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From *Tenure*
and utilization

LAND TENURE AND THE SOCIAL CONTROL OF THE USE OF LAND

FIRST OPENING PAPER

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IN the third book of his *Wealth of Nations* Adam Smith has a chapter on the discouragement of agriculture in the ancient State of Europe. He maintains therein that the work done by slaves is, in the end, the dearest of any; for a person who can acquire no property can have no other interest but to eat as much and to work as little as possible. The *métayer* can have no interest in the investment of a part of his little stock in the improvement of the land, because the lord, even if he himself has laid out nothing, will get half of whatever is produced. Adam Smith sees the best prospect of soil-improvement firstly in the personal interest of the owner-farmer, and secondly in that of the tenant farmer, provided that his security of tenure is as certain as that of a proprietor. He adds that the to this extent favourable laws and customs of England have contributed more to the grandeur of that country than all the boasted regulations of commerce taken together.

His considerations emphasize the activity of individual interest. He is, however, very far from neglecting the fact that men live and trade, not as isolated individuals but as communities or more particularly as families. He therefore treats of the benefits and disadvantages of certain methods of regulating inheritance, of the rights of primogeniture, and of entails. He holds that, if the land is considered as the means only of subsistence and enjoyment, the natural law of succession is that of equal division among all the children of the family. The right of primogeniture, however, continues to be respected, as, of all institutions, it is the fittest to support the pride of family distinctions. Whether or not one shares this opinion, an important point of view here becomes prominent. The value of the system of inheritance and of the legal system in general, in relation to their economic effects, is to be estimated according not only to their influence on the individual interest of the producer himself, but also to their significance for the permanence and solidity of the community, above all of the rural family.

It will not be possible here to have a fruitful discussion of all the many-sided and inexhaustible problems connected with land tenure. To-day, therefore, it is only proposed to develop the line of thought which finds expression in the above-mentioned chapters of Adam Smith and in the many treatments of the subject by prominent writers before and since his time: the problem, that is to say, of the relations between the legal regulation of land tenure and the productivity of agriculture. The questions which will occupy us can, therefore, be put as follows: What are the economic effects which have been aimed at by the various countries in their regulation of land tenure? What tendencies in the laws of land tenure are to be observed in recent times? How far are they determined by the effort to influence economic achievement favourably? And what are the economic effects to be expected from them?

It will be seen that the new tendencies encroaching upon the rights of landowners are aiming at two objects which are essentially different from one another: (1) to fit into the liberal order measures of safety tending to intensify the attachment to the soil, to stop the causes of unproductive indebtedness, and to prevent injurious exploitation of the land, all of these being intended for the creation of better social and economic foundations for the permanent activity of private initiative; (2) to get the use of land controlled by the community, and thus to supplement or even to replace private initiative. This distinction will determine the line of thought in this paper.

It is by no means easy to deal with these questions; moreover, in an international conference we have to face special difficulties of terminology. When for the last time our late Vice-President, Dr. G. F. Warren, presented the Cow-bell to the President—and nobody among us could guess or fear that he did it for the last time—he told us that the tongue of this bell is the only one which we can all understand. Some preliminary definition is necessary in order to secure as far as possible an understanding on the meaning of our topic. The word *Agrarverfassung*, generally used by German agricultural economists, covers a wider field than the term land tenure which is familiar to our Anglo-Saxon friends. But I do not have to deal with the whole substance of *Agrarverfassung* or *Agrarpolitik*, nor shall I cover all that is implied in the English terms land tenure and land policy. The only part, but a very important one, with which we are concerned is the legal status of the farmer and the policy pursued by the states in regulating it.

We must begin our consideration from the point where liberal

principles were realized in the *Agrarverfassung*. This occurred at a time when the population was increasing rapidly and when the rejection of the traditional technique of agriculture, characterized chiefly by the three-field system, was making headway. It occurred gradually in Great Britain; in most European countries it was brought about by systematic legal regulation for which the name Peasant Emancipation has been coined. The political result was the abolition of those local powers, founded on landed property, which stood between the government and the rural population, and were thus an obstacle to the perfection of the modern state. Many important powers which had formerly enabled the lord of the manor to control changes of ownership, inheritance, and the assumption of liabilities were, as in many countries—Hanover and Russia for example—taken over by the state or, as in Prussia and France, completely done away with. In general, a commutation of those privileges which had had their origin in the social and political relationship of the landlord and the actual tiller of the soil was effected. To this has to be added the dissolution of the system of labour which the large estate owners, whose estates spread over eastern Europe, including Austria and Prussia after the sixteenth century, had developed with the help of their manorial privileges. In Germany the system took the milder form of hereditary servitude, but in the Slavonic countries there was in the large majority of cases a strict ownership of the body, which implied a complete lack of personal liberty.

It was legally appropriate to have a unified system of landownership in place of the various forms of division of property into *dominium utile* and *dominium eminens* and of the variously interwoven rights of local rulers, private landlords, peasants, and local communities. It is, of course, not wholly true to say of any country in the world that the Roman law of movable property has been applied to land property in its entirety and without reservation; but such a tendency dominated the legislation of most countries from 1815 to 1880.¹ The landowner received full freedom of disposition without any essential encroachments through the power of his superiors or the rights of his relations, a *ius utendi et abutendi*. This order of things was in great part systematically introduced, and was not, therefore, the product of a *laissez-faire* policy. Its substance, however, implied that the landowner could, in essentials, do or leave undone whatever he wished. Correspondingly there was a general recognition of freedom to contract, in particular for the conclusion of contracts

¹ O. G. Schmoller, *Grundriss der allgemeinen Volkswirtschaftslehre*, Teil I, §§ 123 seq. 'Das Wesen des Argentums und die Grundzüge seiner Verteilung'.

of tenancy, of personal liberty in the application by an individual of his own labour for his own profit, and of freedom in the choice of a domicile. The conviction obtained that both individual interest and the common weal would best be served by an activity inspired and given direction by open competition.

The liberal principles were enacted with special enthusiasm by the oversea countries at the time when the descendants of European peoples streamed out by sea and by rail to carry out the work of colonization, and in doing so to lay the foundations for their political and social development according to democratic ideals. The most striking token of this policy was the Homestead Law of the United States passed in 1862. Just as, when means of transport were limited, the effort of free men and the guarantee of a secured right, together with a far-reaching independence in the utilization of the soil, contributed decisively to the success of the important colonization movements of the times, so the rapid opening up of whole tracts of country in the nineteenth century depended not only upon technical advances but also and to no less a degree upon the liberal land policy.

In spite of the validity of a legal system which is unified in its principles, a large and varied number of economic conditions and conditions of living have been preserved or formed anew. Thus the systems of land tenure in the various parts of the earth present a sufficiently diversified picture. The division of landed property into large or small units had taken very different forms even before the nineteenth century, and the factors which determined this were not, in the main, technical or purely economic but belonged chiefly to political history. Varying principles have been followed in the initiation of systematic redistribution of land. Moreover, readjustment of the relationship between former lords of the manor and peasants produced very varied results. Thus in some countries the peasants obtained full proprietary rights, whilst in others they continued as tenant farmers to cultivate the land which they had, up till then, occupied. In whole tracts of country they to a large extent or even completely lost it.

The development and details of labour organization cannot be separated from these variations. After the general recognition of personal freedom a system of independent family farming was the most prominent possibility for the smaller undertakings; it might be supplemented on somewhat bigger farms by a small amount of paid labour. Farming on a really large scale was bound to choose one of the many alternatives of a wage-paying system. Traces of

earlier obligations to feudal service are often clearly recognizable in these, e.g. in the combinations of rent-contract and obligation to work which became common in Russia and Rumania after the emancipation of the peasants, or in the conditions of agricultural labourers in the north-eastern parts of Germany where the labourer's family had to provide several hands to work in the cultivation of the estate. Then, too, the combination of numerous family farms controlled by the landlord into a sort of decentralized estate farm, such as is common in South Europe, especially with the assistance of *métayage*, is frequently the continuation, under a changed legal system, of a former manorial union.

Frequently, in fact, the actual state of affairs corresponded but slightly with the written content of law or contract. The attitude of his landlord was often of far greater importance for the tenant farmer than the text of the law or even of the contract of tenancy. There are numerous examples to show that actually an extraordinary permanence and, it is not too much to say, a state of ease in the relationship between tenant and landlord obtained under conditions of contract which reserved all advantages to the landlord. This was the case as long as the landlord acted graciously and benevolently, and only made use of the strict form of the contract in order to exercise a favourable influence on the economic achievement of his tenants or, when necessary, to get rid of a slovenly tenant. In the same way the living conditions of the country labourers are frequently much more determined by the presence or absence of a sense of responsibility and of a social or patriarchal attitude on the part of the employer, than by legal or contractual regulation. Indirectly, of course, the legal conditions are also important. They can provide a support for a valuable mental disposition or can, on the contrary, contribute to its decay where a contradiction exists.

The most intimate human relationships are precisely those which it is impossible to formalize by laws or contracts. This is clearly seen in the matter of inheritance. During the nineteenth century in many countries the general principles of common law were extended to rural affairs and laid the foundation of completely equal claims for all children of a family, even giving each one of them the right to get the parental farm sold by auction in order to facilitate a complete and equal division of the inheritance. It was then that the counteracting customs and views of the peasants gave evidence of an admirable vitality. The dangerous breach between the principles governing the legal order and the temper of the people which corresponds to the popular sense of justice was at that time minimized by

the liberal character of the laws, because the current legal freedom to dispose and to bequeath allowed the peasants to do what by tradition they considered appropriate for the maintenance of the farm and of the relation between brothers and sisters.

If we describe the years from 1815 to 1880 as the period of liberal policy in land tenure, we must not consider that the period is thus strictly limited—either at its beginning or at its end. The theories advocated by Adam Smith had already attained a large predominant influence in the eighteenth century, and German monarchs had already initiated the emancipation of the peasants in their territories before the French Revolution of 1789. In this way they not only conceded to the peasants the abolition of feudal rights but also prepared the way for the transference to them of complete ownership.

On the other hand, the kindling of the private landowner's interest only reached its peak in Russia at the beginning of the twentieth century. At that time the land reform of Stolypin not only strove for the abolition of the village community and of the *Gemengelage*; even more important perhaps individual ownership by the head of a family was determined upon and took the place of the family ownership which had obtained until then. Stolypin himself based his policy on the intention of placing the peasant in a position to free himself from poverty and ignorance and to introduce a steady utilization of the soil. His saying is well known: 'We have placed our hopes not in the weaklings and drunkards but in the strong and powerful.'

Here, perhaps, the expectations which the statesmen of the entire world attached to the above characterized policy of landed property find their most clear expression. Of course, these expectations were, not in the least important degree, of a political nature; the desire was to encourage the awakening of a state of mind among the peasants which would make them reliable supporters of the state and of its constitution. Hand in hand with this went the economic aim of establishing a supply of agricultural produce as rich and as permanent as possible, in other words, of encouraging economic and technical progress. The individual agriculturalist should himself be sensibly interested in this progress, and he should be placed in the position to employ his interest without restriction. So far as the danger, inherent in this policy, of an uncontrolled exploitation of the land which would be productive only for a short time, was seen at all, it was held to be best met by giving as free a form as possible to land holding; for it was considered that the landowner

would develop the land not only for his own life-time but for his children and grand-children. It was expected also of a landlord that he would in his own interest prevent his tenants from 'mining' the soil and would, on the other hand, make it possible for them to improve their cultivation, even to the extent of providing sufficient capital.

Schmoller mentions two tendencies which are to be met again and again in land policies: (1) increase of free individual ownership in the interest of technical progress, and (2) the subordination of all private ownership, its size, its alienability, the extent to which it can be indebted, and its inheritability, to the common interest of the state. In the period referred to, special stress was necessarily laid on the need for increase of agricultural production owing to the unprecedentedly rapid growth of population. Thus the two tendencies, according to the general opinion, harmonized in such a way that the best correspondence with the common interest of the state was attributed to the freedom of individual ownership. From this freedom it was expected that the land would find its way to the best cultivators, and, even from the point of view of national economy, he was considered as the best cultivator who was able in the long run to obtain the highest rate of income from agriculture for himself and his dependants.

During the last fifty years, however, doubts as to the wisdom of such confidence have won ground in most countries, and, at first partially, more strongly after the Great War, and almost universally in the last decade, these doubts have given rise to new directions in land policy. Only a few countries, however, have completely abandoned the liberal basis. The general aim has been to maintain the benefits of ownership, but to eliminate its conspicuous abuses.¹

At the beginning of the nineteenth century conservative politicians and national economists of a romantic tendency had already appeared in opposition to the liberal system of land-ownership, more especially against the conception which rules Thae'r's Prussian Edict for the Culture of the Land (1811). According to this edict every one could reduce the size of his farm by sale or increase it by purchase, and could dispose freely concerning it, during his lifetime as well as on the occasion of death. This was said to be the surest and best way of protecting the landowner from debts and of encouraging the cultivation of all land holdings. The Baron v. Stein attacked these principles, particularly in his old age. As he expressed himself,

¹ E. G. Nourse, *Agricultural Economics*, Chicago, 1916, p. 261.

he did not wish to see a capable, strong, moral, respected class of moderately well-to-do landowners turned into a mob of day-labourers and poverty-stricken allotment-holders. 'I am well aware of the fact', he says, 'that this opinion is opposed to the point of view of those for whom the chief purpose of the state is to increase population and the production of food-stuffs; for me, however, it is religious, moral, intellectual, and political perfection.'

The movement against the existing conception of landed property became noticeably stronger and more widespread after the period 1880-90, first of all in those countries which had long been occupied. The German political economists of the historical school frankly recognized that the technical impetus to agriculture, resulting in increased production in the older civilized countries and tremendous extension of the area under cultivation, had exceeded even the highest expectation. However, they in no way overlooked the fact that a certain amount of damage had occurred, especially through the destruction of valuable wood-land and through attempts to colonize unsuitable land such as had taken place in the impetuously opened-up new lands. Decisive for them was the fact that, to use Sering's expression,¹ they did not consider rural land property merely as an institution for the production of foodstuffs and raw materials. Thus they demanded a new formulation of the law of peasant inheritance for the maintenance of a numerous, truly independent, physically and mentally healthy peasant class. Furthermore, they demanded a limitation of the extent to which land could be indebted and national measures both against the over-division of land and against the conglomeration of large private possessions. They demanded internal colonization and were impelled to do so by reason of the seriously large flow of men from the country to the New World or to the large cities of their own land; a flow which depopulated the country-side, particularly the districts with large estates in East Germany.

Since the end of the nineteenth century most European states have adopted internal colonization and, in this, found the support of liberal politicians. By so doing they recognized that systematic measures on the part of the state are necessary for the establishment of a sound distribution of land. The determining factors in the desire for the conversion of big country estates into family farms were for the most part of a national or sociological character; the hope existed to a large extent, however, that a favourable influence would be exerted upon economic achievement.

¹ Ländlicher Grundbesitz in *Wörterbuch der Volkswirtschaft*, 3rd and 4th ed.

Throughout all this the fundamental position of the landowner still remained everywhere unaffected. The possibility of dispossession for purposes of internal colonization arose only in a few places, and even there with very cautious limitations, in the period before the Great War. It was, of course, important that newly formed settlements, e.g. in Prussia, should be given a new legal status, that of the *Rentengut*. The Prussian State, which incurred a large expenditure on internal colonization, accorded only a restricted ownership to the settler. There was a special rule, differing from that of common law, dealing with the question of inheritance. Every alienation, all borrowing on mortgages, all sub-letting was subject to the approval of authority. The authorities could also, especially in the case of bad management, exercise the right of repurchase, wherein, however, there was no intention whatever of subjecting individual farm management to official control. The fact that in Prussia in 1906 it was made possible for the rural landowners to subject their possessions to a limit of mortgages was more important in principle than in practice. Far more important were the English Agricultural Holdings Laws which considerably limited the principle of freedom to make contracts, in order to place the tenant farmer in a more secure position, but at the same time took action to ensure the independence of the tenant in his farm management.

During the Great War, and above all shortly after its end, the measures directed towards a supervision of changes in ownership and towards a redistribution of landed property were considerably strengthened, particularly in east and middle Europe. As early as 1917 Soviet Russia had ordered the socialization of the entire system of land holding. It is true that at first it did not occur to the peasants to accommodate themselves to this regulation, and they took independent possession of the lands of the big private estates. In order to avoid a complete collapse in the supply of agricultural produce, the Soviet Government found itself compelled to give way, and in the Agrarian Code of 1922 recognized an inheritable right of use for those who, with their families, themselves cultivated the soil. The effect of this appeal to the interest of the peasant cultivator was a perceptible increase in the production and delivery of foodstuffs in the following years.

The principle that the land should only belong to him who tills it had a strong influence on the so-called Agrarian Reforms of the eastern European countries adjacent to Russia and in the Balkans. These reforms were accomplished by the dispossession of rural

landed proprietors on a scale exceeding all previous measures. Even the obligation of the state to grant an appropriate compensation to the dispossessed, which had formerly been universally recognized, was either not admitted at all or not fulfilled in practice. The land was transferred to the peasant masses of the dominating nationalities in the country; in Estonia under tenancy in anticipation of conversion to complete ownership at a later date; in other countries with immediate ownership limited only in Poland and Latvia by the prohibition of alienation and division. Expectations of an economic improvement in agriculture were not completely absent from these revolutionary measures, without, however, a national regulation of soil utilization coming into consideration. They were, however, first and foremost a weapon in the struggle of the nationalities for possession of the land. Moreover, they were intended to satisfy the politically excited peasantry and thus to nip the Bolshevist agitation in the bud.

It is impossible to ascertain the economic results with complete clarity. There is no doubt that a considerable decrease in agricultural production has taken place. It is, however, impossible to say how much of this is attributable to the devastating effects of the Great War and how much to the agrarian reforms which, with their small peasant's ideal of an *égalité des fortunes*, ran contrary to practical economic requirements. And if the agricultural achievement in these districts has since been brought to a notably higher level, it is still an open question whether this improvement would not have been much greater still without the methods of the preceding period.

Far-reaching possibilities of dispossession were also created in the German law of 1919 for internal colonization and in the legislation of Austria, Hungary, and Finland. In these cases, however, there was the deliberate retention of appropriate compensation, since in any case these countries, like Great Britain, the Scandinavian countries, Holland or Italy, who at the same time encouraged the expansion of rural small holdings, did not intend a revolution so much as a reform of their system of land tenure.

The aims of an intensified internal colonization are set out and argued very forcibly in a memorandum written by Sering on the above-mentioned German law. He was able to win over the Social Democrats, who had attained to political power, for a policy which was essentially foreign to them, that of the increase of an independent peasantry. He emphasized the necessity of establishing a balance between industry and agriculture in Germany and of resolutely increasing small agricultural undertakings to this end. They

were in a position to provide the nation with the highest possible quantities of foodstuffs and raw materials provided that they were supplemented by co-operative unions and other organizations of the community. They produced, moreover, numerous capable, well-brought-up, and work-loving people, and thus the maintenance of large, well-managed country estates which was desired by the national economy would be coupled with an extensive internal colonization.

The countries of east and middle Europe also legislated, in the years following the Great War, for the protection of land held by tenants. These laws were intended to protect the tenant farmer from eviction and from an immoderate increase in rent. As emergency measures most of these laws were valid only for a limited time. In many places efforts were made towards a thorough and permanent reform of the law of tenure. The English Agricultural Holdings Laws which had a pronounced effect in this direction were extended in 1920, Belgium passed a new law of tenancy in 1930, Holland in 1937. The United States, too, has raised the subject of a reform of the law of tenancy and has commenced its preparation in recent years. Especially measures have been adopted to facilitate the acquisition of ownership by tenant farmers. Like most of the newer countries it is faced with the task of accommodating the land law, which was appropriate to the impetuous extension of simple methods of cultivation, to the stronger tendency to permanent occupation, which has come with the improvement and intensification of agricultural methods. Here is to be found the reason for the efforts against the treatment of the soil as if it were merely a profitable investment, a commodity which could be freely alienated, and the endeavour to attain a high measure of security. This problem has nothing to do with a general social control of the use of land, just as little as had the growing repression of freedom to contract which had been carried out up to that time in the tenancy laws of the European countries. The purpose is merely to create conditions more favourable to the success of initiative on the part of the tenant.

The widespread contention that private landowners and small corporations, who together form by far the most important group of landlords, are, as a result of the changes in economic and social conditions, no longer in a position to do justice to their task in the system of national economy goes, it is true, much further. From this contention arises to a large extent, and especially in Great Britain, the demand that the state should take over the tasks of the landlords, a demand which carries with it the idea that the law of tenancy should be progressively developed to a sort of hereditary tenure,

cultivating tenure. Such endeavours are associated with the theories of the land reformers, which were developed by Henry George towards the end of the nineteenth century. They required, in the beginning, a transference of landed property to state or community ownership in order to do away with the injustice which they considered to be bound up with the private receipt of ground-rents; later they took a more moderate course and, particularly under the leadership of Damaschke in Germany, were prepared to content themselves with a limitation by the state of private ownership of land and with an almost 100 per cent. taxation of ground-rents.

Even in the time of the liberal land policy there remained a few exceptions from the principle that the private landowner and cultivator should be independent in the development of agriculture. Even at that time most countries deliberately used their own government lands as an important instrument of agricultural policy. They promoted the extension of family farming by the method used in alienating their lands, as was the case in the great countries overseas, and, though of course to a much more limited extent, in the internal colonization of European countries. Over and above this the most varied aims were followed in the disposition of government lands. The letting of government land was, in many cases, meant to create especially favourable conditions for the expansion and operation of private initiative on the part of the farmers, and often met with excellent success in places where the administration of the Public Domain was of a high standard. Almost everywhere government-farmed estates are found which serve the purpose of model, instructional, or experimental farms, and provide a valuable complement to the privately possessed middle-sized or smaller undertakings.

Actual cultivation on the part of the government is at its strongest in the department of forestry, and owing to the long periods of production, periods which exceed the lifetimes of several generations, it has met with conspicuous success—in any case greater than that which could have been attained by private or communal forestry on a small scale. Government control of forestry has therefore been established in those countries where the small farmer predominates, e.g. in France and in South German States since the beginning of the nineteenth century. This principle was not extended to the entire German Reich before 1933.

But even in forestry, particularly favourable as it is for government management, it has been demonstrated that an exclusively

national administration is not the best possible method. Important progress has been made by large private owners of woodland, whose methods were adopted with an eye to the future and not merely for their own lifetime; for this an appropriate state of mind and a sufficient supply of wealth were necessary. Apart from this a form of legal limitation has proved beneficial to a considerable extent for forestry undertakings, i.e. the permanently inalienable, indivisible, and unmortgageable entail.

The system of strict entail has persisted, too, for agricultural landed property in almost all European countries. The opposition of political liberalism compelled its repeal in the periods of revolutionary movements, for instance after 1789, 1830, and 1848. In many cases a revival has taken place. The system was finally abolished in Spain, from which country an important tradition has come to us, in Portugal and France (about the middle of the nineteenth century), and in Italy (soon after the political union). In Germany, Denmark, and the Succession States of Russia and Austria-Hungary its repeal did not take place until 1918. Traces are still to be found in Hungary, and in individual cases in Sweden, Norway, and Great Britain—in the last side by side with the widespread, more elastically regulated system of entail.

The attitude adopted towards family entail is chiefly dependent upon the acceptance of the formation or maintenance of a special aristocracy of large landed proprietors as a thing to be desired from the political point of view. Even if so, there still remains a doubtful question from a social point of view, that a too widespread movement in this direction would exclude large parts of the rural population from the possibility of acquiring land. The system of entail has received far less approbation for the economic development of agrarian cultivation than for forestry. It is regularly indicated in the extensive publications on the subject by European agricultural economists that the prohibition of distraint makes it more difficult to get sufficient credit. The high degree of security which the family entail offered to its holders has been frequently made responsible for a neglect of economic achievement.

The German *Reichserbhofrecht* of 1933 shows a relationship with the system of entail in the restrictions it places upon the landowner, in the regulation of succession, and in its treatment of the non-inheriting children. Its regulations are not, however, intended to maintain individual families in a superior and influential position. They apply rather to all independent farms up to a limit of 125 ha. in order to ensure the fulfilment of those tasks which National

Socialism has given to the entire farming population. The *Erbhofrecht* can be extended with special permission from the Minister of Agriculture to apply to larger estates. The farms thus controlled are only alienable with the consent of a special court called the *Anerbengericht*, and this is also required before mortgages can be incurred. Distraint on such a farm is impossible. If the owner farms badly or culpably neglects to pay his debts, he can, at the instance of the special court, lose the power to administer his farm, or even his possession of it. In addition to this there is a new regulation of inheritance whereby the transference of the undivided property to one child—in principle to the youngest son—is laid down. The other children or relations are entitled to support and education but have no claim on the capital value of the farm. Exceptions to this rule require the permission of the special court. Thus the freedom to bequeath is abolished.

Approximately half of the arable land of Germany is now under the *Reichserbhofrecht*. The homestead law resembling it in some respects has but little importance for agricultural holdings. It was established by an Act of 1920 which was chiefly meant to realize the ideas of the land reformers. Its name had been borrowed from the Federal Homestead Law of 1862 fixing the distribution of the public domain in the United States, but essentially it was much more like the Exemption Laws prohibiting distraint on rural property which several States had adopted according to the model of Texas. For all rural property the idea of ownership has acquired a new meaning in National-Socialist Germany. Private property is no longer, to use an expression current in former times, burdened with a social mortgage; it is limited in its very idea in relation to the needs and demands of the community. This is shown by the extension of the power to dispossess for purposes of rural planning and of town-building, in the imposition of the obligation to obtain permission before alienating or letting property—in which case the amount of the purchase-money or rent is controlled—and in the obligation to cultivate productively. The carrying out of consolidation in order to create pieces of land of a practicable size has also been considerably facilitated.

A complete understanding of the regulations of the *Reichserbhofrecht* and of the new conception of the whole idea of property is only possible when one considers the marketing regulations for agricultural produce imposed by the *Reichsnährstand*. A general view shows that agriculture should be freed from that economic system which is characterized by the word capitalism. Ruhland, who saw

in capitalism the decisive cause of the agricultural depression of his time, had demanded this even before the War. Even though the German *Reichsnährstand* has refused as a matter of principle to control the management of the farmers in individual matters, it has nevertheless effected a far-reaching social control which not only affects the distribution and inheritance of rural landed property but also the utilization of produce, the determination of prices, and, because of this, the manner of utilizing the soil.

The medieval system of agriculture was very far from concerning itself with controlling the utilization of the soil. It is self-evident that this problem was not present to the liberal agricultural policy. But even the endeavours which have already been described and which have brought about reforms of the liberal land law in the last half-century are not, as has been repeatedly emphasized, intended to take the decision as to how the land is to be utilized out of the hands of the private cultivator. Together with these efforts towards a new land law serving chiefly to maintain a permanent farming population, other plans and measures have made their appearance—also for rather more than fifty years—which have as their definite purpose the control of the use of land. It is necessary to make their nature, origin, and results clear in what follows.

First of all we must deal with Marxist socialism. Its supporters had originally expected with certainty that the peasantry would be displaced by large capitalist undertakings. It was their wish to abolish this capitalism and through the strength of the proletariat to create a new socialist order of society from which they, at the same time, expected a more abundant supply of commodities. These endeavours found their most logical development in the policy of collectivization, introduced in Soviet Russia in 1927, by which the possibility of operating independent family farms has been for all practical purposes completely abolished. Collective farms which have to operate according to the directions of appointed officials determine to a preponderant extent the cultivation of the Russian soil. On them, as on the purely government estates, the peasant has become a dependent conscript worker. Only as far as stock-farming is concerned have the individual families once more obtained a certain measure of personal control, because of the definitely unfavourable experiences which were incurred in the attempt to collectivize stock-farming.

The aims followed by the collective system are first and foremost political in character—a fact which explains the energy with which they have been prosecuted. Precisely because of its materialistic point of view it would be impossible for the Soviet Union to suffer the

predominance of peasant family farming, for it fears from this an influence contradictory to its economic planning and even a danger to its political power. At the same time, of course, it was confidently expected that agricultural production would be favourably influenced. Reliance was placed upon the superiority of centralized planning as opposed to allegedly chaotic production, and in particular upon the introduction of new technical methods, especially those of the tractors and combines which had so conclusively proved their worth in America—there, of course, in the vast majority of cases in the hands of independent farmers.

In point of fact, however, centralized planning does not yet constitute, in itself, an economic asset, and it is not merely the technical perfection of implements and machinery which decides the success or failure of economic achievement. The type of community in which men live and farm, and the state of mind and readiness to work which are founded therein, are often of far greater importance. After a short time the well-known devastation in stock-farming and the diminution of crops set in, which occasioned the appalling, widespread famine of 1932. Even though the agricultural output has since then attained a higher level and although a generation may be growing up which would adapt itself to the new conditions of life, it is nevertheless true that the agriculture of Soviet Russia has lagged noticeably behind the progress which has been made in other countries by independent owner and tenant farmers, and has not maintained the strong forward impetus which was noticeable in the years before the Great War, particularly after the reform of Stolypin.

A second source of a far-reaching social control of the use of land is to be seen in the war-time economy, particularly in its application to those countries which were cut off from world communications. In order to carry out their policies affecting food production and prices, they subjected agricultural produce to national administration and commandeered the produce for this purpose. They moreover limited considerably the right of the landowner to dispose freely of land. The nature of the war-time economy sprang from the conviction that the accommodation of the supply of foodstuffs to suddenly quite different circumstances, made all the more difficult by the disappearance of former sources of supply and by tasks of a completely new type, should not be left to an uncontrolled price-system and to the measures which would be adopted by the farmers in response to it. The war-time economy was relatively quickly and thoroughly set aside at the conclusion of hostilities. It continued, however, to have an indirect effect; several regulations of fundamental

importance remained in force, and the idea of a social control of the use of land acquired new strength for the purpose of national defence, as confidence in the continuance of a regular and prosperous system of free trade declined.

The economic depression, which has been made manifest to the whole world in a series of agricultural crises, is also attributable to the Great War and more especially to the method of its conclusion. From the methods of combating this depression, from measures both towards debt reduction and towards price control, new tendencies to social control of the use of land have been developed.

Many countries, particularly in central and east Europe, prohibited distraint on agricultural possessions in the times of crisis after the Great War by a series of measures for conversion and reduction of debts; and it has not yet been reinstated in many places even where a departure in principle from liberal land law was never intended. This has led to an organized supervision of the indebted farmer and thus the methods of individual credit control and of promoting improved farming methods initiated by large credit organizations have been still further developed.

The influence which the state exerts upon farming conditions is a strong one, and it requires a much more complete fulfilment of national needs than was formerly the case. But when the farmers find themselves unable to meet their debts, the state does not merely leave them to their fate but feels itself obliged to prevent the decision as to the economic existence of the farmer being left in the hands of his creditors.

The far-reaching measures for improving the prices for farm produce which have been adopted since 1929 by almost all countries in the world are, as I was able to show at the meeting of our Conference in 1936, moving towards the combination of agricultural producers in compulsory syndicates. This implies an important restriction of their power to dispose of the produce, no matter whether the boards which regulate the market are created by a majority vote of those interested or by the disposition of authority. The development has not slackened, despite the fact that, at least temporarily, considerable rises in the prices for agricultural produce have occurred. Often, too, practical or legal influence has been brought to bear on the extent or selection of areas for cultivation and on the amount of live-stock. The policy inaugurated by the United States since 1933 is worthy of special attention both for the scale of its effects and for its principles. In its effort towards adjustment of the agricultural production and marketing of agricultural supplies the Federal

Government has left the farmers free to decide, at least from the legal point of view. The support of prices is no longer the all-important aim; rather has the conservation of the soil come to the fore. Moreover, thorough study is being made of means of accomplishing a redistribution of land which would favour sizes of farms rationally adapted to the requirements of agriculture and to modern technical conditions.

Here the two problems which lie at the bottom of all land policies arise: How can the distribution of land help its cultivators to work under the conditions most favourable to production? How is it possible to provide that the soil will not be exploited in the interest of the living generation alone, but that its productivity will be maintained in such a way as to supply permanently the needs of the community?

In the nineteenth century, when more or less complete free trade between the various countries in the world was a matter of course, a supply of produce as rich and permanent as possible was, as we saw, regarded as the need of the community. The older conception has undergone a considerable change in recent years. Owing to the efforts towards a self-supporting organization and the fear that markets or sources of supply might be completely cut off by political complications, the various countries are concerned to effect a utilization of the soil which will guarantee the highest possible degree of independence. They did not seek to attain this object merely by bringing influence to bear on the prices of agricultural products, but also by giving farmers a legal status which compels them to take into account the demands of the political leaders.

From the basis of what has already been said we can now proceed to the definite questions of to-day's paper: (1) What importance had and has the legal position of the agriculturalist for economic development? (2) What economic prospects are opened up by the more modern tendencies to social control of the use of land which have been seen to exist?

The first of these two questions is frequently raised in order to compare the advantages of the owner-farmer with those of the tenant, and at the same time to investigate the merits or disadvantages of the different forms of tenancy. A few examples will make clear the necessity for great caution in the distribution of praise or blame. Holland, with almost 50 per cent. of its land held under tenancy, and Denmark, with no more than 5 per cent., are both, beyond any doubt, countries which hold a leading position in agricultural progress. It is impossible to ascertain any variations in

the economic achievements of the farming in Canada and in the United States which even approach a correspondence to the proportions of tenant-held land (about 10 per cent. to 40 per cent.). As has already been shown, the mentality and capability of the men concerned are the influences which chiefly determine economic achievement even under identical legal conditions, and their effects are everywhere more noticeable than those which proceed from the legal position. Even the categorical objection to *métayage*, made by Adam Smith and many other writers, that it retards economic progress, is not applicable here, where the transference of agricultural undertakings from one generation to another occurs—as is certainly often the case in North America—with the help of contracts of share-renting, and where an experienced father uses the opportunities offered him by the law to control the agricultural procedure of his son for the latter's benefit. This is true wherever a form of patriarchal relationship obtains. It has been observed in all countries that the heavily indebted landowner is often in a less favourable position and is more negligent in his treatment of the soil than the tenant farmer.)

In spite of very important reservations applicable to individual cases, a number of fundamental considerations as to the general importance of the legal position of the agriculturalist for economic development can be put forward. To do this we must, it is true, adopt general premises as to the way men think and act; but this method is the more reliable since, with certain limitations, we are chiefly concerned here with men of the white races and of the present time. Their representatives tend in the vast majority of cases to be stimulated by the prospect of economic profit, although it is true that their achievement decreases when conditions of life and the making of profit become too easy. They are not merely concerned to work for their own comfort but for the support of their families, and they provide, moreover, not merely for their own lifetime but for their descendants. Great differences exist, of course, in and among the individual nations as to whether the soil which is tilled is regarded only as a source of income for the living or as an inalienable home for the children. Where the mentality of the individual leads him to use the soil with an eye to the preservation of its value for the generations which follow, the danger that the soil will be 'mined' is relatively small, and in times of favourable economic development the state can, in essentials, leave the maintenance of the productivity of the soil to private initiative—at any rate, in as far as the individual farmers are acquainted with the needs of the soil.

When the government considers that such knowledge is not sufficiently widespread, it will be able to supplement its general activities of instruction and education by offering special economic advantages to those who follow its advice, to those, that is, who select certain methods of cultivation which do not exhaust the soil. As we know, the present-day Soil Conservation Programme of the United States is proceeding along these lines. If, incidentally, it is desired to counteract the tendency (which can never be completely destroyed) to 'mine' the soil for the purpose of immediate profit, that which Thaer has said in an often-quoted sentence on the drawing up of contracts of tenancy holds force: 'If a whole college of the cleverest economists and lawyers worked for four weeks to produce a contract of tenancy, it would either still fail to protect the estate from a really avaricious and cunning tenant or it would have to be framed in such a way as to paralyse the good tenant completely.' [All regulations] which limit to any important degree the farmer's power of disposition bring with them the danger that the very farmers who are the best and most capable will be obstructed. A complete economic success can, then, only be expected if it is possible to raise the average and to educate men away from the crafty and avaricious pursuit of short-sighted self-interest.

As far as the possibility of influencing the individual by means of an organized pressure on the whole is concerned there are considerable differences arising from tradition and political constitution. The agricultural policy of Soviet Russia is to a high degree based upon the supposition that the incentives which spring from the family mentality of the peasants, or from individual effort for profit, can be replaced or even exceeded by such pressure by the community at large. An estimation of the economic prospects of this policy is essentially dependent upon the extent to which this expectation is justified, and above this is, of course, the moral assessment of the forces and ties which are destroyed by systematic repression or suffocation of the family community or of individual effort. This decision can only proceed from faith and, here too, it is bound up with the question how and to what extent the powers of this world can so transform the hearts of men that they joyfully sacrifice their personal interest and care of their dependents to the needs of the community.

Especial attention must, however, be paid to the particular character of agricultural production. It is concerned with the organic growth of plants and animals, and its success depends to an especially high degree upon the exact knowledge and painstaking treatment of each individual piece of land, of each individual animal. Still

more must the character of the conditions of production be taken into account when an intensive and diversified type of farming is practised. If it is sufficiently difficult to manage the exclusive large-scale production of wheat and ranching according to a generalized, more or less schematic system, so much the more is technical progress in the more intensive types of farming based not upon standardized methods but upon individualization, upon painstaking and conscientious adaptation to particular conditions. Intensive agriculture brings with it considerable difficulties, even for the success of large individual undertakings; still more is this the case in the exercise of an authoritative control, even when the powers entrusted with this task have notably good men at their disposal.

To sum up one can put the matter as follows: According to the principles of psychology which have been laid down, countries which aim at agricultural progress, in the sense of a maximum supply of commodities without attributing an especial value to the delivery of a particular type of produce, will best attain their object by creating as favourable conditions as possible for the encouragement of private initiative and competition. Important, too, is the security of the legal status. But a security which goes so far that his land can only be taken from the farmer in the case of clearly culpable neglect of his duties compels the renunciation of a part of the economically favourable effects which are attainable by a generous utilization of credit. A limitation of the freedom to contract in particular fields—for instance, in the relation between landlord and tenant—can easily occasion a tendency to other legal forms and methods of cultivation which do not offer the same prospect of agricultural progress.

Now, at the present time, almost all importing countries are concerned to produce at least a definite minimum proportion of their supply of foodstuffs, of raw materials, and of certain prescribed types of produce from their own land; whilst the countries with a surplus production, whose available markets have been sensibly narrowed, systematically encourage their farmers to take part in the competition for those markets which still offer prospects of advantage.

The politicians who determine these things do not believe that the principle of freedom of disposition for the producer and the middleman guarantees the attainment of these objects. The result is that a legal system is brought into being which, for the sake of actual or alleged political requirements, subjects the production and sale of commodities to the direction and regulation of the state or of organizations which it has instituted. Only Soviet Russia has, to this end, completely renounced the operation of private

initiative and effort. In other countries it is to be complemented and given a new direction by systematic national organization and by educative measures. There is no doubt whatever that forces capable of playing an important part in agricultural progress are in this way called into being and set in action. The question is whether they will be sufficient permanently to attain those successes which were recorded by the system of free disposition by the farmer. The final decision, however, lies in the answer to the question whether the men who till the soil still really desire this freedom of disposition with its corresponding hardship in times of economic failure, or whether they prefer an activity less rich in prospect but promising greater security according to the directions and under the protection of an organized community. If, together with a slackening in the birth-rate, the courage for personal responsibility, with its possibilities of brilliant or devastating results, fails, then the system of land laws can no longer be built upon its former basis. When, however, the legal system itself contributes to the suppression of this courage and of the willing initiative which spring from it, then, even though it is politically justifiable, it will bring about conditions which do nothing to encourage progress in agriculture. L

The justification of the principle of freedom of disposition for the agriculturalist is not, however, entirely determined by the consideration of agricultural progress: for families and peoples do not live by bread alone any more than men themselves, nor can material gain compensate for the loss of their souls. We shall not, however, treat here of the definite moral, political, and social aspects of the question. Let it be enough to say that agricultural progress is an indispensable means to the attainment of the more important moral, political, and social aims.