

AGRARIAN LAND LAW IN THE WESTERN WORLD: SOME REFLECTIONS

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The agricultural law of a nation is often a reflection of the problems that farmers and the agriculture industry confront in that nation. Among other things, the quantity and quality of agrarian land, along with the pressures facing that land, help to shape the law. The material presented in the various chapters in this book has indicated that a great variety of laws, regulations, and policies affect agrarian land in different nations. As might be expected, some important agrarian law issues have been addressed in the majority, or even all, of the countries under consideration here. Other issues are more unique and arise from special political, social, or geographic features in a particular country. In this chapter, some of the more significant issues in agrarian land law are addressed, with the intention of indicating some of the comparisons that can be made and the trends that can be identified in agrarian land law.

As the laws described in the foregoing chapters indicate, the right to own farmland and the freedom to direct the use of that land are privileges granted and protected by law. In some countries, these privileges exist with little restriction; in others, potential farmland owners or users face substantial limitations. Indeed, a spectrum of approaches exists, with extremes of relative freedom to use land as the owner (or sometimes the tenant) prefers and rather stringent limitations on land use in agricultural areas. Countries vary, too, in the care with which agrarian land laws are implemented; laws are more effective in achieving their purpose when landowners know that implementation of the laws will be consistent and reliable.

Among the significant agrarian land law issues are physical planning laws and regulations; land consolidation; limitations on purchase, subdivision, or agglomeration of land; mandatory use of agricultural land; provisions for governmental (or quasi-governmental) pre-emption or expropriation of farmland; access to privately-owned land by members of the general public; and regulation of agricultural tenancy.

Each nation has developed its own system of regulating land ownership and use to ensure the most beneficial allocation of its unique agricultural land. These systems seem to be influenced by (or to reflect) both the legal-administrative structure and the scarcity of agricultural land. For example, more intra-country variety in regulatory approaches seems to be evident in federally organized countries, where both the national and state governments exercise authority over aspects of agrarian land. This variety is particularly evident when some land-use questions may be viewed as regional or local (rather than national) matters and regulatory authority is delegated to those levels of government. And, as expected, nations with a limited agrarian land-base tend to enact stricter regulatory systems to protect that land. Moreover, while the existence of special administrative bodies with competence in land-use matters is relatively common, some nations (or individual states) also have special courts with broad, or more limited, jurisdiction over issues related to agricultural land.

The discussion that follows is intended to indicate the types of regulation (or lack of regulation) that exist, without an attempt to mention the legal position of each country on every issue. Indeed, not all of the land-use issues have been addressed by the authors of the various chapters, either because no such regulation exists in the author's country or because, in the author's judgement, other issues are more significant.

I. Physical Planning and Related Provisions

A. Physical planning

In most countries, the protection of agrarian land has a connection with physical planning or zoning legislation. In the countries where this connection exists, physical planning provides guidelines for policy at different levels of government; these guidelines have influence as long as government officials are committed to them. Thus, the designation of land as agrarian land in the course of physical planning procedures can be important to protect that land, but it does not always guarantee that protection.

In some countries, however, the influence of physical planning is more significant, when physical planning regulations have binding effect. In the Netherlands, for instance, the local land-use plan is binding on every citizen and for all levels of government (even the higher levels) through a system of building and construction permits, and even with a possibility of expropriation to further planning purposes. The local land-use plan in fact has the force of law, and the protection of agrarian land depends on physical planning. Even so, physical planning regulation cannot be an

absolute guarantee of protection in the long run, because the land-use plan can be changed as a result of new circumstances and after reconsideration in the course of the land-use planning procedure.

Other countries, too, have systems of binding physical planning legislation, although perhaps less far-reaching than in the Dutch situation. In the German legislation, land-use planning is a responsibility of each level of government. On the federal level, principles (for example, the guarantee for the maintenance of a rustic agriculture, characterized by family farms dependent on the cultivation of the soil) are formulated by the Federal Act on Physical Planning. These principles have a binding effect on the authorities of the Federal Republic and the *Länder*. They are implemented by the *Länder* in their land-use planning for the *Land* and the different regions of the *Land*. On the local level, the zoning plan, designating areas for different purposes, is the basis for the alignment plan, which contains provisions that are binding for private persons. In both plans, plots can be designated for agricultural use, guaranteeing that they are excluded from non-agricultural development. The construction of buildings in an undeveloped area is prohibited, with some exemptions especially for buildings that serve a farm.

Belgium, too, has a system of binding spatial plans. The sector plans indicate zones for different purposes. In agricultural zones, only buildings belonging to farms are allowed. The plans are legally binding for the citizens as well as for the public authorities of cities and municipalities. In Denmark, the Urban and Rural Zones Act, whose purpose is to prevent urban sprawl, divides the whole country in urban zones, summer house zones, and rural zones. Rural zones are protected against residential, industrial, and recreational development. Developing or building, as well as altering the use of existing buildings and land without buildings, needs approval of the county council and is permitted only if the building on the land is intended for agricultural purposes.

The Town and Country Planning legislation of New Zealand imposes on local bodies and regional governments a duty to prepare district schemes and regional schemes. District schemes designate land for different purposes. In each zone, certain activities are permitted and others prohibited. The schemes in particular have to provide for some matters of national importance, such as the protection of land with a high value for food production and the protection of rural areas against urban development.

Physical planning is not always focused directly on protection of agrarian land. In France, for example, the protection of farmland occurs only indirectly through urban zoning policy, intended to avoid scattered residential development. Half of the 36 000 French municipalities have adopted a zoning map, on which the territory is divided into urban and natural districts. Natural districts with agricultural uses are protected

according to the agricultural value of the land; in these zones, only buildings necessary for the farm holding are permitted. On the level of the 94 French *départements*, zoning ordinances may define special agricultural districts where all tree and timber plantations are prohibited.

In the United Kingdom, the use of land for agriculture is normally outside the control of the planning legislation. Nevertheless, certain kinds of agricultural development (such as the erection of buildings) need planning permission from the local planning authority. Some developments are permitted automatically through a General Development Order, with restrictions on large-scale developments and especially those constituting potential nuisances.

Even where legal authority to zone exists, zoning is not always used effectively to protect farmland. In the United States, zoning is a responsibility of the states, but is often delegated to local governments. Since local governments are not normally required to zone rural land, the majority of US agricultural land is not zoned. Where zoning exists, a variety of approaches has been used. On land zoned for agriculture, non-farm development can generally be prohibited or (more often) discouraged. Although zoning does not effectively protect most agricultural land from conversion to non-agricultural uses, other state laws are designed to discourage conversion. Often these take the form of financial or other incentives to continued farm use of rural land.

Programmes to preserve agricultural land seem to be more stringent when land is relatively scarce and under pressure from development. Some Canadian provinces have responded to the threat of farmland loss through special farmland protection acts; others rely on ordinary provincial planning controls. In British Columbia, legislation authorizes establishment of agricultural land reserves, in which all non-agricultural land use is prohibited.

As the above summary indicates, the influence of physical planning or zoning legislation in most cases limits the possibility of building in rural areas and thus helps to preserve land for agrarian uses. Moreover, in the countries that have a well-developed system of physical planning, the system offers an administrative and procedural framework within which conflicting claims on rural areas can be weighed. Once a planning decision is made, the (spatial) plan gives a certain guarantee of the continued existence of agriculture in the areas indicated in the plan. It is to be expected that this significance of physical planning, together with the increasing significance of environmental policy (see section IIIH) will gain influence in the coming years.

B. Land consolidation

Physical planning is not the only legal scheme intended, at least in part, to preserve and protect farmland. Several European nations have rather complicated laws that authorize and regulate the process of land consolidation (sometimes called land development or land reallocation). Although unimportant in some nations (e.g. Denmark, Italy), in others land consolidation has for decades formed a relatively significant part of agricultural land policy and has affected thousands of hectares of agrarian land (e.g. Netherlands, Belgium, Germany, France).

The process promotes agricultural use of rural land by restructuring sections of the countryside to improve agricultural productivity and working conditions. Landownership patterns are reorganized to consolidate scattered farm plots into larger parcels located near the farm buildings; roads and waterways are improved. In recent years, land consolidation has also been directed towards environmental, nature conservation, and other purposes (e.g. France, Netherlands, Germany). A complex process, land consolidation can take as long as a generation to complete (Netherlands).

Although the details of land consolidation vary under the different national laws, the general approach seems to be similar in a number of countries. Normally, the process is guided by a public administrative body. In some instances (e.g. Netherlands, France), both national and local administrative bodies exist. A land-consolidation project may be initiated by interested landowners as well as by the government (e.g. Norway, Netherlands). After investigation and perhaps public hearings, the decision to proceed with the project is made. A vote of landowners and/or land users may be taken (e.g. Netherlands, Italy), but under some laws a governmental authority must make the decision to proceed (e.g. Germany, some procedures in the Netherlands). Some type of cost/benefit analysis may be required to demonstrate that the project will be effective (e.g. Netherlands, Norway).

An early step in most countries' procedures is the evaluation of agricultural holdings within the boundaries of the project. One goal of the re-allocation is to assign landowners new parcels with the same agricultural value (if possible) as those they brought into the project. Planning procedures focus on both the new public structures (roads, waterways, natural areas) and the new allocation of privately-owned land parcels. The various steps of the planning process normally provide opportunities for public notice and comment and chances for administrative or judicial appeals. Moreover, some laws (e.g. France, Netherlands) require close coordination between land consolidation and physical planning. Under some laws, too, the land-consolidation authority may have a pre-emptive right to purchase land within the project area (e.g. Belgium, Netherlands).

After final plans have been established, public works will be constructed and owners will take title to their reallocated land parcels. Cost may be shared between government organizations and landowners who benefit from the consolidation (e.g. France, Germany, Netherlands).

In some nations, land consolidation may be complicated by the existence of a number of types of procedures intended for different circumstances. In the Netherlands, four types of land consolidation exist; in Germany, five; in France, seven, though only three are commonly used.

II. Restrictions on Freedom to Own and Use Agricultural Land

A. Limits on acquisition

A number of countries impose administrative barriers to the acquisition of agricultural land (or even all real property). These barriers range from restrictions on purchase to more structural regulations that may discourage the subdivision or agglomeration of parcels of farmland. Acquisition or subdivision, for example, may not be carried out without the proper governmental license, and when the prospective land acquisition or use is undesirable (from the policy of the nation involved), that licence can be denied.

In Norway, for example, in most instances one needs concession of the king to purchase any realty, a restriction that controls sales of agricultural land and ensures beneficial use. Subdivisions of agricultural land are controlled on a more local level, through required approval from the County Agricultural Board. In Denmark, too, the law regulates the acquisition and ownership, as well as the size, of farms. Normally, a size limit of 125 ha applies; subdivision needs special licence to avoid undesirable fragmentation of farms. Similarly, in Germany, prior authorization is required for most land transfers. Authorization can be denied if the transfer would result in undesirable land distribution, loss of farm viability or harmful fragmentation, or if the price is distorted.

In some nations, regulation seems to focus especially on the size of the agricultural holding. In France, with only limited governmental control of land ownership, enlargements and subdivisions of farms must be authorized by an administrative committee. Size is governed by the minimum settlement acreage (SMI), an optimum farm size defined both nationally and locally and adjusted for specific types of operation. A similar approach in Italy, a minimum size farm unit connected with the Civil Code obligation of indivisibility, has been ineffective because no procedures exist for establishing that minimum size.

National agrarian policy may well direct the laws concerning farmland acquisition. New Zealand, with a policy to foster wide ownership of farmland, tries to avoid aggregation of farmland by requiring many purchases or leases involving over 2 ha of land to be submitted to a Land Valuation Tribunal. Subdivision of farmland, on the other hand, can be restricted in physical planning laws. And New Zealand also attempts to limit overseas interests in farmland by requiring consent to certain land purchases by non-citizens or overseas corporations.

A similar concern for alien (or non-resident) land ownership is reflected in North America. The United States has enacted a federal law requiring reports of farmland ownership by alien individuals or corporations with foreign ownership. Some individual states have gone farther, to prohibit alien ownership of farmland. In some states, farmland cannot be owned by corporations either, unless they are small family farm corporations. In Canada, provisions to discourage or prohibit non-resident ownership of farmland have been enacted in several provinces. Under some provincial laws, non-residents may own only 20 acres of land. In other provinces, provisions to facilitate farmland purchase by owner-operators can help to keep land from non-resident purchasers. Scarcity of farmland (e.g. on Prince Edward Island) results in particularly strict controls.

In some countries, special inheritance laws help to avoid undesirable subdivision of farm property. Normal patterns of heirship (that is, equal distribution of property to all heirs) are disrupted to keep an economic-sized unit of land in the ownership of the farming heir. Some federal and some *Länder* laws in Germany give the farm to a single heir; in France, too, the system of preferential allotment gives the farm to one heir, who is already farming. In both countries, other heirs receive monetary compensation. In Germany, monetary compensation is calculated on the basis of the value of the turnover or the taxable value of the farm, while in France the compensation is based on the commercial value of the farm. The family farm is protected in Italy, too, through a right of pre-emption for the members of the family actually farming the land; this right applies during estate distribution. Although not exactly analogous, allodial rights in Norway give certain family members preference to acquire land, when that land would otherwise be transferred outside the family.

B. Farming requirements

Government control on the use of agricultural land sometimes goes beyond control of acquisition or size of land parcels to require that agricultural land actually be farmed or that the person farming the land have a licence to farm. In France, some farmers must have a licence to farm, which is related to the minimum settlement acreage. Land laying fallow may be

reallocated – that is, leased to a tenant – unless the owner agrees to improve cultivation techniques. In Norway, with a limited amount of good farmland, agricultural land must be used for farming. If the land lays fallow or is farmed improperly, the owner must improve farming or lease the land; alternatively, under certain conditions, the State can take the land. Farmers in Denmark, too, are obliged to farm and to farm properly; registered ‘agricultural holdings’ are to be used for agriculture, horticulture, or forestry, unless the land is marginal. In Italy, some laws allocating farmland to new owners (e.g. peasant allocation) carry an obligation to farm.

Recent agricultural surplus production in Europe, however, has led to some changes in approach. In Germany, for example, both farming and good husbandry were required under prior law. Now, surplus production has made this requirement unnecessary, and in general there is no longer an obligation to cultivate agricultural land. The absence of a legal obligation to cultivate farmland is not likely to mean that the land can be converted at will to non-agricultural uses. Other laws – physical planning or setaside, for example – are likely to govern changes in land use.

The obligation to farm, it might be added, is different from the ‘right to farm’, a limited protection against certain nuisance suits that some laws give to farmers whose operations existed before changes in surrounding land use (e.g. United States, France; a bill introduced in Western Australia; broader protection in Ontario, Canada).

C. Pre-emptive rights and expropriation

The government, a quasi-governmental organization, or even private individuals may have the pre-emptive right to buy farmland, in certain (often limited) circumstances. This right is often for structural purposes, that is, to ensure that the land is owned by a farmer. Pre-emption is commonly authorized in land-consolidation procedures, but it occurs in other contexts as well. Pre-emptive rights, unlike expropriation, often apply to land that the owner has already decided to sell.

So, for example, in Norway, when an owner and prospective buyer have a binding contract for the sale of farmland, the state or municipality can purchase, usually on the same terms the buyer had arranged. The land can then be conveyed to a farmer who needs additional land. In Germany, Land Settlement Corporations can use the pre-emptive right, if authority for a land transfer has been denied; pre-empted lands can be assigned to farmers when necessary to improve agricultural structure. In France, SAFERs (non-profit public corporations controlled by the government) have the legal option to buy agricultural land coming on the market; these organizations tend to control the farmland market. Even neighbours active in farming may have the right to pre-empt and purchase land offered for

sale (in Italy). In some countries (e.g. Netherlands, Belgium) the lessor who wants to sell his leased land has to offer it first to the lessee.

Expropriation (eminent domain), too, is often a power of government. Although governments may own substantial quantities of land (e.g. federal lands in the US and Crown lands in New Zealand), other land may be needed for specific public purposes. Normally, compensation must be paid to the landowner when land is expropriated for an authorized public purpose (e.g. United States, Canada, Netherlands, certain forest land in Denmark). Sometimes government actions merely regulate, rather than actually take, privately-owned land. Frequently there is a question of whether the government action is a 'taking' for which compensation must be paid, or merely a regulation, which must be endured without compensation. Constitutional distinctions are often important in this context (e.g. Germany, United States).

Countries differ on the issue of whether restrictions in the interest of nature conservation will require compensation. In Denmark, normal restrictions under the Nature Conservation Act are not expropriation; certain types of involuntary conservation easements, however, involve serious restrictions on land-use and require compensation. Limits on property use to protect landscapes in certain classified areas can be compensated in Belgium, whereas in Norway a farmer will only rarely receive payment for nature conservation restrictions. (In Norway, also, the government can expropriate farmland for misuse of the land.) In Germany, a distinction between restrictions on prospective uses (no compensation) and already existing uses (compensation) may be fading, at least in the sense that environmental protection restrictions must often be tolerated without compensation.

D. Setaside and laying fallow

In a sense, the European setaside regulations also can be considered part of a system that protects agricultural land. These regulations are intended to stimulate farmers (in a situation of surplus production) to take arable land out of production, but at the same time to maintain the agricultural productivity of that land. The Member States of the European Community have an obligation to introduce an aid scheme to encourage the setaside of agricultural land. According to the EC regulation on this subject, Member States have a choice of several possible measures, of which laying fallow (with or without crop rotation) and afforesting are the most important. This regulation is implemented, with slight differences, in the European Member States. In some countries, other programmes for extensified farmland use are motivated by ecological considerations (e.g. Germany, the Netherlands).

The issue of fallow land is, of course, relevant outside the context of the relatively recent EC regulations. In some countries, laying fallow and afforesting are considered a threat, rather than protection, for agricultural land. In France, an EC Member State, special agricultural districts can be defined, in which any tree or timber plantation is prohibited. In Norway, a country outside the EC, the Land Act obliges landowners to preserve the cultivated land, keep it in proper condition, and actually use it for farming purposes; if the land is found in improper condition or laying fallow, the County Agricultural Board may instruct the owner as to the steps to be taken. In certain situations, the land can even be expropriated by the king (i.e. the government) to transfer to other farmers who agree to run it in a proper manner. These are far-reaching measures, perhaps necessitated by the scarcity of agricultural land in Norway.

E. Afforestation

Forests seem to be viewed either as an important component of agriculture or as a threat to agricultural production. In French law, for example, forestry is viewed as a threat to farmland, and the trend in French law is to prefer farmland over timberland. Nonetheless, both forestry and zoning laws recognize the importance of trees for protecting fragile soil. Belgium, too, makes a clear distinction between farming and forests. In farm leases, both landlord and tenant are prohibited from planting trees unless certain conditions are met. The Belgian forestry code focuses primarily on the management of public woods. New Zealand law indicates concern about the impact of forestry on landscape, soil erosion, and agricultural structure.

In contrast, other countries have adopted laws specifically to protect forests and other woodlands. German forestry law protects forestry for wood production, ecology, and recreation. Prior authorization is required for conversion of forest land or for afforestation. In Denmark, owners must preserve forests, and licences are required to use forest land for other purposes; special afforestation areas exist, and financial grants help landowners plant trees. Laws have been rather successful in protecting forests. Norway views both forestry and farming as agricultural activities. Laws are intended to increase productivity of forests and to promote afforestation, although in the light of environmental and recreational considerations. In the Dutch forest legislation, the object is to maintain a forest acreage of reasonable dimension and quality.

The European Community, too, has a provision to aid farmers in the afforestation of their agricultural land. To farmers whose chief occupation is farming, the Member States may grant aid (paid by the EC) for investments in certain types of woodland improvements and for forest roads.

This aid may be combined with the aid schemes for setaside, extensification, conversion to non-surplus products, or cessation of production.

F. Nature conservation measures

Nature conservation is not a subject, as such, in a book about agrarian land law. Nevertheless, in several chapters nature conservation is relevant, primarily because in most countries agriculture and nature and landscape are in fact very much interwoven and so influence each other, even in a legal way. In several countries, this has led to legislation to protect nature and landscape by putting limitations on the use of agrarian land. This is the case in Denmark and Belgium, for instance. In the United Kingdom, restrictions can be put on agricultural operations in Sites of Special Scientific Interest, National Parks, and Nature Reserves.

In the Netherlands, as in several other countries, the interrelation between agriculture and nature and landscape conservation has influenced the development of a special legal provision, the management agreement. This is a voluntary contract between an individual farmer and the government, under which the farmer will adapt farming practices to the requirements of nature and landscape preservation in exchange for financial compensation. In the United Kingdom too, management agreements play an important role, because the conservation policy in that country has long been to encourage the voluntary participation by landowners and farmers in conservation measures. Management agreements can be applied in areas designated as Environmentally Sensitive Areas, Nature Reserves, or Nitrate Sensitive Areas.

In the countries of the European Community, the types of measures mentioned here are encouraged by EC aid schemes on farming in less-favoured areas and in Environmentally Sensitive Areas. Less-favoured areas (regions that suffer from permanent natural handicaps) are typically dependent on agriculture, but they are threatened by a tendency towards depopulation and decline in agricultural activity. For purposes of the EC policy, they include mountain areas in which farming is necessary to protect the countryside and other areas in which the conservation of the countryside is not ensured. In Environmentally Sensitive Areas, EC aid is intended to encourage farming practices that are compatible with the requirements of the environment and of natural resources or with the requirements of the maintenance of the landscape and the countryside.

G. Public access to agrarian land

In recent years the public demand for recreational land has increased, and much of this demand has focused on privately owned land in the country-

side. Some legal systems focus on individual right of ownership to the exclusion of the public at large, while others provide public access even to privately owned land. In New Zealand, for example, access to agrarian land is controlled by the owner or occupier, and no public right of access exists, apart from use of some public roads and walkways. Similarly, in the United States, the law does not permit public access to private land; permission of the owner or occupier is required. In many states, however, recreational use of private land is encouraged by laws that restrict the landowner's liability for injuries to persons entering on the land.

Other nations have less exclusive views of the rights of private landowners, although public access is normally restricted to protect agriculture. Forests, particularly, are viewed as open to free access for recreation and other outdoor activities in Norway, Denmark (in private Danish forests, during the daytime by foot), and Germany (for recreation). In some countries, too, uncultivated farmland is available for public access. In Norway, people can enter frozen or snow-covered cultivated land, but never between 30 April and 14 October. In Germany, everyone has the right to walk on open, unused farmland, although this right can be restricted in the *Länder* for special reasons like nature protection or farming.

H. The environment

More and more environmental issues are influencing agrarian land and becoming part of agrarian land law. Since agriculture depends to a large extent on clean soil, clean water and clean air, environmental regulation in these areas is important for agrarian land. The different chapters in this book show that most countries have, or are preparing, legislation to protect soil, groundwater, and surface water against pollution. In this regard, agriculture, like some other activities, is protected by environmental legislation and so plays the role of 'consumer' of environmental law.

However agriculture also plays the role of polluter, and in some countries has become its own victim. The use of too much pesticide and herbicide can be a threat to the environment, and so is regulated in several countries (e.g. Germany, Italy, Denmark). In some countries a manure surplus, or the misapplication of manure, endangers the environment and agriculture. This situation has given rise to (sometimes elaborate) legislation in the Netherlands, Denmark, France, Norway, and several *Länder* in Germany.

Not all countries regulate strictly, however. In Belgium, for example, environmental policy relies on levies and indirect incentives; no environmental laws directly regulate the use of agrarian land. Even here, however, direct regulation can be anticipated for the future.

In some nations, regulatory programmes are directed at protection of the soil in 'damaged districts' (e.g. France) and soil conservation from erosion, floods, and other damage (e.g. United States, New Zealand, Italy). The British Nitrate Sensitive Areas and Water Protection Zones fall into the same category. In Australia, where European-style cultivation of fragile agrarian land has caused serious land degradation, environmental law has not been particularly effective in preventing soil erosion and other damage. Present federal efforts in the direction of ecologically sustainable development may be able to ameliorate the problems, if not rehabilitate the land to its former productive capacity.

The increasingly alarming degradation of the environment is likely to affect agrarian land legislation more and more. Regulations to combat and undo existing environmental problems are no longer sufficient. The laws and regulations that must eventually be imposed from an environmental point of view are likely to take the form of limiting conditions that will affect every use of land. The issue is no longer certain inconvenient rules that agriculture must endure. Threats to the continued existence of agriculture itself, from polluted land, loss of soil fertility and other damage, mean that a more stringent regulation of agricultural practices must be imposed. More intrusive regulation of agricultural land use will require a total change of mentality in the agricultural world, a change that will be difficult to achieve. In the western world, the freedom of farmers to do with their land what they like is still the predominant attitude. The different chapters in this book have indicated that this freedom can lead to serious environmental problems, for instance, land degradation in Australia and the manure surplus in some countries of western Europe.

Therefore, it is likely that in the near future, environmental policy and legislation will affect agrarian land more directly. In some situations, mandatory land-use regulations in pursuit of environmental goals may have the same legally binding effect that physical planning now already has in certain countries.

III. Farm Tenancy Law

In many of the nations represented in this book, agricultural leases are an important component of agricultural structure. Although many landlords are individual landowners, in some instances farmland may be leased from the government (Australia). Landlords surrender possession to farm tenants, who produce agricultural products and care for the land. In some nations, farm leases are a matter of contract, with a minimum of legislative intervention (e.g. United States, Denmark). In others, however, a complex system of regulation governs.

To encourage best use of the farmland through improvement of the farm business and capital expansion, it is often desirable to provide security of tenure for the tenant. A number of laws reflect the importance of security of tenure, although in some countries short-term leases are common (e.g. the United States, where many tenants have 1-year leases). In the United Kingdom, most tenancies of farmland are annual tenancies, but the Agricultural Holdings Act gives many tenants extensive rights to security of tenure, in part by limiting the reasons for which a landlord can terminate a lease with a tenant who is farming properly. In a number of countries, statutory minimum lease terms are used to ensure security of tenure. In the Netherlands, 6 years is the minimum lease term (12, if the lease also involves the farm buildings); in Belgium and France, 9 years, with automatic renewal, absent notice to quit; in Italy, 15 years. Although no statutory minimum lease term exists in Germany, the agricultural tribunal may sometimes extend a tenancy contract to a maximum term of 12 years for plots of land or 18 years for a whole farm. In Denmark, the statutory maximum lease term for a whole farm is 30 years. Moreover, it is often difficult to terminate successfully a tenancy relationship, even at the end of a lease term, unless the landlord plans to farm the land himself or the tenant's work demonstrates poor husbandry.

The amount of rent the landlord can lawfully charge may also be set by law or regulation (e.g. in the Netherlands, France, and Italy), although in some nations, market price governs (e.g. Denmark and United States). In the United Kingdom, the parties can agree on the initial rent, but later reviews by arbitration are governed by a formula. When an arbitrator is called to fix rent in a particular case, he must consider the 'productive capacity' and 'related earning capacity' of the holding.

To protect the landlord's investment in the real property, the tenant is normally obliged to farm properly. The tenant may have significant freedom of husbandry, that is, the right to farm without interference from the landlord (e.g. Belgium and France), so long as the tenant actually farms. In Germany, the State renting state-owned farms to a farmer may set limits for ecological reasons; private landlords rarely do so. There may be limits on land-use changes like tree planting (Belgium). Poor husbandry will normally justify termination of the lease, although the definition of poor husbandry is not always clear. In France, poor husbandry would seem to involve reduction of production and income from the farm, rather than farming that damages the land. Recent enhanced awareness of environmental concerns on agricultural land may challenge current definitions of poor husbandry.

Farming the land often gives the tenant the right to make capital improvements. Sometimes the tenant must get the landlord's approval for new structures; failing landlord approval, a court or agricultural tribunal may authorize improvements (e.g. in Germany, Belgium). At the end of

the lease, the tenant may also have the right to receive compensation for the improvements, at least to the extent that they are not amortized.

In some countries agricultural policy reflects the importance of owner-operated farms. Thus, agricultural tenancy laws often provide that if the landlord decides to sell the property, the tenant has the first right to buy the land. This right of pre-emption may be limited if, for example, the landlord's relatives or co-owners plan to buy the land (e.g. Belgium, Netherlands).

The tenancy system may be supervised by a specialized government agency or a special tenancy court, or both. In some countries, farm leases must be submitted for approval (e.g. Netherlands, Germany, Norway, New Zealand), although enforcement of this requirement is not uniformly stringent.

IV. Administrative and Political Context

Despite all the differences between the various countries shown in this book, the administrative and political context for decisions about agrarian land policy seems to be quite similar. Decisions about the agrarian land policy of a country, the measures to be taken to keep agrarian land agricultural, and freedom or restrictions in the use of agrarian land are all made by the institutions with general legislative and administrative power (that is, government and parliament) in each country. These decisions occur at the national level or (in the federal countries) at the state or provincial level. This allocation of decision-making power is not surprising: decisions affecting agrarian land usually are linked closely with decisions by the same institutions in other policy fields and so involve the weighing of often-conflicting interests. In addition, the decisions will often involve legislation or other forms of regulation, which is the competence of government and parliament. Decisions about agrarian land policy are influenced by (sometimes powerful) pressure groups and lobbies, a situation that is normal in a democratic system.

The implementation of agrarian land policy and legislation involves more variety. Decisions, in the framework of physical planning or zoning, about the identification of land to be kept agricultural and the protection and limitations connected with that identification can be made at the national or state level, but are more often the responsibility of the lower (regional or even local) authorities. In that situation it is relevant whether (and how) the national or state government has the ability to influence or undo the decisions of the lower authorities in case these decisions conflict with national or state agricultural policy. For decisions on a still smaller scale, like building permits or approval of development or subdivision, the

competence of the lower level of government (mostly local) is the rule. The division of responsibility among the different levels of government may reflect the confidence each country has in the way lower governments can deal with decisions about agrarian land. In rural areas, local governments are normally connected closely with the agrarian population and so will have a keen eye for (local) agrarian interests. This can mean that in decisions about agrarian land on a local level, non-agricultural interests, rather than agricultural, must be protected. (Thus, it may seem unusual that in Denmark the implementation of the manure legislation is deliberately given to local governments.)

The implementation of agrarian land policy shows another type of variety: the existence in some countries of special agrarian organizations that play a role in decision-making. These organizations include special commissions, boards, or courts. These are not the offices and services that are part of the normal government agencies staffed by civil servants. Instead, these special organizations can have an advisory function for decision-makers with general legislative and administrative power. An example of one such organization is the Dutch Central Land Development Committee, which acts as an advisory board for the Minister of Agriculture and prepares their decisions in the field of land development. Other examples are the Nature Conservancy Council for England and the Countryside Council for Wales, which can designate land as Sites of Special Scientific Interest or as Nature Reserves, with limitations on agricultural use. In most situations, the influence of organizations like these depends on their expertise in the field of agrarian land law. Nonetheless, responsibility for the decisions made stays with the government rather than these special-purpose organizations.

Another type of organization active in the field of agrarian land law is the special board with decision-making powers. In Norway, for example, County Agricultural Boards have far-reaching powers under the Land Act: for instance, to instruct a landowner about the measures required to improve the condition of his land or to lease the land to another (better) farmer. In British Columbia, Canada, the Provincial Agricultural Land Commission acts as an agricultural land zoning authority and has the power to make decisions to keep agrarian land agricultural, for example by refusing permits to convert farmland to non-agricultural uses. In New Zealand, the Land Valuation Tribunal must consent to any contract for the purchase or lease of more than 2 ha of agricultural land. In a way the French SAFERs fit in this category, too; as non-profit public corporations controlled by government and owned by farmers' unions and other agricultural entities, they can buy, sell, and lease agricultural land and even have a legal option to purchase.

In a democratic system, special boards with such powers always evoke the question who is responsible for their decisions, and if appeal against

those decisions is possible. The more public power these boards have, the more some form of public control and accountability will be necessary.

Special agricultural courts or tribunals are another kind of organization vested with jurisdiction in certain fields of agricultural land law. These special courts offer expertise in typical agricultural matters, and their authority is often exercised by a combination of professional judges and agricultural experts. As already noted, Germany, France, and the Netherlands have special agricultural courts that decide in appeal about tenancy cases. The Land and Environment Court in New South Wales employs specialist judges and assessors who have final decision-making power in matters relating to planning and land use; in other Australian states, too, a variety of tribunals and courts for land-use matters are active.

Conclusion

The discussions in this chapter and in the individual chapters in this book indicate that the countries of the western world take a variety of approaches to the legal regulation of agrarian land. Every country faces a number of analogous issues in agrarian land law, for example, issues connected with landownership, development on agricultural land, and farm tenancy. These analogous issues, however, have elicited a variety of approaches to law and regulations in different countries.

Some agrarian land issues are uniquely related to political, social, or geographical features in a particular country. As expected, these issues have been addressed by policies, laws, and regulations especially tailored to the unique situation. However, even in instances where the basic structure of law is intended to be similar, variety exists. For example, Member State implementation of European Community programmes also shows disparities in implementation.

Indeed, it seems to the editors, as it may to the readers, that more differences than similarities exist in the agrarian land legislation in the countries represented in this volume. Awareness of those differences, along with the similarities, will enhance the understanding of agrarian land law in the western world. And perhaps, in some small way, this understanding will encourage law and policy-makers in all countries to ensure both that agrarian land will be used productively and wisely now and that its productivity and special natural features will be protected for succeeding generations.