation

1. Strengthening the States
2. Participation of the States at the European Integration
3. Financial System
  - Tax System
  - Redistribution and Compensation

You need social & econ. rts to use liberal rights equally.

for rts have to be made enforceable by statute which constitutional validity

Without independent revenue,  
regions are not independent  
[either through own revenue  
or share of national revenue]

Income Tax:

15% - local govt

42 - Länder

42 - federal

VAT - not so clear

37% - Länder

63% - Federation

More  
than  
80%  
of  
natl.  
budget.

Municipals - own special taxes.

Each Land gets its share  
in prop. to no. of inhabitants -  
acc. to a formula, which favours  
'smaller' (poorer?) states.

Our system is highly personalized  
through voting for Chancellor.  
There should be a means of  
votes on special issues (agendas).

IV. Direct Democracy

Campele Park to discuss.

Switz.  
Italy have  
We think they  
are very good

1. People's "Request" (Volksinitiative)
2. Legislature by the people
  - a) Motion - in Saxony
  - b) Referendum
  - c) Plebiscite

3. Elections by the People
  - a) General Elections
  - b) Direct Election of the President
  - c) Dissolution of the Parliament by the people

3.7 mil inhab. - requires  
40,000 signatures  
if contains draft law -  
goes to referendum - if  
Parla. proposes  
diff. - referendum  
succeeds if 15%  
(then plebiscite  
some restrictions)

No longer a real federation

- ① States are sovereign - without money  
to function
- ② Parls. without real competence

a) We can have fewer, bigger, stronger  
states

or  
b) We can have a new system  
of burden-sharing between  
W & E, separate from financial  
pools, of Bonst. 1

Social rts protect indiv. against societal pressures.

Can be claimed by individual  
- if no shelter, a family can claim from police.

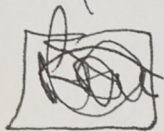
60% of property is publicly-owned or publicly influenced.

The Basic Law is neutral on the economic system - Task for legislation

[It gives some elements of:  
freedom of profession  
property rts.]

Big space for legislature.

1979 - you can have co-determination.



Non-racial  
happiness in  
2 places -  
Wild Coast  
basins -  
TV adverts

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I've journeyed  
into the future  
- and it looks  
like a TV advert  
to this non-race.

# GERMANY

Everyone has rty in his/her person -  
product of labour.

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Enshrinement of any  
conception of rty.  
creates problems.



The essence of rty is  
excludability

legal

physical

moral

squatters, labour tenants, pensioners

Rt to exclude  
from access on  
legal, physical  
& moral grounds.

~~6/7~~

19/15

Quotables

NOTE: THESE ARE  
'SCRAPS'.

NOTE VERY BEN  
LECTURE.

Once upon a time, before the world was pum-  
combined assault of neo-liberal certainty and post-modernist  
vagary, there lived a quaint people who believed in the  
capacity of all human beings for goodness. These curious  
folk thought it was worthwhile to try to build a land in  
which caring was more important than acquiring. They even  
considered that it was a compliment and not a sneer to be to  
be said to possess high ideals.

I am sure there are many of them in this hall, old and young  
survivors of that age.

We buried many of our comrades in far away countries. They  
should be honoured as patriots in a suitable way, their  
bodies returned to South African soil if their families so  
wish, or their lives honoured in some other manner. Our  
country has many memorials and well-tended war graves, but  
not one that relates to anyone who fell in the struggle  
against apartheid.

Bram Fischer's ashes are still entombed in a prison yard.  
They should be freed to be scattered on the Free State soil  
that he loved so much.

We have many people, old and young, who left their studies  
and their jobs, separated themselves from their families, to  
join MK and, as they saw it and I see it, fight for freedom  
in their land. Just as the ex-service men and women who  
fought against Hitler received gratuities, housing grants  
and special support to make up for missed education, so  
should arrangements be made to recognise the years of risk  
and dedication spent in the service of MK.

Our movement drew its strength from the fact that it was  
broadly based. Every philosophy of struggle, from passive  
resistance to armed confrontation with the state, has been

NOTE: THESE ARE SCRAPS TO BE SAVED IN A FILE MARKED  
'SCRAPS'.

NOTE VERY BENE: THEY DO NOT FORM PART OF THE INAUGURAL  
LECTURE.

Once upon a time, before the world was put right by the combined assault of neo-liberal certainty and post-modernist vagary, there lived a quaint people who believed in the capacity of all human beings for goodness. These curious folk thought it was worthwhile to try to build a land in which caring was more important than acquiring. They even considered that it was a compliment and not a sneer to be to be said to possess high ideals.

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represented in it. The central theme has always been the importance of achieving basic democratic rights for everybody and moving swiftly to tackle the enormous inequalities created by apartheid. Those were our pre-occupations then, and they should be our concerns now.

- ① Inviol - 1st Gen.
- ② Property - land
- ③ Non-damagag. Matters } Found's well-stab.
- Procs - attend.

Land  
Notes for presentation  
(by Alice!)

Natural Law Resources

Primacy of all

ownership, occup.

foreign ownership - except  
non-residents  
Previd's permission  
Women's rights of land.

use:

Legitimate eyes of all people  
Based on principles of equitable access  
Stable

Procedures: Independent tribunal  
Fair procedures  
Applying criteria

Compensation

11(2) subject to duties/responsib.

- ① Inviol - 1st Gen.
- ② Property - land.
- ③ Non-demagog. Matters } Found's well state
- Procs - attend.

Natural Land - finite - patrimony of all resources conserved

System of land-ownership, occup. or use:

Legitimate eyes of all people  
 Based on principles of equitable access  
 Stable

Procedures: Independent tribunal  
 Fair procedures  
 Applying criteria

Compensation

11(2) subject to duties/responsib.

foreign ownership - except  
 (non-residents)  
 Pre-emptive permission  
 Women's rights of land.



00744 71 2729094



①ullah - Bulbame

Wait - Gamado Date OK?

② Wake man  Specs,

③ Firo 2 - have money

Aug. Land. Upper House. - SA.

Notes

④ Melneid - Mason - Durban Univ.

Bepnes Pius Langa - want. Bands

Linda Zama

⑤ Send: Worral, De Beer, Malan. H.A. - ET

Steve Karunovity } Ken Owen Business Day.   
 Shemaz Meer }

Wang Walba - Revised.   
 Wanghezi.



Most countries - legal -  
behind consist. or offic.  
arrangements of power -  
subvert hegemonies of  
state, ~~owners~~ <sup>controllers</sup> of econ,  
Plaza Santana, heads of family.

Plaza Santana

Calle del Prado

In SA - off.

Pluralism - not dom.

Econ. subord

Patriarchy -

Answer: Against Constit-plural.

- for pol plural. ? Legal pluralism.

① Rx - same/diffe. - cult.

② Bill of Rts - pol plural.

Can state promote anti-statism

③ ~~Bill of Rts~~ Constit Ass

④ Charter ⑤ All. leg. inst.

⑥ Civics - Const?



Boa

Entre

① Entre

② SA-pluralism  
State  
Econ

③ Write - V autob./nat.  
Family, Soc. - formal

a). Same/diff

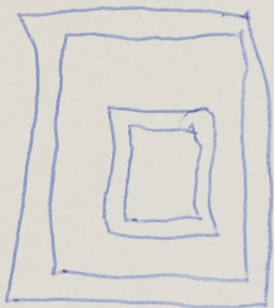
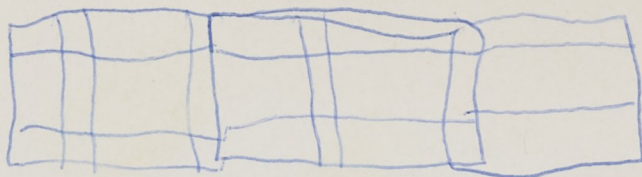
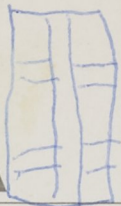
b). Bill of Rts.

c). Constt Ass.

d). Charters

e). Civics.

Peoples power / people's rts.



Pluralism / consociat / corporatism

*[Faint, illegible handwritten notes]*





What binds?

A situation in search  
of a legal enquadramento.

USA -  
~~needs~~ -  
sem  
complexos.

Role of jury - hitting frontiers  
of legal doctrine.

---

Accept contradicts -  
not eliminate  
(state / popular)  
(gender neutral / gender  
affirmative)



Limits on State sovereignty -  
territorial multiplication

good quotable  
no losers &  
winners!  
↓

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The losers must  
have hope.

Winning must make  
a difference. ©  
NGO - monitoring of monitors

Limits on State sovr. -  
territorial multiplication

- dangerous -
- competing sovereignties
- costly.



Checks & balances -

institutional  
judicial  
civil sovr.

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The losers must  
have hope.



Winning must make  
a difference.

NGO - monitoring of monitors



Political

Regn - SA

Malawi - Swaz - Lesotho - SA

Botswana's role.

Organisational

UWC

Pretoria

Bot's

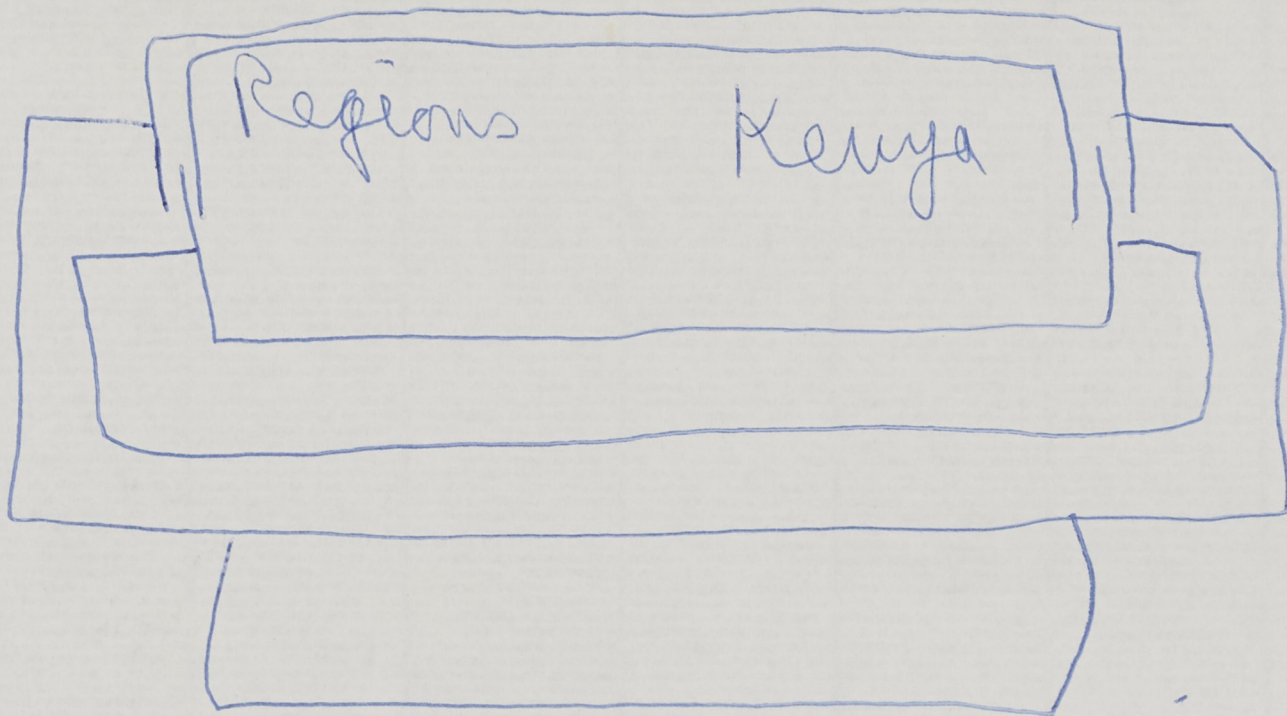
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Format

Themes - Panels

Outsides

Keynote



Separate  
conference.

socio. econ. regime  
nation / region  
Involvement

Themes:

Soft / hard.



CBO's

Soft: a) Min. standards

b) Reconcil, truth, justice. Child

c) Open socy, account., transparency  
- media.

d) Control of security organs

e) Bill of Rts - soc/secn-nts / it. to  
- anti-disor. develop

f) Gender dimension

Hand ; 1). Civil society, role / relationship  
NGOs - HKSD =

Work done.

2). Intern / regional  
Perspectives. Build up.

Afternoon, in community.



If a  
of a ne  
privilege  
follows  
to that

## Dedication of Advancing Rights in a Democratic S.A.

by  
at  
tribution,

~~formulations may be mine, but all  
the basic ideas emerged from struggle.~~

Readers will have little difficulty in  
discerning <sup>(the influence of)</sup> decades of involvement with  
the ANC. They will also understand  
that what follows is not an official  
presentation of ANC views, nor even  
an unofficial one.

If a constitution is an autobiography  
of a nation, <sup>we</sup> are the <sup>privileged</sup> generation  
~~privileged to~~ <sup>(that) will</sup> do the writing; what  
follows is a small personal contribution  
to that <sup>and noble</sup> task/process. ~~Some of the~~

~~formulations may be mine, but all~~  
~~the basic ideas emerged from struggle.~~  
Readers will have little difficulty in  
discerning <sup>(the influence of)</sup> decades of involvement with  
the ANC. They will also understand  
that ~~what follows~~ is not an official  
presentation of ANC views, nor even  
an unofficial one.

The views are my own, not  
those of "D.R." nor of the ANC

## Dedictory note

Readers will have little difficulty in discerning the influence of decades of involvement with the ANC. They might be less aware of the particular impact <sup>made on my generation</sup> ~~on myself thinking of Oliver~~ Albert Lutshuli and Oliver Tambo.

Mechanisms - National / Object -

(Rts of  
Boundary  
Comp  
Adver  
Meetings -

Land  
Property  
rights

ment  
satisfy?

- encourage - local agreed  
solutions  
in framework of law.

Process to establish  
national criteria

Explain options

Assessors

Start: People best organised, clearest

4 stages:

Quantify, pay out -  
compensate  
Examples  
~~Check oppression~~  
proceeds - followed  
Security  
Built in review -  
spec. circs.

- ① Meeting - assess  
- mgt.
- ② Local sol.  
Registered. reviewed - no-  
where possible.
- ③ If no consensus -  
Assessors  
If no agreement -  
Land court.

Mechanisms - National/object

Rts of necessity - adjudicators.

Boundaries - land for settlement  
- swift procedures. Comp?   
Competing claims.

Advertisement - for claims.

Meetings - explain - rts, proceeds.  
- encourage - local agreed solutions

Process to establish national criteria

in framework of law.

Explain options

Assessors

Start: People best organised, cheapest

& stages:

Quantify, pay out - compensate

① Meeting - assess - mag.

② Local sol. where possible. Registered. reviewed - no.

③ If no consensus -

Assessors

If no agreement -

Land court.

Examples:

Black oppression, proceeds - followed

Security  
Built in review -  
spec. circs.

Out of own J.A. experience,  
hist, relats. <sup>perspectives,</sup>  
Could have bold criteria,  
cautious application.  
Legitimise, stabilise.

Chiefs - controllers

Women

Top down /  
bottom up

low & top layer  
shareholding  
tenancy  
flexibility  
removal  
sense of responsibility  
diff. forms

Chiefs - vs. Berthel  
Dry Work & Direct  
Importance  
low - middle

Third group - vs. - middle - investment  
- larger size

look at actual values - stop  
any: race metaphysics



2) Human res. dimension

Land & legitimacy

Legal

Conflict - law human res  
Dispossess - gun, treaties

Rights dimension

Boers

Law - stop large sharecropping - tenancy - flat tenancy - removal

Sense Ms. never existing - diff forms

Jobs - vs: Birthright

Occy Work - Invest -

apartment  
dispossess -  
- a. a. transport  
pricing subsidies low  
interest loans a cap

Inheritance -  
Bris - maize - soil

Third group - vs - title - investment  
- larger econ.

Look at actual values - strip  
away: race, metaphysics.

(3) De-social - finance.

Econ. dimension - 20% - 30% w farm  
- productive (Sept Ags)

Skewed agrics. Subsidies

Debt

80% belongs to Land Bank.

Govt: Subsidised life-styles,  
absentee-farming

Landed gentry strong claims

- both counts

Others - poorer land -  
strong claims.

Agri-business - speculative/  
productive

High tax - instead  
of rebates. Dead  
investment 'in case'

Tied up. ~~Low~~

Make it uneconomic to tie up  
land - productive.

specific, concrete, grows out of life situation  
Values dimension <sup>Contract / shared</sup> <sup>(b) Negotiations</sup>

underlying notions of res. - Legality. - rules.  
Independence

Contract (negot - terms of equality)

Differ from st. of necessity - claim to services. ]  
~~fair share~~

Reciprocity, binding rules.

~~Security of tenure~~

Either say: I own it because I'm white or because of certain values. <sup>Brook: we</sup>  
because we're black. Real ownership won't be disturbed. Either we own - or they X

Legal dimension - rule of law.  
Law stronger

weaker.

The rule of law down on the farm. order of the place

R. of law - prot. basic const res

works res  
family res - part  
guided res

(1) - against oppression. dem. arbitrariness - assaults abuse (search! hrs) susp. (2) Contracts claim - negot

③ Plat. of <sup>soc.</sup> pts - some powdery - in self  
miscel' contribs - housing built roads  
school clinic  
access, visiting etc.

④ " " workers pts - unionise  
safety  
leave

⑤ " " gender res written contracts.

⑥ Ownership as imperium -

## Procedural dimension -

mediation of claims.

Two phases -

Not much / Prelim. ① buying: symbolic return  
to whites of expropriated land - people  
graves  
- doc. proof individual title,  
undivided shares, usufructual pts.  
certif. of occupation, or benefits  
of trust. Symbolic -  
communities - known.

⑦ Employees pts  
Labour tenants: Defensive pts  
labour tenants.

① Land is finite -  
unlike votes  
can't be  
extended

② Don't re-distrib- land  
you re-distribute access  
& control

③

④

⑤

⑥



Denied - one by one  
lifting laws - not enough  
Just title deeds - state -  
undetermined lkk-prop. rts -  
maintaining dispossession.

Other - laws - gtee rts -  
whether called priv. prop.  
or not.

Re - legitimize law. Values/  
proceeds

(a) Qualities of private property  
alleged:

Security

Indep - state inter.

Freedom to contract or not

Stable, enduring re changes

Fruits of labour - expended on phy.

~~Rego Contract~~ - binding, legality, reciprocity  
- inequality, shared interest same land

## 2 Distinct processes -

- 1) Establishing <sup>common</sup> values on the basis of all being involved in process of hammering out criteria
- 2) actual application - deeply personal - this farm, these people.

Compensation - where real conflict of interests exists -  
comp. for interest, not for mere legal title + market. Could be in land elsewhere. could be for black or white workers. Land for housing.



③ Sharing the land -  
- non-hegemonic / white or black  
as such.

Face head-on: land - race - domin.  
get rid of racialis. of land.

FC - SA belongs all  
Land shared - those who work  
Luthuli. Today.

True sharing - not a question  
of spatial prop. or quotas.  
- values, interest -

Criteria ~~XXXX~~ - established in  
consult. - farmers - e.g. -

(land - whole country) [ ]  
Necessity /  
w/ land.  
Housing -  
birthpt.  
occup.  
prod-use  
inherit.  
title - ancient  
& now.

Process -

① ~~Defensive~~ <sup>Defensive period - enforcing rule of law.</sup>

Moratorium. on eviction. (Period of establishing criteria)

② Fixed Rentals - Clear claims

③ Labour tenures - Birth & occupancy

④ Farm leases - Wage - schooling.

⑤ Class claims of 13% - 80% in terms of redistribution

like <sup>productive potential</sup> productivity - of land value  $\rightarrow$  tax.  
productivity - if debt  
can be useful <sup>regulators</sup> regulators.



Land to live  
to work.

~~Class~~  
Support.  
Groups?  
depend on

East - trad -  
W - scattered farm  
centralised  
collect units.