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## **AFTER LAND REFORM, THE MARKET?**

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## ABSTRACT

The ultimately disappointing results of past redistributive reforms caused contemporary policy-makers in Latin America to search for alternatives. In recent years, the issue of transforming tenure structure through the market mechanism has moved into the spotlight. This paper argues that it is extremely helpful to approach the topic from an institutional perspective. The institution of property rights is central to the discussion. New questions emerge: How are transactions actually being carried out in the rural setting? What role do transaction costs and the corresponding institutions like property rights play? What influence may externalities have? A meaningful analysis of how rural land markets work cannot be done in a conventional neoclassic scenario. The rural economic environment is characterized by imperfect markets, asymmetric information and uncertainty. In addition, economic behaviour is often guided by the intrinsic logic of the peasant farm which differs markedly from the way commercial agriculture operates. No one property rights regime is universally valid. A whole array of agricultural institutions emerges as a response to different and evolving economic parameters. The complexities of rural land markets have to be considered in the design of effective policies.



## INTRODUCTION

In rural areas land performs an economic function of paramount importance. It is the primary production factor, source of employment and repository of personal wealth. Thus social status and power relations in rural societies are often largely determined by the structure of land holdings. Although this frequently still adequately describes the situation in contemporary Latin America, a modernization process clearly has begun. With the emergence of agro-industry and modern, well-managed, mostly medium sized farms, the polarization in land distribution is not as stark as it has been in the past.

Nevertheless, the distribution of the vital resource "land" within the region as a whole must be characterized as highly inequitable even when we take into account that "Lumping all parcels of land together in an economic analysis, by counting acres, certainly violates every rule of aggregation" (Schultz, 1953, p. 141). Wide tracts of huge holdings are underutilized or lie idle while significant portions of the rural population are struggling for access to land. Not only has this predicament led to civil unrest in the past and continues to do so at present.<sup>1</sup> Additionally, environmental degradation as peasants penetrate the fragile frontier in search for land has become a source of concern.

Thus, the demand to change the skewed land tenure structure has stayed alive. Over the last few decades attempts have been made, for equity as well as efficiency reasons, to alter the existing tenure structure through redistributive land reforms. The results thus achieved have failed to bring a decisive change, however. Beside the fact that the reform efforts in the individual countries differed in initial political resolve and extent of the programmes (compare, for example, the extensive reforms in Mexico in the 1930s or Bolivia in the 1950s with much weaker efforts in Brazil), the post-reform situation suffered from factors like insufficient quality of the land redistributed, insecure titles, a lack of farming know-how on part of the beneficiaries, plus a number of policy distortions. These experiences led to the search for alternative solutions.

The question today is how agrarian structures would evolve if land property rights were marketable and land markets active. To put it differently: will competitive market forces break down and reform a bimodal tenure structure, shifting land to the landless and land poor? Will small-scale producers end up selling their parcels, thus creating either further land concentration, or maybe allowing the emergence of a new, efficient subsector, made up of medium-sized operational holdings with the characteristics of commercial agriculture? Or will the outcome be altogether different?

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<sup>1</sup> Witness, for example, an incident on August 9th in a Brazilian state bordering on Bolivia, where 10 people died in a dispute over land. Around 500 landless farmers had occupied parts of a huge *hacienda* and attempts by the police to evict them resulted in the shoot-out. Reportedly, 379 similar conflicts left at least 36 people dead during 1994, making land disputes the chief cause for violence in the interior of Brazil.

## I. UNDERSTANDING RURAL LAND TRANSACTIONS

### A. THE ECONOMIC ENVIRONMENT

*The world operates, at best, in a second best framework.*  
Erik Thorbecke

Rural markets in developing countries have their specific characteristics related to multiple imperfections not only in land markets but also in the markets for capital and labour as well as in risk-management (insurance). It is worthwhile to quote De Janvry *et al* (1993, p. 569) at length:

"The rural community is characterized by highly imperfect markets, with low transaction costs within the community but high with the outside, asymmetrical information, fragmented oligopolies, lack of formal collateral, and highly covariant risks. The result is that transactions within the community are highly complex: Some transactions occur within the household itself without any visible price; some occur through contractual arrangements among independent parties such as interlinked transactions between labor and land and between credit and labor, or by sharecropping contracts; some occur among members of organizations such as cooperative networks; and finally some occur via market exchange, with markets assuming a variety of configurations and transactions eventually spilling over across markets, from regulated to parallel. Market and nonmarket exchange configurations depend on the nature of the items traded, the actors and organizations involved, and the structure of the environment, including most particularly state intervention."

Furthermore, the way in which transactions are carried out depends, among other things, on the relative power position of an individual in society, or institutions like cultural norms and the legal system. As a result of this environment, rural transactions can be highly complex. Therefore it may be grossly misleading to conceptualize transactions in the rural community 'as if' perfect markets existed.

The basic conclusion here is that the emergence of an organized, formal market or a non market configuration to carry out transactions for a certain good will depend—in a world of imperfect and asymmetric information and multiple imperfections in associated markets—on the transaction costs involved! Likewise, it is important to see that different market and non market configurations that do exist in an economy do not operate independently from one another, but interact.

It has to be made clear in this context that non-market operations should not be conceived of as taking place in some vacuum, standing outside the economic sphere. The very existence of a certain economic rationality (minimizing transaction costs) explains this type of configuration to carry out transactions.

The crucial question is, if more or less free transactions between economic agents will be better able to process all the necessary information and thus accomplish more than past redistributive reforms.



## B. PROPERTY RIGHTS IN LAND: AN INSTITUTIONAL PERSPECTIVE

*"We often apply the simple 'laws' of market supply and demand without being fully conscious of the complex of institutions on which contracts in actual markets crucially depend."*

Pranab Bardhan

This chapter wants to illustrate that it can be immensely helpful to analyze the issue of rural land markets within an Institutional Economics framework.

For this goal it will suffice to describe Institutionalism in terms of two central premises, both showing that the analytical focus differs from that of conventional neoclassics. The first point is the belief that institutions matter in shaping economic behaviour as well as performance. Secondly, it is crucial to realize the evolutionary aspect of the concept! Institutions change over time, responding to changing economic circumstances.

Often a distinction is made between Old and New Institutionalism. In short, followers of the Old School reject the neoclassical assumption of rational behaviour, while New Institutionalists are at most willing to modify it. While in much of what follows the underlying premise is the abstraction that institutions derive from optimizing decisions of individuals and respond to changing sets of relative prices, it is not suggested to completely disregard factors like status, group-identity, or power, which clearly may influence behaviour in a rural environment.

The fundamental idea in our context is that markets are nothing else than the transactions between economic agents, and that transaction costs (TC)<sup>2</sup> matter enormously in shaping the way these transactions take place. One of the reasons for the emergence of social and economic institutions—like property rights—is to reduce TC. Lipton (1993, p. 642), who refers to this body of ideas as the 'new paradigm', describes its fundamental premise—the existence of endogenous, transactions-cost-reducing rural institutions—"in four words, that transaction costs endogenize institutions".

This new understanding of agrarian institutions constitutes a body of knowledge which was not available for the land reform efforts of the 1960s and 1970s! It will help to understand past failures and provide guidelines for future intervention.

Typically, there have been three ways in which economists treated agrarian (or rural) institutions: i) in *standard neoclassical economics*, these institutions are given. Knowledge, organization and technology remain constant. Within this framework individuals maximize utility and the outcome usually will be Pareto-optimal; ii) for *structuralists*, rural institutions are the result of power relations between groups and classes, they emerge through "extra-economic coercion". Those institutions will persist as long as those who benefit perceive the situation to be to their advantage, and as long as "the gainers can brainwash, bribe, compensate or coerce the losers into acceptance"

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<sup>2</sup> The term here shall mean all costs associated with transfers of property rights other than direct production cost. Examples include costs of information, of negotiation, of drawing up and enforcing contracts, or defining and policing property rights.

(Lipton, 1993, p. 631); iii) *institutional economics* views agrarian institutions as the endogenous outcome of actions, taken partly to reduce TC.

While it is not our intention to discard the contributions of neoclassical and structuralist economics, we suggest that institutionalism attempts to bring parts of the three approaches together. Of central importance in this last approach is the institution of property rights (PR). To understand rural land markets it is helpful to shift the analytical focus from the physical ownership of land to the prevailing system of property rights. This means that control over an asset like land has to be seen as a web of entitlements between persons, rather than merely the possession of something. 'Property' is defined by the "bundle of rights" of one individual in relation to others. In the words of Hoff (1993, p. 231):

"Little economic activity would occur in the absence of rights, or powers, to consume, obtain income from, and transfer assets. The level of economic development of a region will therefore depend on its system of property rights."

Land is a special commodity, it is completely immobile, it can be put to different uses and by various parties simultaneously. What governs the use of this resource is a system of PR. Land property rights have some peculiar features, they can be very complex and they vary over space and time, requiring policy-makers to adjust their instruments to the situation found in specific cases. Feder and Feeny (1993, p. 242) illustrate this point:

"Uses of land may include hunting, passage, gathering, grazing, cultivation, the mining of minerals, the use of trees, and even the right to destroy the resource. For instance, in medieval England and contemporary South India, rights to the crop are private, while rights to the stubble after harvesting are communal. Similarly, in many parts of Sub-Saharan Africa land and tree tenure are separate."

Property rights are so important because their actual nature determines resource allocation in a world of conflicting user interests. It has been noted that only on Robinson Crusoe's island there was no need for defining PR —at least not until the arrival of Friday. This is to say that also the outcome of land (re-) distribution via market transactions will depend on the prevailing system of PR! Why, then, do they often get so little attention? The answer is that economic analysis usually assumes western-style systems of PR which are exclusive, transferable, alienable, and enforceable. In such an environment, it is acceptable not to include PR-issues in the analysis. But to make such an assumption for developing countries is often incorrect and the results of a study that does not consider the impact of the existing system of PR are therefore misleading.

Any attempt to alter the inegalitarian pattern of land holdings found in Latin America, necessarily implies shifting individual PR in land, plus their associated rents, from the relatively rich to the relatively poor. It is important to note that an analysis of these issues often "... fails to recognize the subtlety and complexity of property rights in land, so that the question of what, precisely, is being transferred is often obscured" (Bell, 1990, p. 148). This was one of the reasons for the unsatisfactory results achieved by redistributive land reforms. They were often ignorant to the hugely complex economic realities involved.

According to Feder and Feeny (*op. cit.*), PR should be thought of as a social institution. The authors distinguish three basic categories of institutions: i) *the constitutional order* which is made up of the fundamental rules about how a society is organized - the rules for making the rules, so to

speak; ii) *institutional arrangements* like laws, regulations, associations, contracts, and PR in land, which are created within the framework of the constitutional order, and iii) *normative behavioural codes*, determined by the cultural values which legitimize the above arrangements and constrain behaviour. Categories i) and iii) evolve only slowly, whereas the second may be more readily modified. It is important to note that all three categories are interlinked and may influence each other. Feder/Feeny (*op. cit.*, p. 241) give examples:

"Although the formal legal system may provide for alienability of land, the transfer of land to persons from another clan or ethnic group may represent a violation of cultural norms. Similarly, although the constitutional order may make provisions for private property rights and there may formally be laws establishing such rights, the corresponding registration and enforcement mechanisms may be largely absent."

For analytical purposes, PR in land may be classified into four ideal types: i) none or open access, where PR are left unassigned; ii) communal property; iii) state property, and iv) private property, where exclusive rights are given to a group of people, the state or some private entity, respectively. All four forms may be found in one society. Likewise, more than just one category may apply to the same tract of land.

The concepts of state and private property are pretty straightforward when compared with common property and open access regimes. The demarcation line between the latter two can become somewhat blurred in the sense that the incentive structure in a common property scenario may be such as to cause economic behaviour of individuals to resemble that under open access regimes. In many countries of Latin America often up to 50 per cent of cultivated land is untitled thus making it *de facto* open access. Therefore a closer examination of the characteristics of non-private PR systems—other than state property—seems justified.

The rediscovery of an article published almost 30 years ago (Demsetz, 1967) appears to be particularly fruitful in this context. Demsetz' approach is at times broad and it can be difficult to see the practical applicability of his contentions. Nevertheless, the basic premises of his paper help to shed light on many of the questions which are of interest to us.

For Demsetz, property rights "derive their significance from the fact that they help a man form those expectations which he can reasonably hold in his dealings with others." (*op. cit.*, p. 347). He sees a very close relationship between PR and externalities. 'Externality' here means any harmful or beneficial effect that someone suffers or enjoys through the activities of someone else. The classic example is smoke from a factory chimney, or it could be the shadow a tall building casts on the swimming pool of a neighboring hotel. These effects are 'external' in that no prices are attached to them and thus they have none or at least no full impact on the decisions of economic agents since no information is transmitted through the price mechanism. 'Internalizing' external effects, accordingly refers to a process or mechanism which brings such effects to bear on the behaviour of those affected.

Demsetz now maintains that "A primary function of property rights is that of guiding incentives to achieve a greater internalization of externalities" (*op. cit.*, p. 348). His article analyzes the different patterns in the emergence of PR among American Indians belonging to two groups, one inhabiting the northern Labrador Peninsula, engaging in profitable fur trade. The hunting of forest animals under a common property regime makes it become necessary over time to define and

establish clear private PR as the cost for the coordination of user entry, unavoidable under (*de facto*) open access, become too large and the resource runs the risk of over-utilization.

The second group is made up of the Indians of the Southwestern plains where the grazing animals indigenous to that region are of no commercial value —unlike the fur animals of the North— and in addition tend to wander over wide tracts of land. Those two conditions make the establishing of enforceable private PR neither highly desirable nor feasible. As a result a long tradition of private PR in land could be observed in the case of the Labrador Indians, whereas no similar arrangement could be found among the Indians of the Southwest.

The analysis then turns to the issue of communal ownership. The distinction between 'communal' and 'common' ownership is not made clear, but the observations are instructive nevertheless. Demsetz apparently thought of open access regimes when he referred to communal ownership. But because of the difficulty to clearly distinguish the two in certain cases, his conclusion that such a PR arrangement results in significant externalities which are not internalized may be valid nevertheless. External effects may be less obvious in the case of communal ownership, where the community is sufficiently small and functions at a certain degree of coordination among members and at the exclusion of outsiders. There, externalities may be internalized through negotiations which carry costs, the larger the number of members in the community the more significant. This leads to the second advantage of private PR: the negotiation costs tend to be considerably less than under communal ownership. Thus Demsetz (*op. cit.*, p. 358) plainly states that "ownership tends to be an individual affair."

The main lessons to be learned from the proposition presented may be that: 1) PR internalize externalities; 2) PR emerge when the benefits of internalization become greater than the associated costs; 3) precisely that usually happens in the course of economic development; 4) private PR provide the best mechanism to internalize external effects; 5) therefore they seem to be —generally speaking— a necessary albeit not sufficient condition for development, and 6) consequently it seems crucial that the state allows PR adjustments because over time new technologies and markets enter the scene and old PR regimes are ill equipped to deal with new realities!

This is not to say that private PR constitute the first-best solution in all instances at all times. The most suitable PR regime will depend on the particular circumstances of a society like, for example, its stage of economic development. Demsetz takes this into account when he writes:

"(...) property rights develop to internalize externalities when the gains of internalization become larger than the cost of internalization. Increased internalization, in the main, results from changes in economic values, changes which stem from the development of new technology and the opening of new markets, changes to which old property rights are poorly attuned. **A proper interpretation of this assertion requires that account be taken of a community's preferences for private ownership.** Some communities will have less well-developed private ownership systems. But, given a community's tastes in this regard, the emergence of new private or state-owned property rights will be in response to changes in technology and relative prices" (*op. cit.*, p. 350, boldface added).

Finally, PR also play an important role in providing incentives for efficient land use and investments, in that they reduce asymmetric information —plus the associated inefficiencies and uncertainties— and thus facilitate transactions in financial markets. Asymmetric information in land markets can emerge in the course of (agrarian) development of a society. In the early stages, land transactions will largely be carried out among members of the same community, where information

still is mostly symmetric. The individuals know who they are dealing with and which tract of land belongs to whom. As the mobility of individuals and capital increases in the more advanced stages, more and more transactions take place with outsiders of the community, and thus problems of imperfect information and therefore of land disputes arise. This can lead to efficiency losses since in such a scenario the market price of land will move away from its shadow price and the extent of land transactions will be sub-optimal. This, of course, under the assumption that land transactions generally increase efficiency because they allocate resources according to their (potential) marginal productivity.

It is important to note, "That changes in economic relations and in power structures that characterize the development process generate changing needs for property rights and the institutions to regulate or enforce them" (Feder/Feeny, 1993, p. 242). Factors like population pressure or technological change that make investments in land quality more attractive, call for more precisely defined PR. The demand for institutional arrangements to do just that is strong in many of today's developing countries, where the said factors are at work.

It can now be argued that, even though the "optimal" PR system in a given situation is not necessarily equivalent with the institution of **private** property, in the course of "modernization" of a society, private property becomes ever more important. Economic history of, for example, European countries indicates that with progressing development, as division of labour increases, economic interaction between agents becomes more complex, and factor markets slowly emerge, the institution of common ownership in land has to give way to private property arrangements (Barlowe, 1958).

## II. FOUR CASE STUDIES

An analysis of the countries in this sample reflects the recent preoccupation of regional policy-makers for market solutions. Attempts to correct misconceived policies of the past are obvious. In some countries rural land markets have been operating during the last couple of decades at a modest level of activity and some observations on the outcomes are possible. In others, the mechanisms to transfer property rights still lie dormant.

A look at individual cases also highlights the complexity of the issue: the degree to which land distribution still is monopolistic, the wide variety of existing property rights regimes, the sorry state of cadastral systems, frequently counterproductive and inconsistent policies, the multiple factors that influence behaviour of the rural agent, and the extent of untitled land. It also gives a sense of the diversity of conditions **within** a given country. The need for institutional innovation becomes evident. Rural institutions and/or configurations may differ from region to region, thus calling for diversified instruments to foster land markets.

### Chile

Under the two governments preceding military rule, Chile experienced two waves of comprehensive expropriations which eventually affected 40 per cent of the national territory. Economic policy after the *coup d'état* in 1973 prioritized private property and a process of returning land to the previous owners began. In many cases the pre-Agrarian Reform situation was thus reinstalled. At the end of the redistributive procedure, however, around 48 000 peasant families, the so-called *parceleros* had received tracts of land fit for agricultural production.

Subsequently, around 45 per cent of the land distributed to the *parceleros* was sold again by the new owners. An analysis of the background of this process allows some valuable insights into the workings of a considerably liberalized rural land market.

In an interesting publication, two Chilean researchers provide a case study of the Metropolitan Region in Chile's Central Valley (the agricultural heartland) and the VIII Region in the southern part of the country, where traditional agriculture plays an important role (Echenique/Rolando, 1991). They found that by 1991 around 70 per cent of the previously assigned parcels had been sold in the Metropolitan Region and roughly 45 per cent in the VIII Region. The level of market activity was highest in areas where the land was most fertile and surrounding infrastructure best. This is explained mainly through the substantial demand for quality agricultural land stemming from the beginning rise of that subsector of Chilean agriculture that produced fruit and horticultural products for export, primarily in the Central Valley of the country. While the *parceleros* slowly began to sell their land one or two years after it had been given to them, the bulk of the sales took place in the years between 1979 to 1982. These four years marked a deep crisis in the country's agriculture, but it was around the same time when fruit exports began to boom, causing a strong demand for land and resulting in 58 per cent of all sales of *parcelero* holdings to take place within this period.

To explore the motivations of the sellers, Echenique and Rolando carried out a survey among former *parceleros* and rural agricultural leaders which produced some remarkable results. The major reasons to sell which were mentioned, were excess debt burden and lack of working capital. A total of about 40 per cent of the peasants surveyed in the Metropolitan Region claimed that those two factors induced them to give up their land, with a respective participation of 23 per cent and 19 per cent.

But this was far from being the whole explanation. Some 19 per cent of the peasants who sold their land said they did so because they had no interest in agriculture and preferred to engage in other fields. That makes this motivational factor as important in the peasants' decision as the lack of working capital and almost as important as debt burdens! In addition, some 10 per cent mentioned old age and no children who were willing to carry on the farming activities as their reason to sell, while 8 per cent admitted family problems like alcoholism or plain laziness. In some cases the families were so large (10 or more children) that after the death of the father the heirs decided the only practical way to divide the inheritance among them was to sell the land. Legal regulations in some instances put the *parceleros* at a disadvantage. So, for example, until 1980 the sale of land that had been distributed to peasants under military rule was illegal. To circumvent this rule many *campesinos* entered into long term lease arrangements with the option for the leaseholder to buy later. The peasants often did not understand these contracts well and in a number of cases they thus became victims of fraudulent practices.

In its majority the buyers of the parcels were farmers or agricultural entrepreneurs, but there were also urban professionals and business people in this group. However, the predominant motivation to acquire agricultural land was to put it to productive use.

These characteristics of the Chilean case suggest that some of the notions about rural land markets have to be evaluated cautiously. One such contention is that the attributes typical for the economic situation of peasants make it impossible for market mechanisms to shift land to this group. However, without claiming to be a representative sample, the 19 per cent of smallholders in the

survey mentioned above who claim to have sold their parcels out of a lack of interest in agriculture, plus another 18 per cent who mention family problems, old age or a lack of children to carry on, is surprising. A large number of the sales were not motivated by the usually assumed lack of capital or excessive debt, but were attributable to extraeconomic factors. The land market transactions in Chile by and large allocated the resource according to productive potentials, thus promoting the emergence of a modern, successful agriculture.

### Colombia

An analysis done by FAO (1994) of land markets in several municipalities in Colombia illustrates the difficulties in changing ownership patterns through market transactions.

In Colombia, too, land distribution is highly skewed. In 1992, 78 per cent of the holdings were of a size of 10 hectares or less. They covered only 8.8 per cent of total agricultural land area. In contrast, 1.3 per cent of the holdings comprised 200 hectares and more, and accounted for over 48 per cent of total area.

With this situation in mind, the Colombian government last year passed the 'New Law of Agrarian Reform' (Ley 160 de 1994). It intends to create the 'National System of Agrarian Reform and Rural Peasant Development', introduces a subsidy scheme for land purchases by the rural poor, and reforms the Colombian Institute for Agrarian Reform (INCORA).

As to the extent of land transactions, the report finds that in the municipalities examined, 4 per cent of the holdings, equivalent to around 9 per cent of the municipal area, changed owners in 1991. The structure of these transactions reflects the segmentation of rural land markets. The vast majority of transactions took place between smallholders, representing a smaller total of land transferred than through the relatively few large holdings that were being sold. Thus the study concludes that buyers and sellers usually belong to the same socio-economic level.

Another important observation is what the authors call the 'social segmentation' of the market. The social norms of groups like extended families or closely knit rural communities often result in the exclusion of outsiders. Cases are reported of individuals who did acquire land in such a community but had to give it up later because they were denied certain services or could not find people who were willing to work for them.

Usually transactions are carried out only among the members of the group. This (in addition to hereditary customs) has led to worrying degrees of fragmentation of holdings. The report found that in 1991, in areas dominated by peasant farming, over 50 per cent of the land sales were carried out among family members! In this environment, efforts by state agencies to redistribute land may be frustrated. In one case, INCORA had purchased land with the intention to resell it to small producers of a certain municipality. The offer was rejected because the peasants refused to give up the holdings they owned and did not want to relocate to other regions.

Another form of denying market access to unwanted parties is the authoritarian rule of guerilla or paramilitary groups over an area. Coercion and the application of sheer physical force make sure that only sales that are welcomed by those in power take place.

As regards land prices, the study found a strong link to the revenue-generating capacity of the land. Location of the property, surrounding infrastructure, and the prices the produce can achieve in the marketplace become determining factors. In one region, dominated by coffee production, the extend of land sales was about three times less during a period of depressed coffee prices than otherwise.

The investigation observed another interesting phenomenon: owners of large holdings frequently sell parts of their property to investors coming from outside the rural community, mostly urban buyers. Before the sale, improvements like the construction of fences or —often luxurious— homes are installed and thus the parcel commands a price of up to twice the original value of the land. Apparently, some *latifundistas* contemplated breaking up their holdings to sell them to a number of peasant farmers. Eventually, though, they discarded the idea because they feared that insufficient profit margins would result from such an arrangement. One of the conclusions that can be drawn from this, is that the organizational hurdles and bureaucratic delays plus the associated transaction costs were considered to be prohibitively high.

In light of the above observations the FAO Report concludes that in the regions studied land markets were relatively active. However, transactions primarily took place in form of 'intra-strata' sales. The observed transfers of property rights through the existing market mechanisms are thus not able to shift land from one economic group to another.

### Ecuador

An analysis of rural land markets in Ecuador, undertaken by FAO (1995a) during 1992-1993 concludes that the country's agriculture has experienced drastic changes over the past three decades.

Until a new legislation was passed in 1994 ("Law of Agrarian Development, June 14, 1994"), legal and bureaucratic hurdles were such that the vast majority of land transfers between private individuals took place outside the framework established by governmental regulations.

An investigation that studied the Ecuadorian case before the new law came into effect (Stringer, 1989) illustrates the effects land policies can have. It suggests that the administrative and legal structure of the country, plus the political regulations that go with it worked against more active land markets in several ways.

First, there were very specific rules for land transactions and the public Agrarian Reform Institute (IERAC, now INDA) played a crucial role. So, for example, transfers of *minifundios* (note that the pertinent law did not define the term *minifundio*, neither by area nor soil type!), subdivisions of farm land, or sales with the intention to change the use of land from traditional farming to, say, cultivation of flowers or beekeeping, could not take place without prior approval of the IERAC.

Another hurdle was the tax system: a combination of a capital gains tax, which was especially high because the rate set in the early 1970s had never been adjusted to inflation, plus transfer tax, national defense tax, potable water tax, provincial tax and other fees defined a situation where each sale of land incurred a tax load of anything between 25 and 30 per cent of the sales price. This led to illegal transfers, wrong declarations of the price and other problems.



But even if two contracting parties agreed to carry out a transaction, the process was immensely cumbersome. For example, for each sale a petition had to be sent to IERAC requesting authorization. This petition was to be accompanied by a map of the property, a copy of the title, a certificate from the land registry verifying that the property is clear of liens, a declaration of the contiguous property owners that they do not want the parcel, and the personal identification numbers of buyer and seller. Then, the petition had to go through various departments within IERAC and later to the directorate in the capital. Finally, the parties to the transaction could begin drafting and notarizing the contract. It was not uncommon for the whole process to take up to six months. And IERAC was never able to process more than 5 per cent of the solicited transactions. The new legislation did away with this process. It states that private land transactions do not require authorization of any kind.

Today, through a combination of past Agrarian Reform, the colonization of new lands, and the vitalization of formal land markets the agrarian structure has been altered in that the dominance of the traditional *latifundio* has disappeared. This is all the more remarkable if one takes the situation in 1954 and 1974, the years of the last agricultural censuses, into account. In 1954, 2.2 per cent of the holdings were of a size of over 100 hectares, comprising 64 per cent of total land area. Smallholders operating on less than 5 hectares made up 73 per cent of all holdings, but occupied only around 7 per cent of the total area. In 1974 the percentages still stood at 2.1/48 and 67/6.8, respectively. In contrast to this, today small and medium-sized producers as well as agro-industry, engaged in modern production techniques, their activities often geared towards export markets, have emerged.

By the same token, a different problem of polarization now exists. The modernization process has been accompanied by a substantial increase in *minifundios* and rural households without land. A 1991 'Survey of Rural Households' shows that 39 per cent of those are landless, while around 20 per cent are smallholders, operating on less than one hectare. At the same time the composition of the rural labour force has been altered. About 40 per cent of economically active rural population inserted themselves into the urban labour market or found otherwise off-farm employment.

While in the past beneficiaries of Agrarian Reform have often lost their land due to the overwhelming debt they had accumulated, today transaction in formal markets play a much more active role. The FAO study identifies market transfers as the predominant mechanism for re-allocation of agricultural land over the last few years. On the supply side, the peasant producers are the principal sellers, whereas demand largely stems from medium and big agricultural enterprises which add further land to their holdings. But while this development often means that peasants, many of them former beneficiaries of Agrarian Reform or distribution of colonized land, cease to be producers with their own holdings, the report pinpoints another very important facet: the *campesinos* that have to give up usually are the most "traditional" who fail to insert themselves in the modernization process. Thus the peasant sector splits up into two parts:

"Sectores campesinos beneficiarios de la reforma agraria y de la colonización, que en el transcurso de los años han logrado ciertos niveles de acumulación, han asumido comportamientos empresariales y se han convertido en demandantes de tierras, logrando, ampliar su base de tierra-unidad de producción. (...) Por otra parte, los campesinos que mantienen su condición de propietarios posesionarios sin alterar sus comportamientos tradicionales, caen en un proceso de deterioro, por disminución de sus bases de reproducción" (FAO, 1995a, p. 73; emphasis in original)

The FAO study on Ecuador concludes that the country is experiencing a sustained transformation. Market arrangements have become the main mechanism of land transactions. While this has led to the modernization of agriculture in many cases, on the other hand a considerable number of the rural poor find themselves in a situation of crisis. Many have been forced to give up their land or become part of the process of *minifundización*. While the process at large may be interpreted as positive in the course of economic development, it also creates new problems in dealing with those parts of the rural population that stay outside the modernization process.

### Mexico

The Mexican case differs from others in many important aspects because of the considerable influence of the Revolution at the beginning of this century on the institutions of the country.

The agrarian land structure of Mexico is still marked by the consequences of the post-revolutionary Political Constitution of 1917. Article 27 of the Constitution established the *ejido* system. The *ejidos* are areas of communal ownership, made up of —mostly previously expropriated— land which is farmed collectively. In other words, the *ejido* came into existence through decree and the way it operated was regulated by specific laws.

Currently more than 54 per cent of the total national land area are under this kind of 'social property' or *propiedad social* (FAO, 1995b). The *ejido* farmers and members of other communal ownership schemes represent 67 per cent of the total agricultural population. That this structure was in many cases conceived to be sub-optimal was demonstrated by the widespread practice to ignore numerous legal restrictions.

Until a change in legislation in 1992, the extent to which economic activity in agriculture had been restricted was mind-boggling. Article 27 provided for the right of the Federal Government to expropriate private land holdings in order to convert them into communal property. *Ejido* land could not be sold, rented out, otherwise transferred or obstructed in its use (*embargar*). Therefore it was out of reach of —at least legal— market transactions. Furthermore it was illegal for *ejidatarios* to hire paid labour. Legal entities in form of companies were not allowed to own real estate.

Realizing that these conditions had as a consequence a high degree of uncertainty and obstructed development, the administration in 1992 passed a new Agrarian Law to introduce legal security for economic transactions in rural Mexico. The main pillar of the new law is the reform of Article 27 mentioned above which brings significant changes in the governance of property rights and in the way transactions may be carried out.

The most important features are: - the practice of granting land to peasant groups upon their request is discontinued; - members of an *ejido* or a community (other land under common ownership, not established, but recognized by the old law) may decide in their respective assemblies to dissolve themselves, give individual property rights to the members, or to associate themselves with private corporations; - the latter now are allowed to own rural real estate; - it was intended to spread the institution of private property in land and thus to create an active rural land market.

According to the FAO study mentioned, the results so far have been more than disappointing. As for the reasons for this failure, the report does little to bring light into the dark. A mechanism to carry out the privatization of the previously social property was set up, the "Program for the Certification of *ejido* Rights and the Titling of Urban Plots", known by its Spanish acronym, *PROCEDE* (*Programa de Certificación de Derechos Ejidales y Titulación de Solares Urbanos*). The programme is supposed to control and legalize the titling process of land under communal ownership.

By October 1993, PROCEDE had carried out negotiations with 17,731 peasant agencies representing *ejido* and other communal ownership interests. From those, almost 9,700 responded favourably to the privatization plans, a little less than 55 per cent. The next step is the surveying of the land by the National Institute for Statistics, Geography and Informatics (INEGI). Then the respective community assemblies convene to negotiate the final demarcation. Apparently, only around 200 *ejidos* (out of almost 30 000 in total), representing just a little over one per cent of the total area under social property, had completed the procedure as 1993 came to an end.

This obviously stops short of the anticipations policy-makers had when they drafted the new legislation. The FAO study then concludes that this outcome demonstrates that "land for the peasant has a different meaning than that of a simple good" (FAO, 1995b, p. 207, own translation), and that the basic flaw of PROCEDE was to assume that "rural society was longing to dress itself up in the clothes of private property in the 'modern' fashion". (*ibid.*, own translation). This conclusion is not easy to follow considering that far more than half of the communities under communal ownership agreed to privatize. Curiously, on the same page the report states that during the discussion on the merits of privatization, the peasants often cited the need to be clear on who owns what so that conflicts with neighbours and family could be avoided.

Keeping in mind that privatizing formerly socialized property is always a daunting task, the time period that has elapsed since the reform of Article 27 in 1992 seems too short to make a final judgement on its performance in providing legal security. It is also not clear how important bureaucratic hurdles and the associated transactions costs are. The tendency of some social institutions that have been around as long as the Mexican *ejido* system to linger on even though they may be inefficient, most likely also plays a role. It is therefore difficult to determine why land markets in the Mexican case are by and large still inactive.

### III. CONCLUSION

Policy-makers in Latin America increasingly trust in market solutions to their economic problems. Recently, the age-old issue of a highly skewed land tenure structure has been analyzed from this perspective.

A precondition for a functioning market —the mechanism to transfer property rights— is the definition, establishment and enforcement of such rights. In land, especially in a rural setting of a developing country, the complexities involved in these questions are huge and identifying the appropriate PR regime can be a tricky task.

In the Latin American region systems of common property or land where no rights have been assigned are widespread. It should be obvious that this state of affairs cannot persist if the goal is to create or to invigorate land markets. It has been pointed out that the state frequently may protect

property rights institutions which are socially inefficient in order to maintain its own support structures (Bardhan, 1989). But surely an enlightened administration can help in providing the prerequisites for (agrarian) institutions to evolve and adapt.

Development is an evolutionary process. Public policies may stand in the way, for example by prohibiting useful institutional devices like sharecropping. An operational market system also depends on the surrounding social and legal infrastructure. It is here, where an active role for the state can be found: in helping societies to proceed through the stages of development up to a point where markets, including those for land, can perform their allocative and distributive functions.

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