

PROBLEMS INVOLVED IN LAND
TENURE STUDIES

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The description of land tenure as a concept is like the report of a committee of blind men trying to write a description of an elephant. The subject is complex and it is difficult to see the problem as a whole. Nevertheless, we can classify the problem in two fairly well distinguished ways : the first concerns legalistic description of land tenure. Here one is concerned with the bundle of rights and immunities individuals have towards the land. Put another way, we might consider this the description of the set of rules people use to regulate their relations concerning property. The second is a much broader field that ranges through many of the disciplines in the social sciences ; it considers land tenure as a social institution with economic, social welfare, political and sociological questions associated to it. This paper is an attempt to sort out some of these questions in order to guide my future research on the subject.

Control over the land---There are two kinds of rights that involve control over the land : those of the collectivity and those of the individual. For examples of the former, we immediately think of rights of eminent domain, zoning restrictions, reversionary in the case, say, of nonpayment of taxes and so on. Dufour (pp. 174-5) relates a case in the Congo where a European legislature, making laws according to its own image of property, declared vacant lands the property of the state. This resulted in difficulties for the government and the people involved, for in fact,

... il se troonne partout au Congo des communautés indigène qui se manifestent acutuellement en faisant valoir, sur les terres réputées légalement vacantes, des titres égaux à ceux qu'elles détiennent sur les terres occupées ; ces terres vacantes, dont la détermination dépend d'ailleurs de la dynamique des stituations, font en effet invariablement partie d'un domaine foncier déterminé sur l'entièreté duquel le groupe possesseur détient en faisceau de droits inséparables.

One is tempted here to include “communal” land tenure in the rubric of collective control. Clearly, there are cases where lands are controlled by the community, either through a chief or council or some other government structure. The English common lands are a good example. In certain areas grazing and hunting rights are controlled by community decisions. However, the control exercised, in many cases, by the community as a group on lands is mostly political or social and extends only as far as the limits necessary to maintain the group solidarity of the community. Coker writes of Nigerian Native Law and Custom : “Actual physical control of native lands is vested in the families and only in the sense that it is an aggregate of the constituent family groups could the community or the tribe be said to own the land.” (p. 27)

Consider now the rights of the individual to land. There are at least three terms which describe bundles of rights to land, which are used in description of land tenure systems. The concept of “property” implies that there is (a) an owner, (b) the property object, and (c) the state to protect the owner in his rights over the property object. (Ely, p. 75) Rousseau makes the same point with regard to the “right of the first occupier,” (Book I, chap. 9) without the state, or some third party to enforce rights, there is no property.

“Possession” and “ownership” are related concepts. Possession means having physical custody of property. Ownership always has a legal connotation and denotes a complex of rights, privileges, powers and immunities, plus the facts to give the owner these rights. For example, ownership in fee simply implies that the owner has against each of an undefined number of people, claims that they refrain from certain kinds of acts--trespasses--with reference to the land. (Cook, p. 521)

Unfortunately, the complex of rights implied by ownership varies with different cultures and complicates matters. Of the Yorubas, for example, Coker writes :

To begin with, it is futile to try to apply the common law conception of ownership of land to a holding under native law and custom. This is perhaps

a reasonable way of putting the subject, for it is not possible to group together all the rights akin to ownership within any well-known legal terminology. The aggregate of rights vested in a land-owning family over the family land is probably no less than the aggregate of rights vested in an owner in stricto sensu, but those several rights are not identical. (p. 28)

Furthermore, land is not always considered as a thing. Bohannan describes Tiv land tenure in the following way :

A farm lasts only for two or three years, then reverts to fallow and the specific right lapses. However, the right to some form in the tar [neighborhood] never lapses. Thus, the position of a man's farm varies from one season to the next, but his juxtaposition with his agnatic kinsmen and his rights to a farm do not change. Tiv might be said to have "farm-tenure", but they do not have "land-tenure." (p. 106)

In this same article Bohannan outlines the cultural baggage implied in the western concept of land. We think of it in terms of measurable parcels represented by standard ways on a map. Take the case of someone purchasing land in an area to be poldered and drained. He's not really buying land, but rather a piece of a map which entitles him to a parcel that will be created in the future. In this case his ownership is meaningless if the development company reneges on its obligation. Compare this to what Bohannan says about land tenure :

The most important feature of the western system is that it assumes the rights of people to space and to exploit the environment, have automatically as their counterparts, rights in land. Thus, we assume that for every man-man unit with a spatial dimension or a right to exploitation, there automatically goes a man-thing unit. (p. 103)

This is not the case among the Tiv, nor among senior citizens in Fort Myers, who by a queer twist have ownership, but not possession. Neither has the "man-thing" unit Bohannan describes.

To conclude this discussion of land tenure in the legalistic sense, we reiterate simply that individual and corporate rights are very complex, often overlap and are difficult to compare in cross-cultural terms.

Land-tenure as a social institution---On the assumption that a committee of five blind men would submit five blind men would submit five blind men would submit five minority opinions about this, our elephant,

let us take the statements of the following five men, in alphabetical order, regarding the scope of land tenure studies.

Bohannan presents three generalized assumptions for studying land tenure :

(1) that people have a representational 'map' of the country in which they live ;

(2) that they have a set of concepts for speaking about and dealing with the relationships between themselves and things, and

(3) that the spect of their social organization has some sort of overt expression in word and deed.

In sum, land-tenure is, from an ethnographic point of view, the way a people associate these three factors. (p. 104)

Brinkman operates from a different point of view :

The social significance of land-tenure in any society depends upon the economic uses of land that society, and upon its legal and institutional structure. (p. 73)

As a rule [land-tenure structure] were only the expression of that totality of mutual rights and obligations obtaining between landlords and tenants of most older agricultural systems. Similarly, land-tenure...has been connected with military and political conquest. (p. 75)

Fitz Gerald, Deputy Director, Foreign Operations Administration, was speaking at an international conference in the midst of the cold war :

Throughout history land has been considered almost synonymous with property. In the free world a wide diffusion of rights in property and in the opportunity to acquire such rights is a basic tenet of democracy.....We like to use the words "land-tenure" to describe all those arrangements by which farmers or others hold or control land and that condition its use and occupancy. In this context land tenure covers much more than mere rights in land ; it encompasses agricultural economic institutions generally, including agricultural land ownership and tenancy, land rents, taxation of agricultural land or income from land even rural credit facilities. (p. 44)

Parsons is an economist.

.....the tenure terms upon which land is held actually define the use-relations of the land to the farm as an economic unit ; the terms of tenure define the price or performance required for the use of land, which stipulations in turn greatly influence the incentives to energetic effort, the adoption of new agricultural techniques, and the care of the soil. (p. 4) [my emphasis]

Leach is a social anthropologist.

I offer...that in this society, the kinship system is not a thing in itself, but rather a way of thinking about rights and usages of land. The land is fixed, the people change. Ownership is not determined by simple rules ; it evolves and fragments by the processes of gift, sale and inheritance, but all the time the land is in the same place and the 'owners' must adjust their relationships to conform to this inescapable fact. (p. 146)

I do not mean to imply that these men should have axes to grind with one another. The point is merely that land-tenure is a focussing point for very many aspects of society. All of them interact with considerable complexity and it is difficult to separate kinship with relation to property, from the economic and ecological effects this relation has, and vice versa.

Leaving this difficulty aside for the moment, there are several themes that repeatedly appear in writings on land tenure. The first is public or goals. Related to this, because so often improvement of it is a goal itself, are the economic conditions of tenure. Thirdly, there are recurrent considerations of differences in man-land relations due to variations in land tenure arrangements. Social relations arising from property arrangements constitute my last category.

Public policy---Land-tenure policy, as we have already mentioned, can have widespread social and economic effects on the status of individuals. "Land reform," in its most general sense, meaning change in policy, has a long and not-so-illustrious history. The examples are countless. Feudalism in the west is one. Enforcing eviction in the ghetto, but not building codes is another. Adam Smith entail and primogeniture as institutions designed to preserve land as the means "...not of subsistence merely, but of power and protection...", (Book III, chap. 2) so that property should descend undivided to one son.

The Enclosure Acts of the 18th and 19th centuries in Britain constituted a land reform that had fantastic effect upon the society. Witness Marx's description of it :

The spoliation of the church's property, the fraudulent alienation of the State domains, the robbery of the common lands, the usurpation of feudal and clan property, and its transformation into modern private property under circumstances of reckless terrorism, were just to many idyllic methods of primitive accumulation. They conquered the field for capitalistic agriculture, made the soil part and parcel of capital, and created for the town industries the necessary supply of a "free" and outlawed proletariat. (Chap. XXVII)

However, in modern times public policy has generally been more revolutionary than in the past.

David Mitrany writes of land reform in eastern Europe in the early part of this century, that expropriation and resettlement were carried through in almost all the countries there with wide disregard for traditional conditions. (Brinkman, p. 104)

In the US history of land legislation it was strongly concerned with public welfare. According to a former undersecretary of Agriculture, it sought "...the preservation of human resources on the land as well as the improvement of the land itself." (McCormick, p. 32)

Public policy or collective control of the land has wide influence upon the landscape, social structure, and economy of a country. In Ireland the Land Acts of 1923 transformed the country into a land of peasant proprietors. (Cunow in Brinkman, p. 89) The Enclosure Acts created a proletariat. In the United States, it fostered the family farm and created a dustbowl with the Homestead Act. It is little wonder that social planners have used land policy for furthering their goals.

Economic effects on land-tenure----The change from a subsistence economy to a market economy, or the pressure of population on land affects land-tenure arrangements. Where land is plentiful its economic elasticity approaches infinity ; one plot can be substituted for another with little difficulty. Colson writes of the Tonga, that rights to fallowed land were not maintained. But as population increased, people found it expedient to treat the margin fields as permanent assets. (p. 143) These same people, however, maintained very precise rights to riverine fields that could be kept in continuous cultivation.

White has found in Zambia that shifting agriculture inhibits full

emergence of rights of transfer and inheritance. (p. 370) These land sales tend to appear as population increase and commercialization of agriculture

The effect then of commercialization of land-oriented activities is to reduce the elasticity of individual parcels of land and give possession of them an increasing marginal utility, because property reflects the newly-found access to market.

This, of course, requires a stable agriculture, anchored to the earth, so that in Bohannan-Tiv terms, the concept of "farm" is replaced by the concept "parcel of land." (p. 109)

In agrarian societies in general it is almost axiomatic that the right to use land is equivalent to economic opportunity. From this perspective, land use opportunity also has other dimensions, i.e., control of markets and control of credit.

Man-land relations----The state of the environment also conditions tenure relations. We have already seen the example of riverine fields that were held individually while fallowed land in the dry farming area was abandoned, before population pressure made that valuable too. In other environments the tenure arrangements may be conditioned by what is the scarce resource. In Pul Eliya, the system emphasizes rights in water as opposed to rights in land. According to Leach, this explains the bizarre arrangement of the traditional system, peculiar indeed, if seen only from a "land"-tenure point of view. (Leach, p. 156)

Finally we should not forget that the tenure arrangement affects the use (and marginal utility to the individual) of the land. In Syria common share (musha) ownership has greatly retarded development, decreased fertility and exposed the land to the effect of soil erosion. (El-Ricaby, p. 88)

We see the scarcity of resources provided by the environment, arable land, good soil, water, etc, can have a strong influence upon tenure arrangements.

Social relations----In many of the examples cited so far, the status of

individuals has been at least implicitly noted. The Enclosures Acts changed people from peasants to proletariat. In Colson's study of the Tonga she writes :

Each wife worked independently in her fields, and could refuse to share her crop with her co-wives and her co-wives' children. Where one wife had land and the other none, the latter was at a definite disadvantage, especially during the dry season. Inequalities in holdings therefore affected the relationships inside the family unity (p. 147)

In Pul Eliya, Leach finds that it is land rights and place of residence and not descent, which provide the ultimate basis for sub-caste status. (p. 79)

In Coker's study of family property, he finds that a founder of family services his property to the family for the perpetual co-enjoyment of his descendants. (p. 56) The status, with respect to property, of those descendants is dependent upon their membership in the family. Status can also be determined by a landlord-tenant relationship or through debt and credit.

We see clearly then from these examples, and from others presented above, that various kinds of land-holding not only define the status of the land-user by defining his duties with reference to the use of the land which all other persons must honor, but also define the limits within which the user's will is supreme with reference to disposition of the land.

The consensus---We can not pretend to have seen the whole problem. There are many approaches to study of land-tenure and they are much more complex than hinted here. However, at least four themes in land tenure studies do appear. The themes are counterpointed with each other and touch either directly or indirectly practically all aspects of society. This makes land tenure study at the same time frustrating, for like our blind men, none can perceive the whole very well, and exciting, for there is just that difficult challenge which is continually eluding one's grasp.

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