LAND OWNERSHIP:
A CRITICAL STUDY OF THE SWEDISH LAND ACQUISITION ACT AND ITS FUNCTIONS

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The thesis that structure—material conditions, principles of organization and societal conflicts—determines *inter alia* the content of the law, underlies the author's writing in the field of labour legislation.[1] The present paper, however, will investigate the regulation of land ownership, quite a different section of reality, from the same perspective. Does the structural view contribute anything of explanatory value here, too; does it make this complicated and perplexing issue any easier to comprehend? The focus is on the rather limited element in the land ownership complex that is covered by the Land Acquisition Act, and agricultural matters form the core of the analysis.[2] Questions regarding ownership rights have regained importance following recent developments in Sweden,[3] and special attention has been devoted to these aspects.

THE LEGISLATION ON LAND ACQUISITION ...

Under Swedish legislation on land acquisition, the acquisition of an agricultural estate is, in principle, only valid if it takes place with official sanction. The manifest purpose of the legislation has, in the main, been

[1] See Ann Henning, *Tidsbegränsad anställning. En studie av anställningsformsregleringen och dess funktioner*, Lund 1984; also Ann Numhauser-Henning, "Temporary Employment: A Critical Study of the Swedish Regulations Governing Categories of Employment and Their Functions", 30 *Sc.St.L.*, pp. 153 ff. (1986).

[2] This paper is based on Ann Numhauser-Henning, *Rätten till fäderneslandet. Jordförvärvslagen och dess funktioner mot bakgrund av jordbrukets utveckling i det svenska samhället*, Lund 1988. The paper contains few footnotes. The basic material, and sources for the analysis, are listed in the original work.

[3] Legislative issues regarding the Collective Wage-Earner Funds, the transfer of fishing rights, cancellations of the right to build, and the so-called "once-only tax" on savings in voluntary pension schemes have contributed inflammable material. So has the fact that Sweden—as the first country ever—was condemned for an offence against ownership protection as expressed in the First Protocol of the European Convention on Human Rights; see *Sporrong & Lönnroth* v. *Sweden*, 1982. The leaders of the three Non-Socialist parties have submitted joint proposals in Parliament to the effect that a Commission of Inquiry should consider giving constitutional protection to ownership rights; see, for instance, Private Member's Bill (*motion*) 1987/88:K212. Judge Petrén (former Justice of the Supreme Court) and others have drafted a proposal for a new constitution geared to establishing the legal foundation of the market economy; see *Medborgarnas offentliga utredningar* 1988:1, Stockholm 1988.

to prevent agricultural land from getting out of the hands of the farming population. Other aims include the prevention of both exaggerated exploitation and neglect. However, the actual content of the law has varied somewhat over the years; for instance, in the importance of rationalization.

Land-acquisition legislation proper[4] was not introduced until the 1940s. At first it consisted of temporary Acts replacing one another: 1945, 1948, and 1955. Permanent land-acquisition legislation was established by the Act of 1965, which was subsequently replaced by a new Act in 1979, amended in 1987 and 1989.

The legislation is chiefly concerned with private individuals as acquirers. By and large, state and municipal acquisition has always been exempt from the scope of the legislation. Legal persons, above all business companies, were, in principle, forbidden to acquire arable land as early as 1925, in consequence of the Company Prohibition Act.[5] This entailed the "freezing" of the land ownership holdings of legal persons at that early stage in the development. In 1965, the Company Prohibition Act was incorporated into the legislation on land acquisition. The ensuing period—up to 1979—is the only one during which acquisitions by legal persons and by private individuals were, in principle, on an equal footing. In fact, acquisition by certain processing industries was even given priority during this period. After 1979, however, regulations recreated much the same situation as that prevailing before 1965. Changes in land ownership tending towards increased company ownership, were from 1965 to 1979 apparently very slight.

With regard to acquisitions made by private individuals, the scope of the land-acquisition legislation has always been limited. Universal acquisition was never included. From the 1948 Act onwards, acquisition where possession passes from one kinsman/woman to another ("family purchases") has been exempted from the obligation to secure permission. Although this exception was to some extent limited in the 1979 Act, it remains largely intact.

In Sweden around 1980, private individuals owned 40 per cent of the land, business companies owned 20 per cent, and public bodies the remainder. Half of the forest land was owned by private individuals, one quarter by companies and the remaining quarter by public institutions. Where arable land is concerned, private ownership is more in evidence,

[4] In this context, the so-called Five-Year Law, provisional legislation in this area from 1918 to 1920, is disregarded.

[5] The Act did not apply to the estates of deceased persons.

80 per cent being privately owned, 5 per cent by estates of deceased persons, 3 per cent by companies and the like, and 10 per cent by public bodies. Even so, the Land Acquisition Act affects only a minor share of the turnover of agricultural property, since approximately half of the acquisitions are universal and a quarter, family. In addition, most applications for permission to acquire property of this kind are granted. However, we must assume that the existence and the content of the Land Acquisition Act indirectly contribute to determining what sales take place. One problem, at least partly associated with the way in which the legislation on acquisition was conceived, is that the exceptions regarding universal and family acquisitions have led to a state of affairs which is opposed to the manifest purpose of the Act. Nowadays, a very large proportion of the country's arable land and an even greater share of forest land belong to passive owners—that is, to people other than those actually farming the land. Arable land is mostly rented; forest material is sold as standing timber. Hence, a drastic reduction in the buying and selling of agricultural property has occurred, and the land has thus been withdrawn from the area of application of the Land Acquisition Act. Still, the legislation has had beneficial effects in that the arable land has not passed from individual farmers to the promotors of other types of farming. Company ownership of arable land is virtually negligible.

... INITIATED BY FUNDAMENTAL CONFLICTS ...

This paper started with the assumption that the content of the law is conditioned by the prevailing social structure. Consequently, legislation which intervenes in the normal functions of the economy as the Land Acquisition Act does is basically the outcome of societal conflicts.

In Sweden, the capitalist, industrial production of goods dominates, creating a framework for other social conditions.

The agricultural sector is founded on an older social order. It represents a different mode of production. Development of the capitalist mode of production did not take place against the background of demands from the agricultural sector itself. Rather, it was pushed ahead by developments in other sectors of production.

Consequently, the way in which it organizes production is not really warranted by conditions existing within the agricultural sector.

Early Swedish social organization was based on self-sufficient farming units. When, as a result of the growth of the mercantile class, agricultur-

al produce gained a more developed market and became "goods", demand for land and labour grew. In Sweden, this transformation from feudal to capitalist ownership conditions took place largely in the eighteenth and nineteenth centuries. The "goods" character of agricultural produce was strengthened in the nineteenth century, and capitalist forms of production in trade and industry came increasingly to dominate the social economy. Yet there was no clear transition to a capitalist organization of labour in the realm of agriculture. Certainly, resident farm labourers, "cottagers", accounted for an increase of wage labour in farming, but country farmers and smallholders still formed a vital component in the workforce. Several indications suggest that this was due to production conditions being different in agriculture from those that prevailed in industry. As a form of production, family farming seems to have been well adapted to the needs of agrarian production.

The supply of agricultural produce does not adapt to the market in the manner postulated by fundamental market-economy theories. Indeed, it is surprisingly inelastic. One cause is probably the considerable inertia that characterizes the adjusting of resources in agriculture, an inertia associated with, among other things, weather conditions and growth periods. The demand graph is presumed to be fairly inelastic, too; lower prices only lead to minor, if any, increases in consumption. Technological progress in society entails rising productivity, and hence increases in production, at a considerably faster rate than the one by which population growth and increasing wealth are able to step up demand. However, the "perverse" supply function of agriculture leads to falling prices being compensated by greater working efforts, which, in turn, lead to an increased supply and, in due course, to surpluses. This results in further falls in agricultural prices, with ensuing demands for subsidies. Free international competition would have ended in the agriculture of capitalist, wealthy societies being largely ousted by economies of a more agrarian type.

One characteristic feature is that agriculture is a declining sector. Rapid economic growth in other parts of the economy has caused other kinds of production to increase their relative shares of total production at the expense of agricultural production. At the same time, industrial development depended on the ability of a decreasing proportion of farmers to feed an entire population. This has necessitated a technological transformation of agriculture. It is generally felt that a favourable industrialization process is based on a well-functioning agricultural sector which does not compete in a disturbing manner with the production-factor demands of other sectors.

In most countries, the solution to this agricultural "problem of adaptation" has been agricultural protectionism of various kinds. However, price support, restricted imports, subsidies, etc., always entail overpricing, which, in turn, stimulates surplus production.

While agriculture still represents an older, agrarian mode of production, it has nevertheless been largely subjugated to the capitalist order of production.[6] It is true that wage labour has never made much ground in agriculture itself; but the dependence of agriculture on the capitalist wage-labour structure has constantly increased as a result of newly-established wage-earning work in other social sectors related to agriculture, e.g. administration, plant/crop improvement, machinery, chemicals, etc. In actual agriculture, though, family farming has retained its predominance.

Structurally conditioned conflicts arise between different modes of production. However, conflicts also occur within the predominant structure. In consequence of, among other things, technological development, these conflicts keep finding new expression. One may identify three main types of conflict: the *production-factor conflict* resulting from the competition for production factors between the agricultural sector and other sectors of the economy; the *mode-of-production conflict* caused by the structural differences between the two modes of production; and the *legitimacy conflict* which is bound up with the continued legitimacy of the predominant social structure.

The *production-factor conflict* is especially evident in the competition for limited land and natural resources, since fundamental market mechanisms do not automatically satisfy joint long-term interests with regard to, for example, natural reproduction and environmental conditions, nor do they allow for the Swedish policy of "preparedness", according to which the nation should to some extent be self-sufficient in a state of emergency.

The *mode-of-production conflict* is based on differences between the production forms of family farming and the prevailing industrial form

[6] Cf. also Toffler, who maintains that social development can be described as three great waves: the spreading of agriculture, industrialism, and the emergence of that information society which attends the new technologies. The wave metaphor is intended to illustrate how each phase successively replaces previous social structures. In one society, more than one "wave" can be discerned at the same time. Each wave establishes new conditions which cut through the fabric of society, creating structural clashes which take over any conflicts that may have been inherent in the previous society. Each wave is accompanied by a super-ideology which legitimates the structure and finds its expression in all areas of society. See further Alvin Toffler, *Future Shock*, London 1970, *The Third Wave*, London 1980, and *Previews and Premises*, London 1983.

of production, and on the clashes bred by the coexistence in society of two dissimilar modes of production. The capitalist/industrial mode may be said to be more productive than the older, agrarian mode, and that entails considerable differences in the terms of production. This conflict is, above all, manifest in the way in which farmers demand living conditions that are the same as, or comparable to, those obtaining in other sectors. Although independent freeholder farmers are, by definition, small entrepreneurs and do not belong to the proletarianized lower class, there are certain parallels where the exploitation of surplus value is concerned. Banks and trading houses secure much of the surplus value that is produced in agriculture. This contributes to the accumulation of wealth in sectors other than the agricultural; it is chiefly seen in the permanently lower compensation for work in farming compared to that in the other sectors of the economy.

In Sweden, the mode-of-production conflict has led to protectionist policies being adopted in respect of agriculture. The regulations concerning agriculture constitute an intervention which, in turn, creates conflicts when protective policies are drawn up. These conflicts are connected with such factors as agricultural production being organized in private forms. Private interests may hence come to be opposed to joint public interests, both in the short term and in the long term. Above all, though, the conflicts we are concerned with here are associated with the inelasticity of demand which is so typical of agricultural produce. The laws of economic rationality lead to the pursuit of improved productivity on the part of the individual farmer, and the outcome is surplus production that constitutes an embarrassment to the national economy. This surplus production raises demands for resources in the form of unreasonably costly subsidies of various kinds. At the same time, such phenomena as growing "pork mountains" and crops used for the manufacture of concrete impart an element of irrationality to the social order. The resources used for "superfluous" agricultural regulation and control are taken from other kinds of production, and the conflict may thus be regarded both as a variant of the competition for production resources between different sectors and as a question of the continued legitimacy of the system.

The *legitimacy conflict* emanates from clashes within the predominant capitalist/industrial mode of production, and it affects agriculture only indirectly. The development of production has created a conflict between the interests of production on the one hand and the social order on the other. A social order which pushes entire population groups towards the outer margins, fails to distribute wealth and population into

all regions, and allows large portions of the countryside to become totally neglected runs the risk of being thought irrational. The conflict has manifested itself particularly vividly in the area of employment. Its most peculiar feature is that it is not the expression of a target conflict between the interests of production and the social needs of employees, but between the immediate and the longer-term interests of the mode of production. The reason is that one such long-term interest on the part of production is to maintain the wage-labour structure as the prevailing form of production and social order.[7] The development of employment after 1965 has been felt to constitute a threat to wage labour as a supreme societal ideology.[8],[9]

... AND THE CONSTITUTIVE CHARACTER OF THE RULES ON OWNERSHIP

The legislation on land acquisition hence constitutes an intervention in the natural operation of the market economy in the trading in agricultural estates. The effect is to limit the farmer's/owner's legal freedom of disposal, that is, his/her right to sell to anyone he/she likes. This limitation entails a corresponding limitation in the rights of others to purchase arable land.

In our legal order, the right of ownership, or "title", is the most developed right to property that anyone can have. It is an "unlimited right *in rem*". By calling a right or title a right *in rem*, we usually mean that it can be invoked against anybody;[10] and the ability of the right of ownership to "stand by itself" has been said to be a characteristic feature. This means that it need not be viewed in relation to anybody

[7] On this subject, see further Anna Christensen, *Wage Labour as Social Order and Ideology*, The Secretariat for Future Studies, Stockholm 1984, and also Numhauser-Henning, "Temporary Employment ..." (see footnote 1 above).

[8] In a Tofflerian perspective, the production-factor and mode-of-production conflicts may be regarded as conflicts between the first wave and the second. The legitimacy conflict arises in consequence of the industrial society, with its super-ideology, being threatened by the surging third wave—the new information society.

[9] Very recently (after the 1987 changes in the Land Acquisition Act), developments in the Swedish labour market—decreasing unemployment and a shortage of labour in certain branches of industry—have contributed to making this picture a less unambiguous one. Still, the crisis of wage labour is not solely a matter of a quantitative demand for labour; it also involves differences regarding labour organization and conditions in post-industrial society. It was not possible to give further attention to these aspects in the present paper.

[10] This view goes back to Roman law: old Germanic law is different in this respect. See, for example, T. Håstad, *Sakrätt avseende lös egendom*, 3rd ed. Stockholm 1986, p. 11.

else's right to the property in question. Still, the right of ownership, or "title", or "proprietary right" does not actually involve an unlimited right to handle or dispose of property. Instead, the right of ownership can only be defined in negative terms, a typical characteristic.[11] The owner may utilize his/her property according to his/her own wishes, unless special limitations ensue from legislation or from contracts signed by himself/herself.[12]

In Swedish law, the fundamental rules on ownership belonging to private law rest mostly on unwritten general legal conceptions subsequently restricted by means of express regulations. Especially in the matter of real-estate titles—landownership—legally defined limitations are numerous. One might say that the right-of-ownership concept in private law comes close to operating on an external plane, as a kind of legal-technical labelling device.[13]

Regarded as a *concept in legal technique*, ownership cannot, strictly speaking, be infringed by, say, new legislation. Viewed as such a concept, ownership lacks any *a priori* content.[14] However, the imagined legal-technical starting-point with regard to ownership can still appear as a complete, unlimited, power over the property concerned.[15] We usually refer to the elasticity of the right of ownership, in that it automatically fills every empty space that is created when any previous limitations are withdrawn.

However, the right of ownership has also, in addition to its function as a legal-technical concept, been regarded as an expression of a *general legal fundamental principle*.[16] Thus, the Swedish Constitution contains certain rules designed to protect ownership. If an individual's property is requisitioned as a result of expropriation or other measure of comparable

[11] Håstad, *op.cit.*, p. 21, Ö. Undén, *Äganderätten som valprogram*, Stockholm 1927, and S. Bergström, "Om begreppet äganderätt i fastighetsrätten", *Sv.J.T.* 1956, p. 148.

[12] Limitations agreed upon in contracts are commonly based on the principle of freedom in contract law and are less controversial.

[13] Cf. the concepts *mellanbegrepp* (intermediate concept) and *vilopunkt* (resting point), S. Strömholm, *Allmän rättslära*, 3rd ed., 2nd printing, Stockholm 1978, and C.M. Roos, "Äganderätten i dagens Sverige" in *Äganderätt och egendomsskydd*, Stockholm 1985, p. 43.

[14] For years, Swedish experts on civil law have in the main agreed that rights in a legal sense are not given by nature; cf. the "Uppsala School" of legal philosophy. Still, recent doctrine also contains many shades of meaning concerning the view of the right-of-ownership or "title" concept.

[15] Cf. Bergström, *op.cit.*, p. 150, who experiments with a "latent" ownership right and a "currently relevant" one, and Hedenius' "ideal-typical" ownership concept, in I. Hedenius, "Äganderättsbegreppet", in *Filosofien i ett föränderligt samhälle*, Stockholm 1977, pp. 143 ff.

[16] Cf. S. Strömholm, "Äganderätten i idéhistoriskt och internationellt perspektiv", in *Äganderätt och egendomsskydd*, Stockholm 1985, pp. 16 f.

nature, he/she is entitled to compensation according to grounds that must be established in law. The rule does not state when permission to deprive someone of his/her property is to be granted, however; nor does it say exactly how rules for compensation should be designed, and it does not cover any kind of restriction on the right to dispose of or to utilize property.[17] Still, the question has been raised whether certain limitations should not, after all, be held to exist in consequence of the Constitutional statute.[18] Sweden has ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms. Article 1 of the First Protocol contains directions concerning the protection of individual ownership. In principle, this Article consists of a main rule establishing the inviolability of ownership/title, with certain exceptions affecting the dispossession of property, regulations on utilization, taxes and other imposts, and fines and penalties. Unlike the Swedish Constitution, then, this Article refers to restrictions on the right to dispose of, or to utilize, property. While the Article does not define any extreme limits beyond which the accepted exceptions must not extend, the European Court of Human Rights seems to have regarded it as embodying—in the final analysis—guidance on how to achieve a sound balance between the intended ownership protection on the one hand and the urgency of the relevant restriction from the public point of view on the other.

In matters of this kind, the right-of-ownership concept refers to values determined by factors that are fundamental to our current social order. It is in this context that the discussion of the content of ownership rights, and of any infringements thereof, naturally belongs.[19] This is because the right of ownership, when it is an element of a fundamental social order, is no longer merely a neutral legal-technical concept; it is a judicial basic principle of that social order, an expression of *a vital principle of social organization.*

In our society, as mentioned, the industrial production of goods in a market economy creates a framework for other social conditions. The market economy receives its fundamental judicial expression in those rules of civil law that define the protagonists (personal and association rights), the property order (ownership and regulations on legal acquisition), and the principles according to which property is utilized in

[17] Cf., for instance, *Prop.* 1984/85:107, p. 152, and *SOU* 1975:75, pp. 430 f., appendix 20.

[18] See S. Strömholm in *Sv.J.T* 1976, pp. 459 ff., and 1985, pp. 16 f., as well as, e.g., *Prop.* 1985/86:1 (the enclosure supplement), pp. 219 f.

[19] Cf. Roos, *op.cit.*, p. 42, on the argumentative function of the right-of-ownership concept.

trade/business (the contract institution). These rules constitute the relevant economic conditions. All legal subjects are equivalent, and relations between them are based on the principle according to which everyone is entitled to enter into contracts of their own accord. The relationship between legal subject and object is, however, based on ownership. By means of the contract in conjunction with the right of ownership, the fundamental rules governing labour and property in a society are firmly established. The basic order being given, economic practice is then developed by, above all, the legal subjects themselves. Still, this practice rests on the above-mentioned *constitutive rules* regarding ownership and freedom of contract.

Basically, the fundamental constitutive principles do not express a choice made by the legislator, a political practice. The rules emanate from the prevailing social structure, which functions as a framework. Within that framework, operations take place; ultimately, too, the framework defines the boundaries outside which decisions cannot be made.[20]

However, the legal order does not only comprise rules which express the prevailing structure. In a society, there are needs that cannot be effectively satisfied by way of the forces inherent in the market economy.[21] This gives rise to clashes which must be resolved, if the social order is to remain. The State takes care of this vital part of its reproductive function in several ways; so-called *interventional legislation* is one of them.

Limitations on ownership rights, imposed by legislation such as the Land Acquisition Act,[22] may be regarded as examples of interventional legislation. Viewed in this context, it is hardly surprising that regulations of this kind are not only the outcome of societal conflicts but that they also arouse opposition. By definition, an interventional regulation constitutes an infringement of economic practice.

As a principle of social organization, however, the right of ownership, a concept which is, of course, much older than the market economy, has different functions in different social systems. Those ownership rights without which the market economy could not exist are rights that, in conjunction with, e.g., the freedom to enter into contracts, make mar-

[20] Cf. presentations where social structure and legal order are regarded as parts of a game whose rules emanate from the idea behind the game; see S. Strömholm, *Svensk rättskunskap*, Lund 1975, but above all H. Hydén, *Arbetslivets reglering*, Lund 1985.

[21] Cf. the preceding section on fundamental conflicts.

[22] Adjustments in the relevant right-of-ownership concept, to quote Bergström; see Bergström, *op.cit.*, pp. 150 f.

ket turnover, and hence the optimal development of market forces, possible.

In former times, it was not unusual for an owner's ability to handle and dispose of his property at will, selling it, for instance, to be severely curtailed. This was very much the case with real estate.[23] As an example, until the end of the eighteenth century the ownership rights of Swedish owner-farmers ("tax farmers") used to consist mainly of so-called "birthrights".[24] The birthright comprised a hereditary right of possession for the farmer himself, as well as a right for the farmer's relatives to redeem the land if the farmer sold to a non-relative. Whenever a sale to a non-kinsman took place, a recipient of interest would have the right of first refusal, too. Consequently, there was no such thing as a right to transfer ownership of land.[25] Different views of land ownership in different periods of history are reflected in other ways as well. Section 1, subsec. 1, of the Land Book states that land is real property, which suggests that the right-of-ownership aspect is itself indissolubly associated with the very nature of land, real property. As all land is, basically, divided into registered holdings, ownership usually refers to such a holding, individualized by means of a designation in the Land Register, or to a share in such a holding or, perhaps, to a part thereof. In other words, the owned object constitutes individually determined property. However, land ownership has not always possessed the concrete character it has today. Thus, for instance, a person who was part-owner of a village in bygone days did not hold a title to a certain piece of land; the allocations for individual use could alter from one year to the next, and the actual farming of the land was the vital issue.[26]

Changing ideas about the content of ownership rights are not merely an expression of the passing of time; they reflect societies dominated by different modes of production. Activities in the old farming community were not geared to change; on the contrary, preservation was the focal point. The prevailing perspective was not that of forward-looking development; it was determined by a cyclical conception of time. The value of

[23] Cf. Macfarlane, whose definition of the peasant society includes stringent limitations in the right to sell or bequeath land, or even the non-existence of that right; see Alan Macfarlane, *The Origins of English Individualism*, Oxford 1979.

[24] Cf. the Associations and Security Act of 1789 (*1789 års förenings- och säkerhetsakt*), according to which "tax farmers" enjoyed as free and complete rights to dispose of, and to own, tax land as noblemen held in respect of land exempt from dues to the Crown.

[25] See further, for instance, *SOU* 1986:52.

[26] On the factual right of utilization as an aspect of the right of ownership, see Håstad, *op.cit.*, p. 16. See further Gerhard Hafström, *Den svenska fastighetsrättens historia*, Lund 1970.

land did not lie in its being exchangeable for something else, but in the farming of it.[27] Not until the emergence of the capitalist society, with its market economy, does the right to legally dispose of property by selling or otherwise transferring it become an essential dimension in the right of ownership.[28] As agricultural produce was transformed into goods, and a growing capitalist market came into being, transactions involving land became increasingly important.

Those who invoke the right-of-ownership concept are apt to exploit the favourable connotations that adhere to it from ages past. The debate on the right of ownership and its content turns into a defence of ownership as a *fundamental human right.*[29]

THE FUNCTIONS OF THE LAND ACQUISITION ACT ...

Up to the late nineteenth century, farming was much the most important branch of the Swedish economy. For many years, the idea prevailed that allodial land was family land which was to be farmed and inherited. As the monetary economy grew, so did the turnover of land. As we have seen, the normative system of the old, thoroughly regulated society was replaced by new "freedoms": the freedoms of contract, trade, and competition.

Initially, the main function of the legislation on acquisition, especially in the form of the 1925 Company Prohibition Act and its predecessor, the Northern Sweden Prohibition Law of 1906, may well have been to protect the agricultural sector from industrial competition in its own field, that is to say, intervening in the *production-factor conflict.* The interest in preventing over-exploitation was one vital argument; safeguarding national preparedness for emergencies was another.

[27] Cf. further Johan Asplund, *Tid, rum, individ och kollektiv*, Stockholm 1985, especially chs. 5 and 9.

[28] Cf. Barry Holmström, "Skogsintressena, äganderätten och marklagstiftningen" in *Vem skall bestämma över skog och mark?*, ed. Göran Skogh, Lund 1984, p. 42. Holmström feels that there are valid historical reasons for pointing out that the state, which is now imposing restrictions on ownership, is thereby resuming capacities it used to possess, but abstained from during what was actually a fairly brief period around the turn of the century.

[29] Cf. Bogdan, who discusses the right of ownership as a component of the owner's quality of life, but who also points out that in the international perspective, the individual right of ownership can hardly any longer be regarded as a generally acknowledged human right. See M. Bogdan, *Äganderätten som folkrättsligt skyddad mänsklig rättighet,* Lund 1986, pp. 12 and 14.

One might, however, at least as far as agricultural land proper is concerned, doubt whether a free market would really have led to the large-scale introduction of other modes of production. This is because it is not certain whether, in this particular area, economic rationality actually favours other forms of utilization than family farming. Only at one stage of the development, at the time of the introduction of the Land Acquisition Act of 1965, did industrial interests succeed in reducing the limitations on the right of companies to acquire land. One might well ask whether the amended legislation was primarily the result of pressure from industry, or of weakened demands from agriculture, that is to say, the simple absence of lobbying in favour of protective legislation.[30] In the sixties, everyone believed that there were richer pickings in the realm of industrial development.

Instead, it might be assumed that the main function of the legislation on land acquisition was to safeguard income targets for a protected agricultural sector while trying to keep government expenditure caused by such policies under control, in other words, intervening in the *mode-of-production conflict*.

Between the two World Wars, the "problem of adaptation" within agriculture had developed into an acute agricultural crisis. The growth in demand for foodstuffs was relatively feeble; at the same time, the supply of agricultural produce was steadily increasing, mostly due to developments in respect of chemicals and plant improvement. Decreasing profits led to growing demands for protectionist agricultural policies; and in 1933, the *governmental system of price control* in agriculture came into being.

As was to be expected, the price-supporting policy exacerbated the incipient surplus problems; but the situation temporarily improved during the war years. Wartime isolation reduced external competition; at the same time, such factors as crop failures entailed sinking production. As other parts of the economy developed—the forties were the decade when industrial production definitely overtook agricultural—the problems involved in land passing into the hands of non-farmers came into focus. During the war, these difficulties made themselves felt with particular insistence. Real estate with plenty of forest was always an interesting object of speculation by jobbers. The situation was one of crises, with high investment costs and a certain shortage of labour. Consequently, the demand among farmers for agricultural estates was

[30] However, the pressure from industry was stronger with regard to forests.

comparatively low. In the eyes of people of other social groups, however, real estate seemed a fairly safe investment, and was also of interest in connection with provisions and evacuation. When private individuals buy arable land for, say, holiday recreation purposes, the production-factor conflict is less pronounced than when forest land is involved. The phenomenon may be regarded as the outcome of differences in living conditions caused by the presence of two dissimilar modes of production in society: the agrarian and the capitalist-industrial. Still, we are, of course, dealing with a variant of the production-factor conflict; in the end, the land resource problem is the heart of the matter.

Against this background, we might say that two factors led to the introduction of *the first Land Acquisition Act* in 1945. The first factor was competition for production factors and the second was the problems involved in balancing the protective policies of the government, which entailed intervening in the mode-of-production conflict.

The second factor was felt to be the most threatening. When the Act came into being, competition from a "foreign" public with plenty of purchasing power had already led to a considerable increase in land prices. As a result, the value of land came to represent less and less the value of what it yielded; the result was increased, unproductive debt-incurrence in agriculture. This development was soon to become a burden on society.

Under the 1945 Act, any acquisition of an agricultural estate (or a share, or part of a share thereof) whose value exceeded SEK 5,000 called for permission—in principle at least. Such permission was to be requested within three months; otherwise the acquisition became invalid.

The rules meant that no permission was to be granted when there was reason to suspect future neglect or over-exploitation, that is, in cases involving a very obvious conflict between the interests of private individuals and joint public interests. Protection against "foreign" capital interests, in the form of less-than-blatant cases of capital investment and acquisition on the part of non-farmers, was less unambiguous. Permission could be granted where an acquisition was expected to be useful to agriculture, or to local business activity in a more general sense. Thus an opening was created. For acquirers who were, or intended to become, farmers, the regulations were even less stringent. To avoid unnecessary encumbrances being imposed on *bona fide* acquirers, application for permission was replaced by a simplified certification procedure in these cases. In practice, 95 per cent of transactions were handled according to this simplified procedure. The breadth of the simplified certification

procedure probably also explains why no exceptions were made in the Act regarding family purchases. In 1945, acquisitions under family law still did not make up an interesting control group, partly because they may often have been made with a view to continuing farming on an estate, partly because there was scant need to fear that they would push up the price of arable land.

The 1948 Act extended the scope which now included the smallest estates. At the same time, exceptions were made for family purchases and part-owner acquisitions. Above all, the Act signified that legislation on acquisition would continue, though. The danger of rising prices seems to have been especially great during the first post-war years. Continued land-acquisition legislation was still a matter of some urgency, especially to protect prevailing conditions in agriculture. As pointed out above, acquisitions by relatives and part-owners would entail little risk of unwarranted price increase. These exceptions, however, are probably the most important explanation of the decline in the number of permission applications after 1948. This no doubt contributed to reducing the significance of the legislation.

In the mid-fifties, increasing surplus problems and falling prices threatened to impose on the government a steadily growing burden of costs induced by agricultural regulation. Simultaneously, rapid economic expansion took place within the other social sectors. The content of the *Act of 1955* seems to imply that the legislator chose to intervene in the structural conflict by supporting the development of production opportunities inherent in agriculture itself. Among other things, the 1955 Act introduced the possibility of denying permission to acquire land, if the estate was needed for the purpose of future rationalization in agriculture. Even when previous rules were recast, the key issue was addressed without circumlocution: would an acquisition threaten the existence, or the establishment, of a suitable farm unit? In addition, the importance of external rationalization in agriculture was emphasized by a directive which created the possibility of prescribing a certain estate-formation measure as a condition for permission to acquire. It might be argued, too, that the abolition of the simplified certification procedure increased the applicability of the relevant legislation to trading in real estate.

Private Member's Bills submitted to the Parliaments of 1959 and 1963 expressed the view that the regulations imposed by the Act did not promote the external rationalization of agriculture sufficiently. According to these Bills, this would be best achieved by exempting farmers entirely from legal provisions regarding acquisition permits, leaving

rationalization entirely up to them. It is virtually impossible to ignore the conflict between the legislator's interests, which were to create favourable long-term conditions in agriculture and to keep the cost of agricultural regulation down and the level of production under control, and the insistence that the efforts of individual producers to augment productivity by means of external rationalization be released from all restraints. In other words, intervention intended to promote rational production units may have had the opposite effect.

The *Land Acquisition Act of 1965* entailed a radical break with the general tendency in the series of Acts. In the new Act, private individuals and legal persons were placed on an equal footing in respect of the acquisition of agricultural estates. Indeed, legal persons were given an especially privileged position in connection with so-called backward integration in the trade chain (land acquisitions by companies involved in the processing of agricultural or forestry products or the distribution of agricultural produce). Further, all rules regarding permission became facultative: the rules in the Act meant that the authorities were now really only interested in "suitable" or rational farm units. At the same time, it was left largely to the people concerned to decide just how rationalization should be implemented within these units.

In 1965, small farm units which definitely could not be developed were held not to have a place in the agriculture of the future. Hence, there was no longer any need to exercise control over these units. In addition, the winding-up of small farm units was achieved by means of increased family purchasing, leasing of land, and long-term part-ownership of the estates of deceased persons. That being the case, it seemed necessary to alter the rule system so that winding-up could take place at reasonable prices and promote the transfer of leased land.

The altered attitude to land acquisition by legal persons may seem harder to explain if the idea was that Swedish agriculture should continue to be based on family farming. Still, conditions had changed somewhat in the course of time. The farmers' economic organizations had gained strength, and what is termed contract production kept expanding. In addition, it was clear that wealth was to be created by industrial development. It is reasonable to assume that the government, caught up in the conflicts between different economic sectors competing for production factors, could, or would, no longer restrict the area in which industry could expand. In forestry, both technological and economic interests were clamouring for maximum rationality. Here, the link with industry, and with industrial working methods and developments, was more striking than within agriculture proper.

Hence, the Act of 1965 weakened considerably the protection given to the agricultural sector, and the scope of free market forces grew in proportion. The Act intervened in the mode-of-production conflict by stimulating, far more than the 1955 Act had done, the autonomous development of agriculture. At the same time, intervention in the production-factor conflict was "deregulated".

In other words, the downward pressure exerted on the price of land by previous legislation was somewhat relaxed in 1965. At that point, the demands made by farmers preparing to quit that they be enabled to do so on financially reasonable terms must have been especially great. However, the pressure on prices was reinstated, with renewed vigour, by the *Act of 1979*. By this time, land prices and the cost of agricultural regulation had increased dramatically, while the importance of agriculture to national employment appeared in a different light. The Act entailed a return to protective policies in agriculture.

Growth optimism was no longer as ebullient as formerly, nor was competition from other economic sectors, above all industry, as fierce. Also, depopulation in agriculture had culminated; to an appreciable extent, the land had already passed into the hands of non-active farmers, mostly relatives of previous owners. The tightened control of acquisition had a dual purpose: to support an agricultural sector whose dimensions were adequate from the point of view of national provision, regional policy, and employment; and to ensure that the sector was rational enough to achieve the income target set for farmers. As a result, it was hoped that government spending on agriculture, which had at this point reached several billion Swedish crowns a year, would be kept in check. One vital component in these protective policies was the curbing of land price development, partly as a result of price control, partly by means of increasing the supply of real estate. In other words, while the 1979 legislation must still primarily be regarded as an intervention in the mode-of-production conflict, what we have termed the *legitimacy conflict* was also beginning to emerge.

The legislation of 1979 entailed above all the control of developed or developable farms. These were, however, not allowed to grow beyond a certain size. The Act also entailed protection even for "unsuitable" farm units where their existence was felt to be of value for regional and employment policies; and, finally, increased vigilance to ensure a link between ownership and actual farming. Once again, legal persons mostly had to resort to exchanges in order to obtain land. Against the background of developments after 1965, the exception with regard to family purchases was limited. The introduction of an obligation to

secure permission on the part of siblings and the children of siblings meant, assuming that Land Acquisition Inquiry Commission calculations are correct, that the area of applicability of the Land Acquisition Act increased by 20 per cent. There is, of course, the possibility that real-estate owners chose to refrain from putting their estates on the market, preferring to pass them on to their heirs in due course.

Conditions in society gradually altered, though. Farm rationalization increased further, and problems of surplus grew. The dangers to the environment were felt to be increasingly acute. The legitimacy conflict developed to the point where the crisis in employment, especially during the early eighties, seemed to constitute a serious threat to the social order. Employment had to be maintained, and reasonable regional distribution was also desirable. In this context, inefficient farm units fulfil a key function, also from the point of view of business economy, as creators of employment in depopulated areas. This was felt to be so urgent for preserving the social order that it was allowed to be expensive. It appears that even land-price increases were accepted as a means of stimulating the real-estate business and augmenting the possibilities of preserving, and establishing, (in)efficient farm units in sparesely populated areas.

The changes in the Land Acquisition Act in 1987 reflect the obviously diminished need for additional rational farm units, a diminution due both to the costs of agricultural regulation and to environmental considerations. They also reflect the importance of promoting more or less inefficient units on a regional basis. Such units might constitute auxiliary farms supplementing more profitable wage labour; at the same time, they could contribute to spreading the population over the whole country and keeping the landscape open. It must be acknowledged that the previously obligatory reason for refusing permission, the necessity of supporting the external rationalization of agriculture, appears, if anything, to have counteracted the aims currently held to be of prime importance. Refusals for this reason seem not to have been conducive to rationalization. On the contrary, the problem has been exacerbated by what from the viewpoint of agricultural policy is a steadily deteriorating ownership structure. When permission to acquire arable land was refused, the owner retained the estate, perhaps leasing it out. At present, this ownership structure is regarded as the greatest obstacle to the creation of urgently needed auxiliary farms in sparsely populated areas. The current restrictions in the scope of the price-control rule should also be seen in the light of the importance of stimulating such transfers of land.

In 1989, limitations were imposed on the right of the estates of deceased persons to possess agricultural land. These limitations constitute yet another attempt to remedy an ownership structure that is held to be unfavourable from the point of view of the legitimacy conflict.

Different stages in the development regarding legislation on land acquisition outlined above have been attended by different rationality concepts.

Both the concept "internal rationality" (mechanization, improved buildings, etc.) and the concept "external rationalization" (improvement in farm-unit size and concentration) are based on an idea of profitability drawn from the sphere of business economy; we might speak of *private-economically rational farming*. Politico-economic interest in the structure and design of agricultural units may form a counterpart to this concept and be termed *politico-economically rational farming*.

These rationalities may coincide, but they do not always do so. Also, demands for high effectiveness on the part of intervention legislation are apt to be much more insistent whenever politico-economic rationality and private-economic rationality fail to agree.

Legislation on land acquisition in the forties has been assumed to constitute an intervention determined chiefly by the mode-of-production conflict but also by the production-factor conflict. The need for intervention in both conflicts may be said to be due to the agrarian mode of production being less productive than the capitalist/industrial mode. Even so, private-economic rationality was probably encouraged by the Acts of 1945 and 1948. The rules allowed for a certain check on agricultural suitability, in that acquisition by a person who already possessed an agricultural estate, or who bought agricultural units from various quarters, was dealt with specially. The Act thus fulfilled the function of influencing agricultural conditions to promote the rationalization that was, even then, the chief objective of agricultural policy. However, the circumstances conducive to the natural development of rationality were not felt to be strong enough to preclude an intervention aimed at keeping arable-land prices down.

During the fifties and sixties it became clear that, mainly as a result of technological development, the internal as well as the external structural rationalization of agriculture held unexpected wealth potential. In the mode-of-production conflict, the legislator was increasingly inclined to rely on the development of private-economically rational farms. The corollary, redundancies among the farming population, was taken care of by the capacity of other sectors of the economy to absorb labour.

However, developments in agricultural production have now reached

a point where further efforts in this direction are no longer felt to be desirable. The reason is as follows. In conjunction with productivity development and technological change in, above all, the industrial sector, such efforts would lead to further deterioration in the employment situation, accentuated problems in sparsely populated areas, and a grave threat to the cultivated landscape. Hence it is no longer politico-economically rational to back private-economically rational farming. As we have seen, these differences with regard to rationality in the economy of a society have been reflected in the design of land-acquisition legislation. During the phase where national interests coincided with private-economically rational farming, it was possible in the main to place one's trust in market forces. Consequently, controlling mechanisms in the Acts of 1955 and 1965 are a good deal more gentle than earlier mechanisms. When politico-economic rationality clashes with private-economic rationality, more efficient control is called for. As was to be expected, the Land Acquisition Act of 1979 constituted a considerable tightening of the reins in comparison to previous legislation. The 1987 alleviations in the 1979 Act hardly invalidate what has been said above. The main function of these alterations is that of relaxing rules that used to emphasize the demands for private-economic rationality in agriculture. Other alleviations originated in the perceived acute necessity of stimulating land turnover.

... AND THAT OF THE DEBATE ON OWNERSHIP

In discussion of the Land Acquisition Act, emphasis has been placed on the restricting effects of the proposed rules, sometimes regarded from the seller's point of view, sometimes from the buyer's.

During the 1940s, the debate concerning the Act was clearly conducted in terms of protection for the farming population *against* other groups; in other words, the situation of the excluded buyer was in focus. Certain groups of buyers, active farmers, were favoured by the legislation, which was criticized as constituting "guild legislation". In the Parliamentary debate of 1948, arguments were taken rather far; it was said that the content of the Land Acquisiton Act constituted a set of privileged landowner rights, allegedly inspired by the Nazi farm-inheritance laws in Germany.[31]

[31] *SOU* 1947:87, pp. 58 f.

The Commission of Inquiry of 1941, too, regarded its proposal for legislation on land acquisition as, above all, "rather considerable limitations in the previously-existing freedom of individual people to acquire real estate".[32] The Drafts Legislation Advisory Committee (*lagrådet*), which recommended that the proposed legislation be rejected, held that this set of legal regulations purported "to ensure that a limited segment of the population would continue to possess certain natural resources", fearing this might "have unfortunate repercussions on the nation's business and trade seen as a whole". However, both the Commission and the Advisory Committee also drew attention to another aspect: as a result of its anticipated price-reducing effects, the legislation could seem harmful to estate owners who were about to sell their properties.[33] The Advisory Committee pointed out that the intended reduction of real-estate prices in consequence of the legislation "would certainly benefit any person who is allowed, according to the legal stipulations, to buy an agricultural estate; but the effect would be reversed for any landowner who might desire to sell his farm. Falling prices would be especially harmful to the landowner who, for whatever reason, might be compelled to dispose of his property".

Discussion of the Act of 1955 also concentrated on protection for the farming population. Thus, for instance, the Agricultural Rationalization Committee seems to have regarded the Land Acquisition Act as, above all, a piece of protective legislation.[34] Still, the Secretary of State voiced what were to some extent new ideas: "In actual fact, the Act in no way wishes to impede healthy circulation involving several population groups. The fundamental purpose is, however, that whoever acquires a farm, whether he comes from town or country, shall also devote himself to farming".[35] This statement implies that the legislation was intended primarily to prevent free market forces from assuming new expression in the field of agriculture. It was not so much a matter of protecting a certain segment of the population as of protecting the conditions that prevailed in the branch of the economy they represented, agriculture. Among the opposition, however, criticism based on the restrictions imposed by the legal rules on individual ownership rights was given slightly more scope than before. According to the dissentient on the Committee, Mr von Seth, the proposed law on agricultural rationaliza-

[32] *SOU* 1941:24, p. 26.
[33] *SOU* 1941:24, p. 21, and *Prop.* 1945:336, pp. 74 ff.
[34] *SOU* 1954:16, p. 77.
[35] *Prop.* 1955:165, p. 33.

tion constitutes, "despite the fact that significant attenuations are proposed in relation to currently valid laws ... considerable interference with the ownership rights of individuals". Mr von Seth continued, "The Agricultural Rationalization Act does not agree ... with the way in which laws and justice are commonly regarded in Sweden".[36] In respect of the Land Acquisition Act, he made the following statements by way of further clarification: the Act might, on the part of the seller, be felt to constitute "an injustifiable interference with the right of ownership, in that a person who has devoted a long life of labour to his farm may not be allowed to sell it to the buyer of his choice"; Mr von Seth also held that the price-regulating effects of the Act could, in the short term, be taken to correspond to buyer interests.

In 1955, too, the Drafts Legislation Advisory Committee found that serious objections of principle could be raised against reserving the right to own forests and land for certain groups of citizens, as well as against those restrictions in the individual landowner's freedom of action as regards his property that the proposal entailed. This time, however, the Advisory Committee did not feel bound either to recommend acceptance or to reject the proposed legislation.[37]

The Land Acquisition Act of 1965, as pointed out above, entailed a radical change in the very principles underlying the legislation. Acquisition by companies was, in principle, placed on a par with that by individuals; and significant attenuations in the rules on permission to acquire were introduced in other respects as well. In the criticism levelled against the proposed Act by the Agrarian Party (*bondeförbundet*), the chief opponent, the focal issue was the need to maintain protection, especially of the family farm, from other competitors in the market. Hence, Agrarian Party representatives advocated more far-reaching interventions in the right of ownership than what had been proposed. Conversely, those who had previously been against the interventions in ownership rights that were contained in the legislation on acquisition kept fairly quiet at this point. In view of the general character of the new proposal, this is of course only natural. Still, the old arguments in favour of protecting the individual's ownership rights were brought into use again in the defensive explanations of the motives behind the 1965 Act. In this context, particular attention was given to the need to consider those property owners who, in consequence of developments

[36] *SOU* 1954:16, pp. 127 ff.
[37] *Prop.* 1955:165, p. 102.

in agriculture, wished to wind up their business and sell their land.[38] The advocates of the proposed legislation were aware that releasing the trade in so-called non-developable estates would entail a rise in prices; however, they agreed with the view, expressed in the relevant memorandum, that "this consequence of the liberalization of the pertinent legislation should be accepted, not least in view of the seller's, often a small farmer's, interest in being able to secure the benefits of the property's market value".[39]

In 1979, then, the overall set of regulations showed a reversal towards restrictive policies. On the part of the Centre Party (successor of the Agrarian Party) as well as of the Liberal Party (*folkpartiet*), the legislation entailed acceptance of further restrictions in the individual's ownership rights in order to promote farmer ownership. Regulations were directed against buyers whose desire to buy was not dictated by motives bearing on agricultural policy. The regulations had adverse effects for those farmers who wished to leave the occupation, in the sense that these people could expect to receive less money for their properties than they would have done without the intervention of the legislator. This, too, was the position of most opponents of the legislation; they particularly drew attention to the consequences of the regulation on price control.[40] "The Land Acquisition Act only speaks of the buyer. His are the interests that are to be promoted. But the seller—whatever happened to him?" was a question raised by Conservatives in Parliament. The Social Democrats made some attempts to safeguard the interests of the forestry companies as acquirers.

In respect of the changes in the Land Acquisition Act that were decided in 1987, statements on the freedom of the individual, and on ownership protection, are conspicuously absent. The Government Bill merely says, in passing, that "as far as is possible and reasonable, freedom of contract should prevail between buyer and seller".[41] This statement suggests that the legislator has attached importance to individual rights. At the same time, the apostrophized factor is not ownership protection. Instead, once more, the key issue is freedom of contract. In view of the tendencies inherent in the changes, it is hardly surprising that the matter did not give rise to any debate on rights; those tendencies are, after all, characterized by "deregulation".

[38] See, for example, *Prop.* 1965:41, pp. 64 ff.
[39] Cf. *Prop.* 1945:41, pp. 28 and 65.
[40] See, among others, *Prop.* 1978/79:85, pp. 118 ff.
[41] *Prop.* 1986/87:122, p. 17.

In the last few years, the control function of the legislation on land acquisition has altered. At present, the chief danger is not competition for land from industrial production, nor poor profitability; instead, it lies in the recent changes in ownership structure, with an enlarged proportion of deceased-person's-estate and multi-person ownership and of passive landowners. This development has been accelerating ever since the winding-up of business units in the agricultural sector gained momentum in the fifties and sixties. One consequence is that small farm and forestry units in sparsely populated areas, which would have played a vital role in the context of employment, are withdrawn from active farming. This development prompted the terms of reference of the Committee of Inquiry on the Estates of Deceased Persons. The Committee was asked to investigate the possibility of introducing restrictions in the right of heirs to acquire agricultural estates freely by means of inheritance or stipulations in wills. It also reviewed the exception from the obligation to secure permission to acquire in the case of family purchases, as well as general limitations in the ownership of deceased persons' estates. The work of the Committee has led to a time-limit being imposed on the right of such estates to possess agricultural properties, and to permission being required in cases of inheritance division where the acquirer became a part-owner of the deceased person's estate solely by purchase, exchange, or gift. No restrictions in the exception pertaining to family purchases have been implemented, though. The Committee itself emphasized the "infringement of fundamental principles regarding ownership and inheritance rights that would be the result of such a proceeding".[42]

How, then, should we interpret the functions of the right-of-ownership concept in discussions concerning the Land Acquisition Act?

If we proceed from a defence of the right of ownership, it is natural to consider the intervention from the seller's point of view; after all, it is his/her right of ownership we are concerned with. As stated in the introduction to this paper, the legislation on acquisition entails—from the seller's point of view—a limitation in the legal freedom to handle and dispose of one's property at will. True, this freedom is regarded as an aspect of the right of ownerhip; but it is clearly an aspect whose value only exists in combination with certain other fundamental, constitutional, market-economy rules, namely the rules on contract law and on legal acquisition.[43] We must assume that these rules were established for the

[42] *SOU* 1987:2, p. 32.

[43] Cf. Göran Skogh, *Sv.J.T.* 1985, p. 93, note 2, and Håstad, *op.cit.*, p. 19, where the freedom of contract is emphasized as being one aspect of the right of ownership.

equal benefit of buyer and seller; that is to say, they purport to satisfy the demands of the market. Bearing in mind how capitalist society functions, the owner's freedom to sell is hence merely a corollary of other people's *right to buy*. This is because economic rationality in a market economy is founded on the open market and on the opportunities to implement those *changes* in ownership that are desirable from the point of view of maximum profitability.[44]

The very title of the Land Acquisition Act tells us that the set of regulations the Act contains aims at restricting the right to *acquire* agricultural estates; it thus poses obstacles to buyers. The fact that the acquirer is the direct target of the legislation is also reflected in the rules on qualified applicants and on the right to appeal.[45]

Developments in our social order have moved in the direction of more and more legal limitations on the private right of ownership as regards land. The concept "surreptitious socialization" is mentioned in passing by Bergström;[46] another relevant expression in this context is "functional socialism".[47] The tradition of ideas that forms part of functional socialism connects this development with the fact that the labour movement has mostly wielded the political power. The line of thought is as follows: those who hold political power control the process of legislation; the representatives of that power are thus able to pass those laws which may, according to the prevailing view, be felt to be necessary in order to satisfy the general interests of citizens, even if this entails reduced rights for the private owners of various objects of realizable value. To the extent that it implies that the development might just as well have headed in the opposite direction, that of fortifying the private right of ownership, if another political force than the labour movement had been in power, this argumentation is only partly reconcilable with the author's fundamental view of these issues outlined above. In the present paper, legal limitations on the right of ownership have been regarded as an intervention conditioned by the development of certain conflicts in society. While the development of these conflicts

[44] Cf. politico-economic welfare theories; see for instance O. Kjellberg *et al.*, *Om konsekvenserna av prisregleringar på marknaden för mark, Ekonomidagen 1984*, Konsulentavdelningens rapporter, Allmänt 56, Sveriges Lantbruksuniversitet, Uppsala 1984, pp. 85 ff.

[45] See Numhauser-Henning, *op.cit.* in footnote 2 above, pp. 155 ff., with references.

[46] Bergström, *op.cit.*, p. 151.

[47] Functional socialism is usually held to have been founded by Undén and Karleby. For a brief review, see, for instance, Bengt Abrahamsson–Anders Broström, *Om arbetets rätt*, Stockholm 1980, pp. 243 ff.

is in part dependent on the political struggle in society, it is above all due to structural clashes.

Just as the functional-socialist tradition of ideas proceeds from the notion that the right of ownership may be divided into different functions each of which can be socialized separately, the present author would argue that the defence of the right of ownership may be aimed at a particular function. Thus, the defence of ownership rights in the debate concerning the legislation on land acquisition has mostly focused on the principles of freedom of contract, free enterprise, and free competition. We are dealing with the defence of a *market-functional right-of-ownership concept*.

Whenever this aspect of ownership rights is concerned, the idea of the right of ownership as a fundamental human right is misleading; so is the question of the individual's legal protection against any undue societal interference. Nor are we, in this context, necessarily concerned with protection for those social classes who possess property; rather, it is a matter of unrestricted scope for economic rationality. In other words, the struggle is for the freedom to make changes, not for protecting a permanent right of ownership. The ultimate purpose is to reinforce the market economy, which has become the predominant social structure. Conducting this struggle in terms of ownership rights may be said to fulfil an ideological function. The right-of-ownership terminology conceals the structural conditions in society under which power is wielded; hence, it facilitates the acceptance of the demands this structure makes. The terminology, taken over, of course, from older modes of production, evokes associations to traditional values belonging to epochs when the right of ownership represented something different from what it stands for today. This applies to agricultural estates as well as to other matters.

Accordingly, objections voiced in the debate on land-acquisition legislation against the limitations in ownership rights that have resulted from the relevant legislation have come mostly from the groups that might have been expected to defend the new, industrial mode of production. They have, that is, emanated from the Moderate Party (formerly the Conservative Party) and, at least at times, from the Liberal Party and the Social Democrats. Conversely, the Agrarian Party (subsequently the Centre Party) and the farmers' organizations have usually expressed a favourable attitude to the proposed restrictions on the right of ownership; indeed, they have sometimes called for further restrictions. In these quarters, people have been aware that the ultimate issue has been to defend the agricultural sector (an older, less productive, mode of production than the industrial mode) against free market forces. Natu-

rally, this does not mean that there have been no disputes within the farmers' movement. Legislation of this type is mainly advantageous for new farmers. Especially during periods when many agricultural estates were wound up, the interest of sellers in disposing of their properties at good prices was much to the fore. Hence, it is not claimed here that the objection that the legislation on land acquisition constitutes an attack on the legal position of the individual property owner is irrelevant *per se*. However, this is not the central function of the legislation, but a side effect. The main purpose has been to prevent economic interests that are "foreign" to agriculture from competing with, and overcoming, the older, agrarian mode of production. At the same time, it has obviously been advantageous for the opponents of this legislation to attack it as an unjustified infringement of the farmer's right of ownership, rather than conducting the debate in terms of open defence of market forces.

FINAL COMMENT

An analysis of the Land Acquisition Act shows that the functions which have regulated income and expenditure have formed the chief concern of this legislation. This is not to say, however, that the Act must also be assumed to have played an essential part in developments in this field. By and large, farmers themselves have solved their "problem of adaptation" in industrial society by becoming fewer, by conducting internal and external rationalization in agricultural units, and, more recently, by combining farming with wage labour in other sectors of the national economy. In such contexts, the interventional effects of the Land Acquisition Act may be assumed to have been fairly limited; in the main, developments would have been the same without the Act.

Considered against the background of the aim to intervene in the mode-of-production conflict by protecting conditions in agriculture, and by keeping prices on the real-estate market down, the patent limitations in the scope of the legislation resulting from the exceptions regarding universal acquisition and family purchases seem to have had little significance. From the point of view of the legitimacy conflict, however, the ownership structure which is, in part, the outcome of these "deficiencies" in the scope of the Land Acquisition Act, constitutes a major problem.

The changes implemented in 1987 only partly address the long-discussed problems inherent in the altered ownership structure. The general alleviations in the regulations that control permission to acquire land are intended to augment the supply of agricultural estates on the market; so is, to an even greater extent, the abolition of direct price

control. The introduction of the rule on price control in 1979 is likely to have made a solid contribution to the immediate sharp decline in the price of land. It is probably reasonable to assume that low land prices, in their turn, contribute to the extremely small supply, although this is hardly the only, or even the decisive, explanation. It is likely that other developmental features of the industrial-cum-welfare society have contributed; one example is the increased importance of leisure time to people's quality-of-life and social status. At an early stage, a particular variant of the production-factor conflict became apparent when wealthy people bought summer houses etc.; this variant has returned in a new guise as a result of the increase of wealth in the general population.

It may well be that the Land Acquisition Act will, like the structural conflict, play a fairly modest interventional part in the societal legitimacy crisis that has been held to be imminent.

In a future perspective on the Land Acquisition Act, however, a line of argumentation which proceeds from a permanent right of ownership as a human right, a part of the quality-of-life of the property owner, appears to be more relevant than previously. If it were to become necessary (the possibility has been discussed) to obtain permission to acquire land even in cases involving family purchases and certain testamentary acquisitions, then partial functions on the part of the right of ownership would be threatened, functions also central to earlier ideas on ownership rights. The right of ownership as a human right would hence probably have been discussed with greater warmth, had the proposals put forward by the Committee of Inquiry on the Estates of Deceased Persons been more far-reaching and more in line with its terms of reference than they actually turned out to be.[48]

However, one vital difference in future (as compared with previous) right-of-ownership debates occasioned by the Land Acquisition Act is that the owner's position is now being threatened by an intervention which favours the interests of the entire politico-economic structure. Regional and employment policies are crucial; so are environment protection and the preservation of the cultivated landscape. In past years, the legislation on land acquisition has mainly intervened in favour of the agrarian mode of production in opposition to the predominant market-economic structure. The question is whose voices will be raised in defence of the individual owner's position in the new perspective, and how powerful will those voices be?

[48] Cf. *SOU* 1983:71 and 1987:2.