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Review of tenure terminology

by John W. Bruce

1. Land tenure terms

The term “tenure” comes from English feudalism. After their conquest of England in 1066, the Normans declared all previous land rights void and replaced them with grants from their new monarchy. Derived from a Latin term for “holding” or “possessing,” land tenure means the terms on which something is held: the rights and obligations of the holder. Land tenure is a legal term that means the right to hold land rather than the simple fact of holding land. One may have tenure but may not have taken possession. Resource tenure describes rights to land, water, trees, and other resources.

With the emergence of capitalism in England, landholders struggled to reduce the obligations under their land tenure. They forced the monarchy to simplify the system into two basic tenures: freehold and leasehold. (Fee simple and fee simple absolute are technical feudal terms and are practically synonymous with freehold and private ownership.) Under freehold, land is held free of obligations to the monarchy or state. Today, we usually call this private ownership. Leasehold is when land is rented by someone other than the owner for a specified period.

Property is said to be a bundle of rights, since it can have multiple rights belonging to several different persons or groups.



A land tenure system is all the types of tenure recognized by a national and/or local system of law taken together. In a locality, one may find private freehold of residential plots and farmland, leases and mortgages of residential properties and farms, common property in grazing land, and local or national government ownership of parks and roads. Areas with distinctive tenure arrangements are sometimes referred to as tenure niches. A land tenure system cannot be understood except in relationship to the economic, political, and social systems which produce it and which it influences. Tenure systems are characterized by country or type of economic system, as formal (created by

Landholders struggle to reduce their obligations.

Property is a bundle of rights.

Redistribution of landholdings changes the agrarian structure.

When tenure is too short the landholder lacks security.

statutory law) or informal (unwritten, customary), and as imported or indigenous.

Agrarian structure is the pattern of distribution of land among owners. This structure may be unimodal, where most land is owned by medium-sized landowners, or bimodal, where most land is held by very large landholders and very small landowners.

Land reform and tenure change

Tenure reform describes legal reforms of tenure whether by the state or local communities. Tenure reform is different from land reform. Land reform involves the redistribution of landholdings and changes the agrarian structure, while tenure reform leaves people holding the same land, but with different rights.

Security of tenure can indicate that the state or other private individuals cannot interfere with the landholder's possession or use of land. The tenure itself may be short, for instance, a lease for one month, but if the leaseholders can be certain that they will be able to keep the land for the one month, then the tenure is secure. This implies confidence in the legal system and lack of worry about loss of one's rights. This is the narrowest usage of the term, common among legal professionals.

At the same time, economists often use the term to include the confidence factor noted above and a second element: long duration. One month's tenure would be insecure because it is so brief. This relates to incentives for investment. The reason people with a one-year lease will not plant trees is that they have no expectation of being able to use the wood. Security of tenure relates to the time needed to recover the cost of an investment. When tenure is too short or too uncertain for most investments, economists say that the landholder lacks security of tenure.

A third way the term is used adds another element: a requirement of full

rights in the land. Even if the tenure is secure for the lifetime of the holder and inheritable by the children, it may be insecure, for example, if it cannot be freely bought and sold. Here, the term means full private ownership. This usage is common among strong advocates of private ownership.

Property

Property is a set of rights and responsibilities concerning a thing; property also is the term for the thing itself. When we want to make it clear we are using it in the former sense, we often say property rights.

Western law recognizes two basic kinds of property. One is real (Anglo-American law) or immovable property (European Civil Law). This is property in land and attachments to land, like trees or buildings. The second is personal (Anglo-American law) or movable property (European Civil Law), which is property in all other things. Different bodies of law apply to real and personal property.

Private property is held by private persons and includes property held by legal persons, such as corporations or partnerships. Individual property can indicate that a natural rather than a legal person is the owner. Public property is held by any level of government.

Common property

A commons (a term with origins in English feudalism) is an area on which all landholders of a locality have a right to activities such as grazing stock or gathering wood. Historically, this is not a form of ownership but a pattern of legally guaranteed use: all members are free to use the land simultaneously.

In 1968, Garrett Hardin introduced the concept of the "tragedy of the commons." A commons, he argued, will inevitably be overused and degraded. The degrading of the resource is inevitable because each user has every

incentive to use as much of the resource as possible. In response, some resource economists and others argued that a commons did not involve unregulated use. Commons limit use because only community members have a right to use them. Many commons have rules limiting use (limiting the seasons for grazing, limiting types of livestock, etc.). A new distinction was introduced: open access refers to a lack of limits on use of a common resource; common property refers to a situation where there are controls over the use of the resource. Common property is not a legal term and is not so clearly defined as many other tenure terms.

Communal tenure in Africa/Asia

Communal land tenure is used in Africa and Asia to describe tenure that involves a large amount of community control over land use. The community is regarded as owning the land, but it allocates land to its members for cultivation. The members' rights are use rights or usufructuary rights (or usufruct). This implies a long-term right for an individual or household to use land and may include inheritance rights, but it does not imply a right to sell the land. In fact, the community may retain the right to reallocate landholdings among its members. A communal land tenure system usually includes both use rights allocated to households or individuals and also common property in other resources. The term communal tenure is

not legal, but a term developed by western social scientists to describe non-western property systems.

Common property and open access are used in combination with other terms: a resource may be described as a common property resource or an open access resource, depending on whether its use is controlled. Common property management refers to how a community manages its common property. A common property institution may describe an organization that manages the common property or the common property tenure arrangement itself.

Access, holding, possession, and prescription of land

These terms describe situations rather than rules. Having access means being able to make some use of the resource; it is neutral about whether one has a legal right to use the resource. Holding and possession both mean that one has control of the piece of land or resource. Again, these terms connote nothing about whether that person has a legal right to hold or possess the resource.

Possession, however, may have legal consequences. If someone possesses land for a long time, openly, without the owner's permission, and behaves like an owner, western law will accept the person as the owner. This is prescription, or prescriptive acquisition of land. The prescription period (the

A community owns the land which it allocates to its members.

Common property and open access are used in combination with other terms.



period the land is required to be held for prescription) differs from country to country but is generally 15–30 years.

Leases and tenancy

Leasehold involves the owner of land giving it to someone else to use temporarily in return for rent. Lease and tenancy are synonyms for leasehold. A



fixed amount for a specific period of time is called fixed rent. Or it may be a share of the production of the land, in which case it is called share rent. A tenancy with a fixed rent is a fixed rent tenancy, a tenancy with a share rent is called a share tenancy, and farming land leased under a share tenancy is share-cropping.

Some types of tenancies are characterized by their duration. A year-to-year tenancy requires renewal each year. Tenancy at sufferance means the

landlord can evict the tenant at any time.

Mortgages

A mortgage is a contract that commits land as security for a loan. Normally, the land remains with the mortgagor until that person fails to repay the debt. Under possessory mortgage, the lender takes possession of the land as soon as the mortgage is made and holds it until the debt is repaid. Often there is no interest on a loan secured by a possessory mortgage because the borrower can make income from using the land given as security.

Land registration and cadastral survey

Land registration refers to registration of property rights in land. Land registration system refers to the administrative system for keeping and maintaining those records through registration of inheritances and transactions in land. Land registration is useful in proving titles when they are challenged and for assuring a land buyer that the seller is in fact the owner.

Under deed registration, title deeds are registered. Title deeds are the contracts transferring ownership of land. Under title registration (also known as the Torrens system), the state does not merely register deeds and keep them available for inspection but makes a legally binding determination about who is the owner and guarantees that determination. Registration may be sporadic, in which case each parcel is registered separately and voluntarily, often at the initiative and expense of the owner, or it may be systematic, in which case all parcels in an area are surveyed at the same time, compulsorily, and often without charge to the owner.

Most systems of land registration involve a survey of the parcels. The boundaries and location must be determined and recorded in case of

disputes. A cadastral survey produces a cadastre or cadastral map that shows parcels and their owners and can be used as the basis for a land tax. A map can be recorded on an aerial photograph or on remote sensing imagery. If there has been a geodetic survey of the region (which takes into account the curvature of the earth), there should be a geodetic network, and the location of the parcel can be established by reference to two points in that network that are visible from the parcel. The global positioning system (GPS) locates the point in relation to orbiting satellites.

Holdings, parcels, and their division

A holding is all land held by a household or person, whether owned, leased, or held on some other basis. A parcel is a unit of land legally defined by its acquisition as a single contiguous unit, so that it is under a single title. That title can be ownership, lease, or some lesser right. A field is a contiguous area of land under a uniform cropping pattern with no legal implication. Plot is sometimes used as a synonym for parcel, but it can also be used for an area within a parcel farmed by one farmer when two or more farmers control different parts of a parcel.

Parcels can be broken into smaller pieces. This process, which may occur at inheritance by division among heirs or by sale of part of the parcel, is called partition or subdivision. Fragmentation exists when a holding consists of several separate parcels.

Inheritance of land

Inheritance (or succession) is the legal process by which land passes from an owner who has died to his/her heirs. The owner may before death have executed a will and testament, which specifies heirs. If so, the inheritance is said to be a testate succession. If not, the inheritance is said to be an intestate succession.

2. Glossary of tenure terms

access: The ability to use land or another resource.

agrarian structure: The pattern of land distribution among landowners.

agrarian reform: Our broadest term for the attempt to change agrarian structure, which may include land reform, land tenure reform, and other supportive reforms as well as reform of the credit system.

bimodal agrarian structure: A distribution pattern for land in which most land is owned by the largest landholders and the smallest landholders.

bundle of rights: The several rights that constitute a tenure; alternatively, all the rights belonging to various persons or groups in a piece of property.

cadastral survey: A survey that determines the ownership, boundaries, and location of a parcel of land.

cadastre (or cadastral map): A map showing the results of a cadastral survey.

co-ownership: Joint ownership by more than one legal person.

common property: A commons from which a community can exclude nonmembers and over which the community controls use.

common property institution: An organization that manages common property; or the common property tenure arrangement itself.

common property management: Management of a resource as common property.

common property resource: A resource managed under a common property regime.

commons: Land or another natural resource used simultaneously or serially by the members of a community.

The attempt to change agrarian structure may include land reform.

Land or other resources can be used simultaneously by community members.

Boundaries are fixed by reference to points in a geodetic network.

General boundaries refer to physical features.

creditworthy: Term used to characterize a borrower who is a good risk for a lender.

decedent: A deceased owner.

deed registration: Registration of title deeds.

fee simple (or fee simple absolute): Archaic terms for freehold, from English feudal tenure terminology.

field: A contiguous area of land under a common pattern of use or crop, which may be a parcel or part of a parcel.

fixed boundaries: Boundaries fixed by reference to points in a geodetic network.

fixed rent: A rent fixed in cash or a quantity of goods.

fixed rent tenancy: A tenancy for which the rent is fixed.

formal tenure system: A tenure system created by statute.

fragmentation: The state of a holding, consisting of several separate parcels.

freehold: Full private ownership, that is, free of any obligations to the state other than payment of taxes and observance of land use controls imposed in the public interest.

general boundaries: Boundaries established by reference to physical features such as a river or hedgerow.

geodetic network (or grid): The network of fixed points established in a geodetic survey.

geodetic survey: A survey that establishes a network (or grid) of points on the earth's surface, taking into account the curvature of that surface, which points can be used as reference points to establish and reestablish the location of a parcel.

global positioning system (GPS): A system of survey which establishes and can reestablish points on the earth's surface by reference to orbiting satellites.

heir: A person entitled by law to inherit, either by will or by scheme of intestacy.

holding (verb): Having control of land or another resource.

holding (noun): All the land held by a household or person in whatever tenure.

immovable property: Property in land and attachments (European Civil Law).

imported tenure system: Tenure system copied from another country.

indigenous tenure system: Tenure system of local origin.

individual property: Property held by a natural person.

informal tenure system: Unwritten, customary tenure system.

inheritance: The legal process by which land or other property passes from a deceased owner to his or her heirs.

intestate succession: An inheritance under a scheme of intestacy, applicable by law.

land reform: The attempt to change and thereby improve the distribution of land among landholders.

land registration: Recording in a register the ownership and other property rights in land (a broad, generic term).

land survey: Determining the boundaries and fixing the location of a parcel of land.

land tenure: Right(s) in land.

land tenure system: All the tenures provided for by a legal system, taken together.

lease (verb): To make a contract for temporary use.

lease (noun): An agreement for temporary use by a lessee, who pays rent to the lessor (owner).

leasehold: Tenure for a specified period for payment of rent, conferred by the owner, whether state or private.

lessee (or tenant): Person who leases in land.

lessor (or landlord): Owner who leases out land.

mortgage: A contract by which a borrower commits land as security for a loan.

mortgagee: The lender who accepts the land as security.
mortgagor: The borrower who mortgages land.
movable property: Property other than real property (European usage).

open access resource: A resource to which access is open and uncontrolled.

open access: Use of a commons without controls.

parcel: A contiguous area of land acquired as a unit under one title.

partition: Breaking up a parcel into smaller parcels, by division in inheritance or by sale of part of the parcel.

personal property: Property other than real property (Anglo-American usage).

plot: A synonym for parcel; also used to indicate a piece of land within a parcel managed by someone other than the parcel owner.

possession: Having control of land or another resource.

possessory mortgage (or *anti-chresis*): A

mortgage under which the land is held by the lender until the loan is repaid, usually in lieu of interest.

prescription period: The minimum time that land must be held to acquire it by prescription, usually in the range of 15–30 years.

prescription (or *prescriptive acquisition*): Acquiring ownership of land by possession over a long period of time, which is open and without permission of the owner and during which the possessor acts as if s/he were the owner.

private property: Property held by private persons, natural or legal.

property: A set of rights and responsibilities concerning a thing, often stated as rights in a thing, to show they are rights against everyone.

public property: Property held by any level of government.

real property: Property in land and attachments (Anglo-American usage).

rent (verb): The act of leasing.

rent (noun): Payment by a tenant to a landlord for temporary use of land under a lease.

resource tenure: Right(s) in land and other resources including water and forests.



scheme of intestacy: The heirs, their priority, and their shares, as specified by law for cases in which there is no will or wills are not permitted.

security of tenure (or *tenure security*): Tenure held without risk of loss; alternatively, tenure held without risk, and for a long time (preferred use of the term); alternatively, tenure resembling full private ownership.

security: Property of the borrower promised to the lender if the loan is not repaid on time.

share tenancy: A tenancy with a share rent.

A tenant may rent temporary use of the land.

A tenant may pay a share of production as rent.



TENURE BRIEFS

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share rent: A rent consisting of a percentage of the production of the land.

sharecropper: A tenant paying a share rent.

sharecropping: Farming land as a tenant under a share rent.

sporadic registration: Registration of a parcel separately from others in the area, voluntarily and generally at the initiative and expense of the owner.

tenure: Right(s) in a landholder's resource.

testate succession: An inheritance under a will.

tenure niche: An area with a distinctive tenure arrangement, usually related to the particular use to which the land is put.

tenure reform: The attempt to alter and so improve the rules of tenure.

title deed: The contract transferring ownership (title) to land.



squatter: Someone who occupies land without any legal authority.

subdivision: Breaking up a parcel into smaller parcels, by division in inheritance or by sale of part of the parcel.

succession: The legal process by which land or other property passes from a deceased owner to his or her heirs.

systematic registration: Registration of all parcels in an area at the same time, usually compulsorily and therefore without charge to the owner.

tenancy year-to-year: A tenancy that the parties must agree to renew each year.

tenancy at sufferance: A tenancy that can be terminated by the landlord at any time.

title registration: A land registration that confers a guarantee of the title by the government.

Torrens system registration: Title registration named for its originator, the Australian Robert Torrens.

unimodal agrarian structure: A distribution pattern for land in which most land is owned by holders with average-sized holdings.

usufructuary rights (or usufruct): Individual or household rights of use which exist under communal tenure systems.

will (or will and testament): A document executed by the owner before his or her death, specifying heirs and what portion of the estate each is to receive, after debts are paid.