A Legal Look at Land Tenure

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INTRODUCTION

THE LAW COMMISSION has proposed to abolish freehold tenure and the estate known as the fee simple and to substitute absolute ownership. To understand the significance of this, if it has any real significance at all, it is necessary to consider what the terminology affected means.

The legal theory is that the land and resources of England belong to the Crown—that the Crown is sovereign, meaning that it has *imperium* (power of government) and *dominium* (authority of ownership). In theory the land (and resources) are granted by the Crown to those who hold or "own" them.

(a) **Tenure.** Originally a man held land for services and the type of service marked off the type of tenure or holding—if he held for knight service he had to supply armed men to the Crown as the "rent" for his land. In time services were commuted for money payments which with change of values were not worth collecting and fell into abeyance.

(b) **Estate.** When the man was granted the land he held it for a certain period—his own life, or the life of another, etc., and this was known as estate.

As tenure said for what services the man held the land, so estate said for how long. The fee simple was an estate of inheritance which had generally no limit on its duration—it lasted for ever. And so a man who held land in fee simple held it for ever, meaning that he could pass it to his descendants, or sell it, and so on.

(c) **Freehold.** Freehold meant land held for "free tenure" and this was tenure which did not tie the man to the land in any way. If he held the land for a service he kept the land if he performed the service. If he chose not to do the service he might forfeit the land, but that was all. Unfree tenures existed where the man was bound to serve the overlord of the land—he could not release himself of the service merely by leaving the land, and, indeed, he was not allowed to leave it. Unfree tenures disappeared.

The present position is that there are two estates in land, the fee simple which is identified with freehold tenure because the holder of the land has it free of all rent or services; and the term of years which is a right to hold land of a superior, a landlord, for a rent, and for a fixed period.

The owner of a freehold fee simple property is one who (or whose predecessor, such as a father who left it to the present owner by will) paid an outright price for the estate and, having done so, is quit of all further obligations to the former owner, the vendor. Sometimes, however, fee simple land is sold for a set of periodic payments instead of a lump sum—but this has drawbacks and is unusual.

In contrast the leaseholder, the holder of a term of years absolute, has the possession, use, etc., of the property but for payment of a rent. He holds it of someone with the fee simple.

(a) **Theoretical Position.** The theoretical position remains that the Crown has *dominium* and the holder of the land has only an estate, a bundle of rights, of powers, over the land. In a sense, technically, the land and resources belong to the Crown: the Crown can at any time reclaim them on the basis that it is the feudal overlord.

In theory, a view developed possibly after the Norman conquest, adumbrated even before it, all the land of England has the ultimate feudal overlord in the Crown.

This contrasted with the position on the mainland of the European continent where some land was said to be allodial—meaning that it had no feudal overlord above the immediate holder.

(b) **Effect of Change.** If this "allodial" system were to be substituted in England, what is now termed freehold tenure and fee simple estate would be dubbed absolute ownership, or some equivalent expression or term. But with what practical effect?

(i) **Technically** the land, the resources, would not be held of the Crown, would not belong to the Crown —they would be property like chattels, books, cars, etc., belonging to the holder or "owner." But this is a matter of words, of terminology—it would not alter the power relationship between the Crown and the subject holder.

(ii) **The Power Position** is that the Crown is the sovereign authority in England and the Crown may make what laws it pleases, acting through the approved media. In practice the Crown in Parliament makes the laws and so it is the majority in Parliament (in the Commons) which exercises the sovereign powers of the Crown. At any time the Crown in Parliament can alter the rights, etc., of anyone: if a law confers what it calls absolute ownership of land on X, another law can be made telling X that nevertheless his land may be entered by this or that official; another law may require him to pay a tax or even a rent for this land; yet another may take the land from him altogether.

THE ISSUE OF PRINCIPLE

The only ground, therefore, for objecting to the proposed change would be on an issue of principle. This principle would be that the natural resources of a country, of the world, belong collectively to the people of that country, of the world, and that when it is said that the Crown, or the State owns the resources, it means that the Crown or State is the agent, the trustee of the people for that resource and ought not to part with it, even nominally, to individual private owners or holders. But this is one of those issues of principle which tend towards a quibble. If the Crown is the agent for the people to make laws for the people then the Crown can alter the terminology which expresses the rights and duties of individuals over resources; and if the people feel strongly about the matter, and do not like the change, they can, through their agent, through their majority in Parliament, reverse the step taken.

If it is said that the resources of the land ought to be used for the people it is for the people to make this clear through their government. If the best way of making the resources available is to allow individuals to hold land in private exclusive possession upon payment of some tax or rent—the latter term signifying that the people had leased the exclusive possession for a service or payment (like the feudal tenure)—then it is for the people to say so through their government.

TERMINOLOGY

Terminology is somewhat difficult, often imprecise. What is meant by "ownership"? It is a term which has never really been defined. It seems to signify a bundle of rights, a set of powers, over something which is itself incapable of having rights, which is, in other words, a mere object of the law.

If we say that a right is a power to do something which is protected by a duty in others to permit it to be done and we say that ownership is the right to do certain things to objects or to resources, we are as near to definition as we shall get. But what powers ownership embraces may vary—it never is absolute or unqualified. If a man owns a book he may do what he pleases with that book—he may read it, bury it, burn it. So far his "ownership" looks absolute. But the law may add that he may not use it to hit another man over the head. Now his "ownership" is curtailed, there are some things he may not do with the book although he "owns" it.

The same applies to land and resources. The man "owns" the land—he may, *prima facie*, do what he pleases with it. But not if Parliament says that he cannot build on it without permission, cannot lease it at more than so much rent, etc. His ownership is at once qualified.

Rights, ownership, etc., are positive concepts of the law—the law makes them, can break or modify them. Like other words, ownership means what the legislators mean it to mean: no more, no less.

Comment by the United Committee

THE UNITED COMMITTEE has noted the proposals of the Law Commission in their Statute Law Revision Bill in regard to the freehold tenure of land and in response to the invitation to comment make the following points.

It is always in the interest of the community when the statute law accords with the moral law—when legal rights do not conflict with moral rights.

At present there is no legal right of private ownership in land and this accords with the instinctive moral perception of people throughout the ages that the gifts of nature or God should not be alienated as private property to be disposed of and enjoyed as are the products of human labour.

The fact that the Crown on behalf of the people has failed to collect land dues from those who enjoy exclusive possession is no justification for making this moral obligation no longer legal, nor for taking the retrograde step of treating property in land on the same basis as property in the products of labour.

Little or nothing is to be gained by the community, for whom the government should be acting, by the abolition of freehold tenure, while there is much to be lost in sweeping away all evidence of the moral obligations of land ownership.

The committee trusts that the Law Commission can be persuaded to drop this proposal.

RECORD FARM LAND PRICE

THE ESTATES GAZETTE reports the sale of Welsh Court, a dairy and arable farm, at Yatton, near Ross-on-Wye, Herefordshire, for £79,500. The property comprised a Georgian 5-bedroomed residence, farm buildings, including cowhouses, a cottage, and 246 acres of pasture and arabel land. The purchase price represents £232 per acre, which is a record for the district.

A separate field of eleven acres was sold for £3,500 (£318 per acre) to a neighbouring farmer.

"SOCIAL CURSE"

WHEN Dawley New Town was first designated, reports *The Daily Telegraph*, Lord Stafford "lost" 300 acres. He now stands to "lose" a further 900 acres, if as is proposed, the town is expanded. His agent said that Lord Stafford did not relish the idea of losing such a large investment in spite of the compensation he would receive.

Mr. Michael Gregory, at the public enquiry, May 2, said the Country Landowners' Association did not oppose the expansion in principle but they considered the proposed use of the land extravagant. They fully appreciated the social curse of inadequate housing accommodation in the Birmingham conurbation.