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FAMILY LAND TENURE AND  
AGRICULTURAL DEVELOPMENT  
IN ST. LUCIA

by  
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DEVELOPMENT IN ST. LUCIA**

by

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All views, interpretations, recommendations, and conclusions are those of the author and not necessarily those of supporting or cooperating agencies.

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## Introduction

This paper is a reworking of a social soundness analysis done during the project preparation exercise for USAID's St. Lucia Agricultural Structural Adjustment Project (Project no. 538-0074). The largest component in that project involves the cadastral survey and title registration of all rural land on St. Lucia, utilizing the model developed by the U.K. Directorate of Overseas Surveys and already implemented on several islands in the Eastern Caribbean. In this context, project planners became acutely aware of the uncertainties as to the nature and developmental implications of "family land" tenure.

The problems commonly associated with family land in St. Lucia are set out in the St. Lucia National Plan of March 1977, in the Development Strategy section:

4.1.15 A key problem involves the antiquated system of land tenure where intestate succession results in the increasing incidence of "family land" --land becoming the property on an equal share basis of an ever increasing number of inheritors. The lack of proper title on account of family ownership, or in some cases due to the absence of clearly defined boundaries, has in recent years become an increasing burden for many small farmers as they are unable to obtain credit to purchase those items needed to intensify production. The raising of capital calls for the holding to be put up as surety, and although loans of up to 75 percent of the value of the holding are currently available through the agricultural and industrial banks, few farmers can take advantage because of land problems.

An attempt is made here to review the legal and historical context in which family land tenure has developed; consider present patterns of use of family land and the constraints on land development created by those patterns; examine the distinctly inadequate data on the extent of family lands; review and evaluate the various solutions proposed, both earlier and in the context of the Agricultural Structural Adjustment Project; and ventures some suggestions as to an agenda for future research.

The primary points made are (1) that we understand the workings of family land tenure poorly; (2) that family land tenure is not a local legal oddity thrown up by the Civil Code's provisions on succession, as it is usually described, but a Caribbean-wide phenomenon based on the particular land/man

ratios and other characteristics of the island economies; and (3) that family land tenure may perform an important economic safety-net function. It is concluded that the ASA Project should approach the matter of family land with caution, and that both further preimplementation studies and monitoring during implementation are necessary. The Agricultural Structural Adjustment Project accepts the proposition that the extinction of family land would be a good thing. This is not entirely clear, nor is it clear that the elements of the Project addressed affecting family land will have the effects desired.

It should be noted that family land is not the only, or even the most serious, tenure problem faced by St. Lucia. Cole has detailed very effectively the skewed distribution of land on the island (Cole 1982:80-83). This maldistribution contributes directly to some of the problems associated with smallholder agriculture and family land (e.g., the heavy pressure on land in the smallholder sector is one important cause of the extensive subdivision). But these issues lie largely beyond the parameters of this paper, which is concerned exclusively with family land, rather than the land tenure situation in St. Lucia generally.

## 1. The Nature of Family Land Tenure

### 1.1 A Legal and Historical Perspective

The history of landownership in St. Lucia has been influenced, perhaps more than by any other factor, by the gradual disintegration of the economic basis of the plantation system. Since emancipation in 1838 and the conferring upon former slaves of a civil status which would allow them to own property, there has been a sporadic but consistent trend toward the breakup of the large estates and their sale as smallholdings to peasant cultivators. This has occurred when world markets for plantation crops have faltered, and have taken the form of either partition and sale by owners of the plantations or escheat of plantations to the Crown, with the resulting Crown land then partitioned and sold by the Crown. The consequence has been the creation of a large class of small owner-cultivators.

Family land may have originated very early in this process. It is a phenomenon found throughout the Caribbean, though its incidence is greatest in St. Lucia (University of the West Indies 1978:37). Freed slaves often had to pool funds in order to purchase land, and the property was acquired in co-ownership. More recently, much family land has been created in reaction to the operation

of the Civil Law of intestate succession. It is interesting to speculate as to whether the style of management of family lands owes something to African traditions.

In the eyes of the Civil Law, family land tenure is co-ownership, which corresponds roughly to ownership in common in Anglo-American law. Each co-owner holds a fractional interest in the entire parcel of land, without that interest being identified with any particular physical part of the parcel. Co-ownership arises when an owner of property dies intestate, that is, without having made a valid will. In this case, the Civil Code prescribes who shall inherit the property, who the heirs shall be, and what shares they shall take. Where there is a surviving spouse and children, the spouse takes one-third of the estate and the remaining two-thirds is divided equally among the children. If there is no surviving spouse, the children take equal shares. Male and female children take equal shares, without reference to order of birth or whether they are the issue of the same or different marriages. If there are no children, matters become far more complicated. Portions of the estate pass to ascendants and collaterals in accordance with complicated formulae. Illegitimate children inherit only from their mother and only when she dies with no surviving spouse or children or relatives to the twelfth degree.

The importance of this last point can hardly be stressed enough. The job market on St. Lucia keeps many workers away from their homes and creates conditions under which "visiting relationships" develop. These are often long-term and relatively stable, but commonly there is no formal marriage. A high percentage of children on St. Lucia, perhaps nearly half, are born out of wedlock. As will be seen later, custom does not view illegitimacy in the same way as does the Civil Code.

To continue with the description of the process of succession, the division of the succession along the lines set out by the law of intestate succession is supposed to be accomplished by a "personal representative" of the deceased, appointed by the Court, usually from among the heirs. However:

(a) In the large majority of cases and particularly those involving smallholders' estates, no one ever applies for letters of administration. In fact, the law specifies no period within which anyone must do so. The heirs never report the succession to the Court. Instead they, or some of them, informally divide the land among themselves in a manner which may bear little relation to the shares which they would inherit. They imagine they

have succeeded to the land as co-owners in their appropriate shares, whoever may be using particular areas of the land. (That was the case for successions prior to 1957, when Art. 586 was added to the Civil Code. Now, in legal theory at least, the land is vested "in the Chief Justice and Puisne Judges severally.")

(b) Even where an administrator is appointed, he often conveys the land in co-ownership to the heirs, either because they prefer this, or because one of them objects to a partition and under Art. 596 the administrator can only partition if all the heirs consent.

The net result is that most land which has passed by intestate succession has ended up in co-ownership, or in what the heirs believe to be co-ownership. There are good reasons for this, and they may be more economic than legal. Land has been progressively subdivided in St. Lucia until the point has been reached where partition among all the heirs is impracticable in the case of most smallholdings. The Code, in creating the surviving spouse and all legitimate male and female children heirs, creates in many cases far more heirs than there is land. The heirs, some of whom have more need to use the land than others, react to this situation by simply opting out of the system of estate administration or by having the administrator pass the land to them as co-owners. They thus achieve a more economically rational use of the property and avoid the legal complexities and costs associated with administration (including contacting all the heirs who may be working abroad). Over time, the land may pass by further unadministered successions when the heirs, and later their heirs, die.

This is how family land is created, and it should be recognized from the outset that it is a perfectly rational response by heirs to the inappropriateness of the Civil Code's provisions on intestate succession, given present man/land ratios on St. Lucia. On the other hand co-ownership, or the "state of indivision" as it is sometimes called, is hardly problem free. It is not really intended to constitute a continuing tenure in land and is called by one Civil Law authority the "precarious and ill-organized state of indivision," in which the heirs' management of the land "is greatly handicapped and sometimes paralyzed by the need for every act to be approved by all of them" (Lawson et al. 1967:312). Indeed, co-ownership is nowhere defined in the St. Lucia Civil Code. And perhaps because co-ownership is presumed to be a tenure of brief duration, pending administration of the estate and partition of the succession,

the Code nowhere set out rules to govern co-owners' rights with respect to one another or third parties. Instead, customary rules have evolved, affected in some respects by court decisions in disputes involving co-owned land (see 1.2 below).

These shortcomings of co-ownership as a tenure are however obviously counterbalanced by certain advantages. Its existence is always optional. An owner can avoid its creation by willing his land to a specified legatee, and any co-owner can require a partition. If there has been a failure promptly to seek letters of administration, nothing penalizes any heir for doing so years, even a generation later, then proceeding to a partition. Few do so and although there are other considerations (illiteracy in the case of wills, and the costs and delays involved in the case of partition), it would be a mistake to over-stress these. The persistence of family land tenure can be adequately explained only in terms of the advantages which it is perceived to confer on those operating within the system. What are the advantages, the various interests served, in the operation of this system? It should be emphasized that there is no serious study of the dynamics of family land in St. Lucia. A picture must be built up from the observations of informants and consultants who have been able to examine the phenomenon only briefly. There are no data to quantify tendencies noted. Any conclusions must be taken as tentative.

### 1.2 The Dynamics of Family Land Use

Who are the people who actually occupy and farm family land? They are generally co-owners, but they are clearly not all the co-owners. A good deal of family land has been under family land tenure over several generations, and if every co-owner were on this land the situation would be entirely unmanageable. There is little reliable information on how many claimants there are for the average piece of family land, or the percentage of co-owners who actually farm family land. Extreme cases are reported of thirty or more owners on a single parcel of 6-7 ha (Foreman 1958:13), and Lawrence notes "one or two 'horror' situations," a holding of 0.2 of an acre held by fifty persons and another of 0.5 of an acre held by a hundred persons (1979:7). But as Lawrence points out, such cases are rare. The data from the 1973/74 Agricultural Census showed an overall average of approximately six co-owners in possession for each parcel of family land and less than 50 holdings with more than twenty persons (Meliczek 1975:7).

The best study which has come to attention is the Morne Panache Household Survey (1982:15). Its results are shown in Table 1. On the whole, a greater discrepancy might have been expected between all those with claims in the land and those with such claims who are actually farming it. One explanation would be that many small share claims become inactive with the passage of time and may be forgotten. Moreover, the data were obtained from those co-owners actually farming the land, and they have no interest in giving a full accounting of others who have claims to shares in the land. The number of all claimants may be suspected to be greater than suggested by the Morne Panache figures.

**TABLE 1**  
**Comparison Between Numbers of Claimants and**  
**Claimants Actually Working the Land for Those Parcels**  
**Owned by More than the Interviewed and His Children**

CLAIMANTS			CLAIMANTS ACTUALLY			
	NO.	%	WORKING LAND	NO.	%	
0	-	-	0	3	5.1	
1	2	3.4	1	15	25.4	
2	7	11.9	2	7	11.9	
3	12	20.3	3	6	10.2	
4	7	11.9	4	6	10.2	
5	4	6.8	5	5	8.5	
6	3	5.1	6	4	6.8	
7	5	8.5	7	1	1.7	
8	2	3.4	8	1	1.7	
9	1	1.7	9	0	-	
10	2	3.4	10	0	-	
10+	2	3.4	10+	2	3.4	
Many	9	15.2	Many	6	10.2	
Unknown	<u>3</u>	<u>5.1</u>	Unknown	<u>3</u>	<u>5.1</u>	
Total	59	100.0	Total	59	100.0	

SOURCE: Morne Panache Household Survey (1982), p. 15.

How do some co-owners come to be in occupation, using the land, and not others? Take a parcel of individually held land which becomes family land for the first time. The owner dies intestate. Let us say the owner is the father of a family, though it could of course be the mother (women inherit land in their own right, and it does not become community property). Either the succession is not administered and the land is considered by the heirs to be held in co-ownership among them, or the succession is administered and the administrator conveys the land to the heirs as co-owners. Does the question of which co-owners take possession then arise? In fact, it has arisen earlier and been fully or partly resolved. Some of the co-owner heirs are already in possession.

While the father was still alive, some or all of his children will generally have reached maturity and established families. Some will have been more successful than others in their education and gone to work in towns. Others will work in the hotels on the island and yet others will have sought work abroad. But some will have found their vocation in farming and remained on the family homestead, perhaps living in satellite houses, and helping their parents farm the family holding. Research would probably disclose certain regularities as to which children these are (elder children or younger children? male or female children? children of earlier or later marriages?), but no information is available at this time which is even suggestive on these points.

The family holding will often consist of more than one parcel of land. These parcels may be family land, individually owned land, leasehold land, or land simply held by permission of an owner. Suppose there are eight children, of whom four become farmers and remain in residence. As the resident children establish their own households, and as the parents become too old to farm, the parents will have given the children land to farm for themselves. Let us hypothesize that in the case of the parcel of individually owned land which we are considering, the father-owner gives a son the northern end of the parcel to farm, a daughter the southern end, while a rocky area on the western side of the parcel remains uncultivated. The other two resident children are accommodated on the other land of the holding. When the owner-parent dies, the son and daughter are already in possession of and farming most of our parcel. This disposition reflects the wishes of the deceased, and will usually be honored. The other heirs are not farmers, and have no immediate need for the land. They

leave it with their brother and sister for the time being. The brother and sister are left holding and farming a much larger portion of the parcel than the shares to which they would be entitled were the parcel partitioned. It is one of the advantages of family land that it gives those heirs willing to farm access to more land than would otherwise have been the case.

This is, however, not an entirely stable or secure arrangement. Perhaps there is a younger child of the deceased who, some years after the decease, is old enough to need some of the parental land to begin farming. Or perhaps an elderly brother retires from work abroad, returns to his home area, and wants a bit of the family land on which to build a house. Or a brother loses his job in Castries, and turns up asking for land to farm. It is not clear how these claims are handled by the co-owners in possession. Certainly some such requests are honored, while others are not. While the literature of family land is entirely lacking in any sense of the interpersonal dynamics in these situations, informants gave the impression that these vary significantly from case to case. Among some groups of co-owner users, where degrees of relationship are close, the co-owners may confer among themselves to try to find a solution. In other cases the co-owner who wants access to land may have no option but to individually approach his closest relatives who farm a portion of the land.

### 1.3 Family Land Over the Generations

To fully grasp the character of family land, however, one must consider how use patterns develop over several generations. Imagine that the new parcel of family land which is under consideration was created by intestate succession in 1920. Three generations of right-holders in this land will have grown to maturity and needed farmland. Take the brother and sister who became the first co-owner occupants of the parcel. That brother's and sister's children will have grown to maturity, and the process which occurred in 1920 will have been repeated. That portion of family land which they were given by their father, they will share among those of their children who have remained in residence and who want to farm. And so on over the generations.

By 1983 that parcel of family land will have been successively subdivided several times and perhaps a dozen farmers now use portions of it. It is a patchwork of house plots and fields, though field boundaries may not be evident on the ground. It has of course not been subdivided to the extent that would have happened had there been a partition among all heirs at each succession

over the three generations. But on the other hand, the division which exists is extra-legal in the sense that the portions of land actually farmed by the co-heirs in residence are not proportionate to their shares of co-ownership in the undivided (legally) land. Nor do their boundaries have any force in a court of law. Both the distribution of the land and the boundaries within the original parcel are purely the result of informal arrangements among co-owners over the generations.

There are of course by this time many absent co-owners, some of them with very small fractional shares, who do not possess any of the parcel and whose ascendants may not have possessed any of the parcel for two or three generations. Because their shares are so small, they are unlikely to make claims, and informants indicated that a request for land by a co-owner whose ascendants had not been in possession was not likely to receive favorable consideration. The prospects of a co-owner who grew up on the land are considerably better. He will usually approach his closest relatives, probably his siblings, to ask for a part of the land held by his father or mother. As noted by Woodson (1982:38): "In practice, potential claims are limited through customary claims and agreements among co-heirs which take the closeness of relations between the parties, the differing needs and opportunities of the co-heirs and a variety of other situational factors into consideration."

#### 1.4 Family Land in Individual Farmer Land Strategies

It is useful at this point to shift perspective. In order to understand how family land tenure arises, it has been convenient to focus upon a particular piece of land and attempt to convey how use patterns for that piece of land may develop over time. But many farmers do not farm only one piece of land. Rather, the successful small or medium farmer, given the present degree of subdivision of land in St. Lucia, must often piece together a viable holding by attempting to obtain access to more than one piece of land. This holding is commonly a mixed tenure holding. The quantitative side of this phenomenon is developed later (see 3.2).

The small or medium farmer has a number of options in his land acquisition strategy. If he has the funds he may purchase land. If he has generous friends who for some reason are not working their land, he may use it "by permission." If he has only a little money and no such generous friends, he may lease land, under a written lease or some less formal arrangement. And he may by descent have access to one or more pieces of family land.

TABLE 2  
Tenure Types and Combinations by Number of Parcels Farmed in the Area

	1 PLOT		2 PLOTS		3 PLOTS		4 OR MORE PLOTS	
	No.	%	No.	%	No.	%	No.	%
Owned	25	26.5	8	19.5	4	26.7	1	12.5
Family	26	27.4	9	21.4	4	26.7	3	37.5
Occupied by permission	19	20.0	0	-	1	6.7	0	-
Rented	<u>25</u>	<u>26.3</u>	5	11.9	0	-	0	-
	95	100.0						
Owned and family			3	7.1	1	6.7	1	12.5
Owned and permission			0	-	0	-	0	-
Owned and rented			2	4.8	2	13.3	0	-
Family and permission			0	-	0	-	1	12.5
Family and rented			9	21.4	0	-	0	-
Permission and rented			<u>6</u>	<u>14.3</u>	0	-	0	0
			42	100.0				
Owned and family and permission					1	6.7	1	12.5
Owned and family and rented					1	6.7	1	12.5
Owned and permission and rented					0	-	0	-
Family and permission and rented					<u>1</u>	<u>6.7</u>	0	-
					15	100.0		
Family and owned and permission and rented							8	100.0

SOURCE: Morne Panache Household Survey (1982), p. 9.

It should be realized that a farmer may well have claims of co-ownership in more than one parcel of land. The farmer may have inherited co-ownership rights in land from both his father and mother, and each of them may have inherited such rights from each of their parents. He may hold two (or more) plots as family land, each by virtue of different lines of descent. The only indication of how often this happens comes from the Morne Panache Household Survey (1982:7). The figures set out below (Table 2) indicate nine cases in which a holder of two plots held both plots as family land (21.4 percent of holders of two plots), four cases in which a holder of three plots held them all as family land (26.7 percent), and three cases in which holders of four or more plots held them all as family land (37.5 percent).

### 1.3 Attitudes and Interests of Co-Owners Not in Possession

Who are the co-owners not in possession, and where are they? A recent survey by Koudson and Yates interviewed women farm residents with living children concerning the whereabouts of their children, and found that of the children living elsewhere (257 of them for 97 women, or an average of 2.7 children per woman), 37.4 percent were abroad, while 20.8 percent were in other rural areas of the island, and 19.7 percent were in Castries, which now has close to 40 percent of the island's population (1982:79).

While attitudinal surveys have been done of co-owners in possession, there has been no systematic inquiry into the attitudes of those co-owners who are not in possession. One can, however, glean certain impressions from informants.

What precisely are their interests? As noted earlier, while in legal theory one co-owner has as much right to use the property as another, a custom has developed which tends to recognize parental distribution of land. Most co-owners not in possession have jobs abroad or in town, and are not anxious to return to a life of farming. It is apparently not acceptable in St. Lucian terms that one would try to get his share from his farmer relative in order to put a tenant on the land.

On the other hand, the retained interest in the family land provides a sense of security, a sense of place, to men and women who live in a fairly unstable economy where job opportunities shift from one sector to another and from one place to another in response to fluctuations in international markets. It means a good deal to feel that one has the option, even if one hopes not to have to exercise it, to return home in retirement and ask one's relatives on

the family land for a bit of land for a house and a kitchen garden. And it is far more satisfactory to have a sense of having a right to do so, than to contemplate throwing oneself on the relatives' mercy.

In the meantime, if one is on the island, it is pleasant to exercise one's right at custom to collect a few coconuts or mangoes from the family land when one goes to visit the relatives. The economic benefit of this right is perhaps not so great, though its exercise by many co-owners not in possession may be burdensome to the co-owner farming the land. But it is also an act which reaffirms one's status as an interest-holder in the family land.

It is not surprising that co-owners in possession are in most cases forbearing with respect to the exercise of the other co-owners' rights. After all, the possessors have the use of the land. But this is not all. Many rural households draw important benefits from their non-resident relatives. The latter will often include the most educated members of the family and those with jobs in government, to whom a farmer will turn with any problems which bring him into contact with government or the courts. In addition, the co-owner brother or sister who is working in London may well be sending remittances which provide support for aged parents on the farm, easing this burden on those who are farming. The balance of interests involved in families is complex, and family land is only one asset within the family.

Nonetheless, the exercise of such co-owners' rights is the occasion for many disputes. These disputes probably have more to do with the general tone of relations between the relatives involved than the coconuts taken, though the coconuts become the focus of the dispute. Such disputes sometimes lead to violence. It is questionable whether the customs which regulate the claims of the co-owners not in possession are entirely stable. Those customs are not the authoritative pronouncements of family authorities but rather the balance achieved through a great deal of small pushing and small shoving. At the moment, one has a sense that the owners in possession have more leverage, because the interests of the co-owners not in possession are not terribly important to them in cash terms. But should land values suddenly increase or job opportunities outside the agricultural sector decline precipitously, there would certainly be attempts to strike a new balance.

#### 1.6 A Comparative Comment on Origins of the Tenure

Conventional wisdom on the origins of family land in St. Lucia attributes its existence to the Civil Code's provisions on intestacy. Lawrence is

virtually the only commentator to have firmly disassociated himself from that view (1979:12). This paper has set out the relationship between those Code provisions and family land tenure in some detail, but without accepting the causal connection usually posited. That there is such a connection is difficult to maintain if one expands the limits of the inquiry beyond St. Lucia to other Caribbean nations which have family land tenure. The evidence is scanty --few of the cases have received the attention focused upon family land in St. Lucia--but sufficiently suggestive to justify a comment.

Family land exists in parts of Dominica, in particular on the northern coast (O'Loughlin 1968:102; Finkel:171). Its existence on Martinique has been documented by Burac (1975:20) and Lassere (n.d.:543), and Brierly estimates it constitutes a tenth of the holdings of small farmers in Grenada (1974:91). The existence of a similar though not identical tenure has been noted in Guyana by Raymond T. Smith, but with an important difference; in the land-plenty of the mainland, there are no restrictions on alienation of family land (1955:72-75). M.G. Smith has analyzed the development of family land tenure out of freehold titles themselves only fifty years old, on Carriacou (1956:103-09). Clarke has written extensively of family land in Jamaica (1961:81-118), and Greenfield has examined the phenomenon in Barbados (1965:200-10). The insights of the last three authors are particularly interesting.

Edith Clarke, in her "Land Tenure and the Family in Four Selected Communities in Jamaica," notes that at Jamaica law the eldest legitimate son is the sole heir to real property in the case of intestacy. Illegitimate heirs have no rights. However, at custom all children legitimate or illegitimate inherit, "reflecting West African principles." A woman whose grandparents came from Africa told Clarke that freedom of relatives to take coconuts from family land was "the African tradition" (1953:86-87). Clarke goes on to explain that access to land by all heirs is perceived as very valuable because ". . . in the economy of the island, ownership of land is believed to be the only real and permanent source of security . . . . There is a deeply ingrained suspicion that jobs, however well paid, are insecurely held" (ibid.:116).

Sidney Greenfield, in his "Land Tenure and Transmission in Rural Barbados," suggests that family land was created intentionally, by will, by early Black freeholders in Barbados. To ensure that his owned land would be conserved for his descendants, the owner willed his land "to all his descendants," creating for his heirs not the freely alienable fee simple title, but the fee

tail, an inalienable estate at English common law. The same device was used by the English nobility to ensure preservation of their estates over the generations. Thus, claims Greenfield, ". . . the concept of family land has its roots in the common law of the time and was a functional adjustment--with legal sanction . . ." (1965:205-08).

Smith examined in detail land rights in the 1904 settlement of Henry Vale on Carriacou. After fifty years, over 60 percent of the settlement land was held under a customary, family tenure system which was progressively displacing registered titles. He characterizes the process as "a realistic and flexible adaptation of the folk to their circumstances, especially to their conditions of high population increase and migrancy, on the one hand, and low incomes and little land on the other" (1956:138).

There is no lack of plausible--but difficult to verify--theories as to the origins of family land. What strikes one after comparing them, however, is the breadth and fundamental similarity of the family land phenomenon in the Caribbean. This militates against highly particularistic explanations of the origins of the tenure. It would appear to weaken equally any suggestion that family land on St. Lucia has been caused by the intestacy provisions of the Civil Code; or that Jamaicans may have developed the tenure in reaction to a law of primogeniture; or that the Barbadians created family land on the model of the English common law of entailed estates. These may be accepted as the local legal parameters within which the development of family land tenure took place; they are parameters which may account in part for the extent of family land or for some of its particular characteristics in a given country, but surely they are not causes.

Clarke's suggestion of an African origin for the preference for succession by all children is sufficiently broad to escape this objection. However, it is somewhat problematic because the customary rules of succession of the multitude of West African tribal groups from which the slave population was drawn differed so greatly among themselves.\* It remains to be established that most of the Africans brought to the Caribbean came from ethnic groups with rules of

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\* Most authors have simply posited, rather vaguely, an African influence, but Marshall (1971:6) suggests more specifically a similarity to property forms in southern Nigeria.

succession under which all children inherited. Even if an argument could be documented for the origins of the tenure in the perseverance of African culture in a new environment, we would still not have an explanation of why the Caribbean environment was conducive to conservation of that cultural pattern--when so much else was lost--or why it survives and flourishes today.

For the cause of the persistence of the tenure pattern, and for at least part of the explanation of its origins as well, we must look to another consideration emphasized by Clarke: the economic security represented by landownership. After emancipation, access to ownership of land meant a degree of freedom from the plantation system. It must have been difficult for a freeholder to contemplate the elimination of some of his children from the succession, casting them back upon rentier systems which required labor contributions reminiscent of the past.

There may have been something distinctly African at play here as well, though on a more general level than specific inheritance rules. Varied as African tenure systems are, they have often been characterized as "communal" because access to land is based on membership in a group, usually defined by common descent. Descent determines the right to access, but in a logical enough inversion, the land one holds is also the best proof of one's descent, i.e., of who one is, of identity. Freeholder is a status which, in a community of freed slaves, one would be anxious to convey to all one's descendants.

It is in Smith's study of the Carriacou community--the one close empirical study of family land as it comes into being--that the security-related considerations stand out most clearly. He saw the evolution of the tenure as a natural normative adjustment in response to rapid population increase, pressure on a very limited land resource, and emigration from the island. Certainly such factors are the reasons for the continued vitality of family land tenure. Economic change in the Caribbean may have thrown up opportunities, but it has offered little security. The very proximity and responsiveness of the Caribbean economies to shifting world markets has meant major dislocations of labor, the basis for Clarke's observation that land is believed to be the only "real and permanent source of security."

Finally, in St. Lucia the land distribution pattern must be seen as one cause of the development of family land, creating as it does greater pressure on the smallholder sector. Lawrence wrote (1979:12):

It has sometimes been suggested that the island's land tenure problems result in large measure from the application of French law, particularly in the matter of intestate succession, but this suggestion is questionable. The problems derive mainly from history, which has determined the present maldistribution of land, and from economic factors including pressure on land as a result of population increase. Indeed, by comparison with some neighboring countries St. Lucia can be regarded as fortunate in having its substantive land law contained in one modernized statute.

Family land has its roots in pervasive economic phenomena, and this has important implications for efforts to change the tenure system. Since family land is not simply a product of particularistic legal provisions, such as the St. Lucian Code's provisions on intestate succession, it will not be easily legislated out of existence. It represents a rational reaction to St. Lucian circumstances, and only a change in incentive structures will work a change in behavior.

## 2. Constraints on Development Under Family Land Tenure

It has been seen that given the law of intestate succession in St. Lucia, family land tenure confers real benefit on the holder of family land: he holds more land than if the land had been partitioned. But the tenure has also been said to pose serious constraints on land development and investment in agriculture. Legal and other reforms to abolish it or reduce its incidence have been proposed by virtually every expert who has examined the phenomenon. Having suggested why family land tenure is valued by those who farm under it (there is certainly no popular ground swell for its abolition), it is now time to examine some of the constraints which it may place upon farm development.

### 2.1 Subdivision and Fragmentation

These terms are used differently by different authors, and so it is best to clarify at the outset the manner in which they are used here. Subdivision describes the process by which a single parcel of land is divided progressively, and by which landholdings may over time be reduced to parcels of economically unviable size. The legal processes through which this is accomplished vary and may be complex, but economically, excessive subdivision is a relatively simple matter of too many people trying to eke a living out of too little land.

Fragmentation, by contrast, describes the situation in which a farmer's holding consists of several parcels. Again, the legal processes by which this

arises may vary, but the economic objection to the phenomenon is clear: if the degree of fragmentation is significant and distances between parcels great, it can impose serious labor costs and other inefficiencies on the farmer and act as an impediment to good husbandry. (It should be noted, however, that a certain degree of fragmentation of holdings may be economically advantageous, as whether this gives a farmer access to different soil types or even different ecological niches.)

"Subdivision" thus refers to a historical process whereby parcels are broken up, while "fragmentation" refers to the broken-up state of a farmer's holding. There are obviously close connections between the two phenomena. Subdivision for whatever reason may produce such small parcels that a farmer must use several parcels to have a viable holding, creating the phenomenon of fragmentation of holdings. Alternatively, a law of inheritance which required that each parcel of parental land be divided among all the heirs would create a fragmented holding for each heir, but at the same time would contribute greatly to the progressive subdivision of parcels.

There has been considerable subdivision in St. Lucia. The 1973/74 Agricultural Census showed that 82 percent of all holdings affected by successions are already below 5 acres in size. There were 4,730 holdings of less than 1 acre, giving an average farm size of those holdings of .31 of an acre, and 3,828 farms of between 1 and 5 acres, with an average farm size of 2.2 acres. This has justifiably been characterized as severe subdivision (Lawrence 1979:2).

But is there any connection between family land tenure and this phenomenon? Mathurin in 1967 asserted that "the major cause of the existence of small farms in St. Lucia is the multiple ownership of land or 'family lands' as it is called on the island--an old system of land tenure which is legacy of the former French occupation" (1967:141). This is clearly incorrect. The Civil Code's provisions on intestate succession which create shares for a surviving spouse and all legitimate children, male and female, promote subdivision insofar as partitions are carried out. French commentators have long recognized this subdivision impact of the Napoleonic Code provisions in the Caribbean, one calling the Civil Code "une machine à hacher le sol" (Bernissant, cited in Lassere n.d.:543). But family land, with its avoidance of full partition, cushions the effect of the Code provisions. Parcels of family land are divided informally among some of the co-owners, but not nearly to the extent

that would be occasioned by partition. Insofar as the creation of subdivision is concerned, family land prevents it rather than producing it. This does not mean that family land parcels are larger than individually owned parcels; Laville in his 1978 survey of small banana farmers found individually owned parcels to average 4.5 acres and family land parcels to average 3.9 acres (1978:5). It is the smallest parcels which come under the family land regime precisely because they have become too small to be partitioned.

Subdivision is more justifiably attributed to the skewed land distribution patterns on the island, giving a large part of the population access to only a relatively small part of the land (Le Franc 1980:112).

Fragmentation of holdings also exists on St. Lucia. Meliczek, working from the 1973/74 Agricultural Census figures, indicated that the average number of parcels per holding is 1.2, and that about 80 percent of all holdings consist of one parcel, 20 percent of two or three parcels, while only 150 holdings are composed of four or more parcels. He concludes that fragmentation is "no serious problem" (1975:21). Lawrence, in his 1979 report, characterizes fragmentation as "mild" and without serious economic impact, citing data from Momsen's survey of commercial vegetable farmers which indicates that only in one agricultural district (east) did the mean distance between home and parcel exceed one mile (1979:8). Momsen's analysis indicated that the farm operator's dwelling was an average of 1.82 miles away from the furthest parcel, although for 21 percent of the farms the farmland was adjacent to the farmhouse. Seven farms actually held land within the bounds of a village but the average distance between farm and settlement was 1.25 miles (Momsen 1972:105). Henderson and Gómez found that among the farmers covered in their survey, 69.2 percent of the first parcels were situated less than one mile from the farmer's home and 48.7 percent of the second parcels and 37.5 percent of the third parcels were less than one mile away. Eighty-five percent of the total number of parcels in their sample were less than three miles away from the farmer's home (1979:72). Knudson and Yates made their inquiries in terms of travel time, and found that 91 percent of the sample walked to their plots, with the small remainder going to their plots by some motorized means. Most commonly, the farmers were within ten minutes walking time, while 23 percent had to walk up to half an hour and 29 percent had to walk more than thirty minutes (1979:37).

Fragmentation of holdings, though apparently not a very serious problem, has also sometimes been attributed to family land. Momsen notes that it has

been suggested that under family land tenure, each heir will get several separate plots in the family parcel. Informants consulted in the course of preparation of this report indicated the contrary: that efforts were made to minimize division. And Momsen concludes on the basis of her own survey data: "Despite the frequently described relationship between the 'family land' tenure system and fragmentation, data gathered in the vegetable survey indicate no correlation between freehold or 'family land' tenure and the number of parcels per holding" (1972:103-105).

## 2.2 Uncertainty and Insecurity

Family land does engender insecurity on the part of the landholders under that system. On present evidence, assertions that the tenure discourages investment seem well-founded in spite of some intriguing dissents (Le Franc 1980:111). The situation could hardly be otherwise given (1) the Code's lack of a legal regime setting out the rights of co-owners in relation to one another, and (2) the fact that all the users' plots and boundaries within a parcel of family land, being the product of family agreement and accommodations over many years, are not enforceable in a court of law. Family land is not an illegal system of land tenure, but it is extra-legal.

Thus while the user of family land may hold more land than if partition had occurred, his hold on it is also more precarious. While there are no data on frequencies of claims for land or produce by co-owners out of possession upon co-owners in possession, there are data from attitudinal questions on two surveys. A 1982 anthropological survey at Morne Panache concluded (Woodson 1982:34): "Informants ranked these tenure types in terms of tenure security and degree of autonomy over farm operations and products which they permit. Freehold was considered to be the most secure type and the one permitting the greatest autonomy. It was followed by rental, family land, sharecropping, permission and squatting." That family land was ranked lower than leasehold seems an indicator of significant uncertainty. On a national level, according to Meliczek's analysis of the 1973/74 Agricultural Census data, 57 percent of holders of family land felt they could have made more intensive use of the land but were hindered from doing so because of fear of possible disputes with co-owners (16 percent), lack of titles to obtain credit (6 percent), actual disputes between heirs (4 percent), and other problems (17 percent). The remaining 14 percent gave no reply (1975:29-30).

It is important to emphasize that family land farmers consulted in this study gave no sense whatever that they felt any imminent danger of being ousted from their holdings by their co-owners not in possession. The insecurity is caused primarily by a battle of attrition over quite small areas of land, usually for house plots, and over the production of the farm. Claims on production happen with fair frequency, although they are sporadic and not generally regularized as to timing or amount. One "Team of Experts" complained: "Members of the family are more conscious of their rights to reap crops from the land than of their obligation to plant them and this is undoubtedly one of the main reasons for what may be described as completely inefficient land use" (Team of Experts 1957:103). Foreman attributed many refusals to cultivate to this (1958:12), and Mathurin attributed to it a discouragement of investment in long-term crops (1967:41).

Meliczek sounds a note of caution: annual crops belong to the cultivator, and it is only the perennials from which co-owners out of possession are by custom allowed to take produce (1972:29). For annual crops family land tenure should pose no problems and this was the conclusion reached by Momsen after her 1972 survey of commercial vegetable farmers (1972:105): "Multi-variate analysis of the data revealed that only a very small portion of the total interfarm variation was accounted for by land tenure. Thus . . . the 'family land' that is included [in the survey] does not suffer from the worst problems generally associated with the tenure system."

Even with perennials, there is some question about the precise extent of the claims by co-owners. Bananas, which are replanted every few years, are like annuals regarded as belonging solely to the farmer who plants them. The problem lies more with trees such as palm, breadfruit, and mango, and here the claims of co-owners out of possession are a common cause of disputes (Lawrence 1979:2).

Woodson found that his informants at Morne Panache stated the right of the co-owner out of possession even more narrowly (1982:28): ". . . informants reported that their co-heirs were entitled to reap annual and permanent crops planted by the person from whom the land was inherited. However they staunchly insisted that no co-heir had the right to reap any crop planted by another co-heir either before or after inheritance without permission." The custom in this regard may be in flux. This might be expected as plots within family land

parcels become smaller and the livelihood which they provide more precarious. It is worth emphasizing in conclusion, however, that any claim to crops by non-farming co-owners appears to be much more limited than is usually indicated. It is effectively confined to the perennials.

This is not to suggest that such claims are not a serious inconvenience. Informants indicated that a farmer with part of his holding in different tenures would not plant his perennials on his family land but on his individually owned land. This distorts rational land use insofar as tenure overrides the relevant agronomic considerations (soils, slope, etc.) in determining planting patterns. There are however no statistics available which indicate whether these distortions are economically significant.

### 2.3 Non-Marketability of Family Land

Family land is for all practical purposes shut out of St. Lucia's land market, frozen in the hands of the co-owners in possession. This is true at two levels.

At the level of the parcel, the parcel cannot be sold by those in possession, or any of the co-owners, without the consent of all the other co-owners. This is nowhere stated in the Civil Code but it is the general rule in Civil Law jurisdictions and is followed by the courts in St. Lucia. The consent of all the co-owners can sometimes be obtained where the land has become co-owned in the present generation (if all the co-owners are in fact willing to sell). But once two or three generations have passed the co-owners are more numerous and more dispersed and obtaining the consent of all of them becomes increasingly improbable. When several generations have passed it is almost impossible for a potential purchaser to be sure he has accurately identified all the co-owners and their respective shares. If he purports to purchase the parcel from only some of the co-owners, all that he is in fact purchasing are the undivided shares of those co-owners with whom he deals. It is open to any co-owner not involved in the transaction to turn up at a later date and asserts his rights as a co-owner with the purchaser. This would obviously be unsatisfactory from the purchaser's point of view, and so few parcels of family land are bought or sold.

At the level of the farmed plot, held by a farmer as his share in a parcel of family land, the farmer cannot sell his plot. He does not own that plot outright, but only an undivided share in the whole parcel which is not specific

to any particular physical part of the parcel and which is not proportionate to the part of the parcel which he actually farms. He can sell his undivided share, but only another co-owner might be interested; what stranger-purchaser would want to purchase the share and then attempt to force himself into possession of land governed by this complex, familial arrangement? The co-owner in possession of family land can sell a part of the family land only by first obtaining a parcel corresponding to his share through partition. He will not usually wish to incur the expense and antagonism of his family by doing so, particularly as the piece of land he will receive under a partition will usually be considerably smaller than the piece he has been farming.

What are the consequences of family land being unmarketable? Although it has been stressed (2.1 above) that family land retards rather than facilitates subdivision, the non-marketability of family land may retard combination of parcels and thereby help perpetuate subdivision. Where subdivision is severe but an effective market in land is functioning, the opportunity exists for transactions to combine parcels and consolidate holdings, thus reducing both subdivision and fragmentation. Because family land is not marketable, it reduces the possibilities of such voluntary combination and consolidation through land sales.

Because there are no statistics which show that this process is in fact occurring with respect to individually owned parcels, this drawback of family land is somewhat conjectural. The unfortunate state of the system of recording land sales makes transfers of small parcels expensive and complex in any case. It seems probable that several initiatives are required to permit a land market to function with respect to this land: (1) a mechanism to render family land more easily marketable, (2) a reform of the land sale recording system, and (3) provision of credit to those small farmers who do wish to consolidate and enhance holdings through land purchases.

#### 2.4 Securing Credit

Because family land is not marketable, it restricts the access of those holding it to credit for major improvements. Of course smallholders have some credit needs which can be adequately covered by crop loans (e.g., seeds, fertilizer, costs of seasonal labor). But where there are major credit needs (such as a well, fencing, replanting of banana trees, or land preparation and seedlings for a new perennial crop, where costs can be recovered only over

several years) the lender will want more substantial security. In this case, a farmer would normally resort to borrowing on the security of his land. He would mortgage (or at Civil Law "hypothecate") his land. If he failed to repay his loan the bank would have recourse against the land, having it sold to recoup the unpaid loan. And because family land is not marketable--cannot be sold to recoup the loan--it is not generally acceptable to lenders as security for a loan. It will be acceptable only in those cases where all the co-owners consent to the hypothecation.

It is not meant to suggest that the only obstacle to credit for family land farmers is the tenure under which they farm. Lenders hope never to have to resort to the security represented by the land, and place quite as much or more weight upon the credit record of the borrower, the viability of his farming operation, and the profitability of his proposed investment. Even smallholders with individually owned parcels will often face difficulties in obtaining loans.

There is, however, fairly convincing evidence that the tenure factor, while not the only factor, makes a significant difference in success in obtaining credit. In Laville's survey of 460 banana growers farming 25 acres or less, he found that of the 117 growers who had ever applied for loans, those who could offer individually owned land as security constituted 67.5 percent of the applicants, with 74.7 percent of their applications approved; those who could offer only family land as security constituted 26.4 percent of the applicants, with only 32.3 percent of the applications approved (1978:15). Laville's study further indicates the relative importance of land as security for loans to farmers. Of the 70 farmers who received loans, 64.3 percent used land to secure their loan and another 2.9 percent used house and land (*ibid.*: 16). The credit needs of these farmers were substantial, and the average loan granted was EC\$2,162.00 (*ibid.*:17).

### 2.5 Why Then Does Family Land Persist?

If family land imposes serious development constraints on those who farm it, why does it persist? After all, it is within the power of any co-owner to require its partition (see the discussion of the law of partition in the Appendix). As was noted earlier (1.2), however, there are countervailing factors at work, most fundamentally the fact that most co-owners in possession have access to much more of the family land than would be the case if it were

partitioned. Several studies have sampled co-owner possessors' attitudes toward partition and the results show a complex set of attitudes.

Laville, in his national survey of small banana growers in the mid-1970s (1978:8), found that 42.4 percent of the farmers, holding 44.9 percent of the family land, were not willing to partition. There is also attitudinal information from the 1972/73 Agricultural Census. When asked whether there was general agreement between the heirs that the family land should remain undivided, 44 percent replied in the affirmative, while 29 percent stated that they would like to abolish the form of ownership and replace it with individual ownership; 27 percent did not know the opinions of their co-heirs or gave no reply (Meliczek 1975:30).

The Morne Panache Household Survey (1982:16) found that 42.4 percent of those farming family land would have liked the land divided, while 55.9 percent opposed it. While the various surveys were of course asking somewhat different questions, all three sets of responses indicate substantial reservations on the desirability of partition.

Laville (1978:8) sets out the arguments given by those in his study who opposed partitioning in order of priority: (a) good harmony among members of the family; (b) farmer cultivating disproportionately large share; (c) farmer cultivating it all; (d) acreage too small for partition, given number of co-owners. Those who would have been willing to partition gave the following reasons for not doing so: (a) inadequate money to finance procedures; (b) some family members opposed; (c) fear of unpopularity of idea with family. Independence was the reason given by farmers desiring to have land partitioned and those who had been involved in partitions.

Meliczek (1975:30) relates that the family landowners in his sample who favored partition gave the following reasons why partition had not taken place: lack of interest on the part of some heirs (27 percent); lack of agreement between family members regarding their particular shares (21 percent); lack of clear title to land (12 percent); lack of finance for surveying (10 percent); lack of physical basis for subdivision (9 percent); lack of contact with some heirs (8 percent); and other reasons (13 percent).

The Morne Panache Household Survey (1982:16) shows the following reasons given by opponents and supporters of partition as to why partition does not occur.

FARMERS OPPOSING PARTITION		FARMERS FAVORING PARTITION	
Reason	% of Farmers	Reason	% of Farmers
Dispute	12	Expense	36.4
Too small	28	Dispute	21.2
No dispute	32	Family land	15.2
Claimant absent	8	No dispute	21.2
Family land	8	Never attempted	3
Other	4	Other	-
No answer	8	No answer	3

The reactions elicited by such "why" and "why not" questions should not be taken too seriously as developing discrete categories of motivations with statistical significance; often the answers are different ways of saying the same thing, or at least overlap significantly. Several points can be made, however. Clearly, there is considerable division of opinion among the co-owners in possession as to the advisability of partition. It can be speculated that this may in part reflect differences in the sizes of the parcel of family land being farmed by these individuals, which would of course affect the viability of partition. As might have been anticipated, independence from co-owners was the major argument in favor of partition. Among the arguments against partition, the advantage of access to larger landholdings figured significantly, but so did concerns about the disruptive impact of a demand for partition on family relationships, and concern about the financial costs of partition.

Whatever the balance of these factors, it appears that there are few partitions. Laville found that only 3.6 percent of his family land farmers had been involved in a partition (1978:8), and the Morne Panache household survey found no farmer who had been involved in a partition (1982:16).

These figures, of course, reflect only the attitudes of co-owners in possession. All three surveys questioned only those on the land. One can only speculate on the attitudes of co-owners out of possession (see 2.4 above).

### 3. The Extent of Family Land

#### 3.1 Problematics of Family Land Statistics

A good number of studies attempt to assess the extent of family land and they show variations in result which are difficult to reconcile. Some survey

work is clearly misleading and can be discarded, such as the results of the 1967 Tripartite Economic Survey which indicated that 64 percent of the private land on St. Lucia was family land (1967:189). Meliczek characterizes the result as "clearly wrong" (1975:28), and Lawrence considered it "almost certainly a gross exaggeration" (1979:16). Unfortunately, this figure continues to be quoted authoritatively in reports and subsequent researchers have been misled by the figure. Momsen, in her study of commercial vegetable farmers (1972:105), wondered whether family land tenure prevented adoption of commercial vegetable farming when she turned up a much smaller percentage of family land in her sample than she expected on the basis of the Tripartite Survey figure. (Family land tenure is not a deterrent to such innovation. See 2.2 above.)

There are in addition the normal differences in samples and presentation of data which make comparisons difficult. Some surveys are national and comprehensive, while others are local or focus on a particular group, such as smallholders growing bananas. Some present their data on the extent of family land in terms of the percentage of acreage under family land, others in terms of the percentage of landholders who hold some family land, and still others in terms of the percentage of parcels which are family land. More serious, because it affects all surveys, is the treatment of land held on tenancy or by permission. These are listed as categories of the same order as family land and individually owned land, which they are not; any piece of leased land or "permission land" was obtained by the cultivator from someone who holds it as family land or individually owned land. The extent of family land and individually owned land is thus understated in all the surveys. (In fairness, it is difficult for a survey to proceed otherwise; the tenant or holder who is interviewed by permission will often not be clear about the tenure in which the land is held by the person who gave it to him.)

There are also difficulties based in the failure of most reports to distinguish between family land parcels which are house plots, those which are farmland, and those which serve both purposes. The failure casts doubts on generalizations concerning family land in agriculture because many small parcels often included are not strictly agricultural land. Le Franc has cautioned that there may be different rules for house sites and agricultural holdings under family land tenure (1980:110).

There are finally serious questions about what precisely is understood by interviewees when "family land" (tè fanmiy, St. Lucian Creole) is mentioned. Woodson (1982:36,37) gives a good sense of this:

. . . informants disagreed on the generational distance over which land should be inherited in order to qualify as family land. Some maintained that the land must be transmitted through at least two generations, while others held that any land inherited from the generation of one's father or mother was family land.

. . . informants differed in their assessments of the status of purchased land at the time of succession. Several informants contended that only inherited land--land acquired through intestate succession in the previous generation--is subject to the prescriptions affecting rights in family land. But others stated that, unless provisions for the disposition of land purchased by the deceased had been made verbally or in a will, both types of land become family land upon the death of the owner.

These considerations should be borne in mind in examining the data below.

### 3.2 The Data

An attempt has been made to expand the very useful table provided by Meliczek (1975:20) to include four more recent studies: the Laville study of smallholder banana growers, the Knudson-Yates study of small farmers, the Henderson-Gómez study of small farmers, and the OAS's Morne Panache Household Survey.

Considering for the moment only the national survey data, these show between 3 percent and 43 percent of the privately owned land acreage as family land. Meliczek, who compiled the data from the 1973/74 Agricultural Census which gave the 3 percent figure, noted that his review of the questionnaires had convinced him that family land had been underenumerated. Still, even allowing for the underenumeration he concludes that less than 10 percent of the privately owned land is under family land tenure. The other national surveys have all produced considerably higher figures (Laville, 25 percent; Momsen, 22.7 percent; and Atkinson, 34 percent). These were however surveys of smallholders, and since family land is a smallholder phenomenon, their figures may be a bit inflated. A reasonable estimate on the basis of the above figures would be that family land constitutes between 10 and 20 percent of the privately owned land on St. Lucia.

TABLE 3  
Summary of Survey Data on Extent of Family Land

SAMPLE SURVEY	CATCHMENT MICOUD	CATCHMENT FOND ASSOR	CATCHMENT CHOPIN	MORNE PANACHE	KNUDSON/ YATES (MUCIA-WID)	LAVILLE (WINBAN)	ATKINSON	MOMSEN	HENDERSON/ GOMEZ <sup>b</sup>	1973/74 CENSUS	
Nature of sample survey	survey of farmers	survey of farmers	survey of farmers	survey of of small farmers (0-15 acres)	survey of small farm- ers (0-15 acres)	survey of small banana growers (0-25 acres)	survey of of banana growers	survey of commercial vegetable farmers	survey of small farm- ers (1-15 acres)	survey of farmers	
Location of survey area	east	north	center	east/ central	island	island	island	island	island	island	
Sample Survey	Acreage of those surveyed	960	2,400	5,500	n.a.	n.a.	2,937.7	790	422.19	n.a.	69,972
Cover- age	No. holders surveyed	73	293	109	290	290	460	100	67	120	10,349
	No. parcels held by those surveyed	n.a.	n.a.	n.a.	340	340	705	n.a.	82	233	n.a.
Maximum size of holdings in survey	35	65	1,000	n.a.	n.a.	n.a.	36	n.a.	n.a.	n.a.	3,200
Percentage of acreage under family land tenure	33	28	2	n.a.	n.a.	25	34	22.7	n.a.	n.a.	3
Percentage of land- holders holding family land <sup>a</sup>	58	20	12	39	n.a.	43	36	28.4	n.a.	n.a.	7
Percentage of parcels under family land tenure	n.a.	n.a.	n.a.	n.a.	39.6	28	n.a.	23.2	29.2	n.a.	n.a.

<sup>a</sup>Includes holders owning other types of land as well.

n.a. = not available.

<sup>b</sup>This was not a random sample: cooperative farmers were selected by extension agents.

Still considering the national surveys, what is a reasonable estimate of the number of farmers who farm some or all of their holding as family land? There is a consistency in the figures in that they invariably show a larger percentage of holders using some family land than the percentage family land constitutes of acreage held. This is as might be anticipated, given that many farmers farm fragmented holdings with different parcels under different tenures. The 1973/74 Agricultural Census figures are again low at 7 percent, and Meliczek suspected that a bit under 20 percent was a more likely figure (1975:20). The other national surveys show much larger percentages (Laville, 43 percent; Momsen, 28.4 percent; and Atkinson, 36 percent). Again, the latter studies' focusing on smallholders may have inflated their figures. It seems from the above figures that a reasonable estimate would be that between 20-35 percent of the holders of privately owned land on St. Lucia farm some or all of their holding as family land.

Several of the national surveys also give, or permit derivation of, the percentage of the parcels held by the landholders surveyed which are under family land tenure. (Meliczek's 1973/74 Agricultural Census figures do not, nor do Atkinson's figures.) Laville's figures show 28 percent; Momsen's figures, 23.2 percent; the Henderson/Gómez study, 29.2 percent; and the Knudson/Yates study, 39.6 percent. A reasonable estimate based on the above would seem to be that between 15 and 30 percent of the parcels of privately owned land in St. Lucia are family land.

These estimates must be increased slightly because of the treatment given in all the surveys to land under tenancy and "permission land." As noted earlier (3.1 above), this treatment must lead to a significant underestimation of family land. This underestimation is, however, very difficult to quantify. Given that most of the studies show land under tenancy and permission land as between 10 and 20 percent, and given that more of the land under tenancy and "permission land" is probably individually owned land (because of the difficulty of getting a lease or permission from all the co-owners), it seems reasonable to increase the minimum estimates by 5 percent and the maximum estimates by 10 percent. The increased range between the minimums and maximums reflects the increased uncertainty created by the unsatisfactory treatment of land under tenancy and permission land in the surveys. Thus it would be estimated, with no great confidence, that:

- 1) family land constitutes between 15 percent and 30 percent of the privately owned land;
- 2) between 25 percent and 45 percent of the holders of privately owned land hold some or all of their land as family land; and
- 3) between 20 percent and 40 percent of the parcels of privately owned land are family land.

### 3.3 Regional Variations

The figures available on the extent of family land make it clear that there are considerable regional differences in the incidence of family land. The Fond Assor figures indicate family land is plentiful in the north of the country (27 percent of acreage and 20 percent of landholders), and this is supported by a northern district survey cited by Le Franc (1980:123) but not available to this author, which found 39.5 percent of the acreage in family land. Figures from the eastern and east-central parts of the country are even higher: 33 percent of the acreage and 58 percent of the farmers for Micoud, and 39 percent of the farmers for Morne Panache. The figures for Chopin, in the central part of the country, are much lower: 2 percent of land and 12 percent of farmers. Momsen's figures also show the central agricultural district as an area with little family land, while the northern and southern districts have significant amounts and the eastern and southeastern districts have the highest incidence (1972:107):

AGRICULTURAL DISTRICT	NO. FAMILIES	ACRES
North	5	9.0
Central	1	3.0
East	4	40.0
Southeast	6	37.5
South	<u>3</u>	<u>17.0</u>
Island	19	106.50

Meliczek relates these regional differences to rural population density and the prevalence of smallholdings. Working from the 1973/74 Agricultural Census data, he notes that it revealed no family land in the quartier of Laborie, and very little in Vieux Fort, whereas more than 80 percent of the

family land was found in the quarters of Castries, Soufrière and Dennery. Among the enumerated holdings under common ownership, 82 percent were smaller than 10 acres (1975:20). The figures cited above support his interpretation. It appears that where holdings are large, partition continues and family land tenure does not arise. Where holdings have become small, partitions decrease and family land comes into existence.

#### 4. Resolving the Problems of Family Land

##### 4.1 Which Problems?

It is useful to review at this point the problems identified with respect to family land. Subdivision and fragmentation have been indicated not to be caused by family land, but there are several problems with the tenure:

- a) The holding of family land is rendered insecure by the extra-legal nature of the arrangements among co-owners. There is no fear of major dispossessions, but rather a battle of attrition over house sites, uncertainty as to boundaries, and disputes over the rights of co-owners not in possession to share in crops. This last problem is confined to tree crops.
- b) Family landholdings are largely unmarketable. While family land tenure does not contribute to the creation of subdivision, it may help to perpetuate it. Family land's unmarketability reduces possibilities for consolidation via the land market.
- c) Because family land is unmarketable, it cannot generally secure loans. It is one among several obstacles to lending to small farmers for major investments.

What are wanted, from an agricultural development perspective, are proposals whose main beneficiaries are those who farm (the co-owners in possession), and which render their tenure in the land they farm more secure, marketable, and viable as security for loans. The various proposals suggested by experts, consultants, and commissions will be examined in the light of these problems and objectives.

##### 4.2 Proposed Solutions

4.2.1 Amendment of the Civil Code Rules on Intestate Succession. Several of the commentators on inadequacies of family land tenure have attributed its existence to the law of intestate succession, and indeed it does come into

being in reaction to that body of law. Foreman in 1958 suggested amendment of the law in this regard, presumably to reduce the number of heirs (1958:18), and Meliczek in 1975 suggested more specifically that the rights of succession of nephews and nieces and collateral relations be abolished (1975:34). In 1979, Lawrence avoided this sensitive issue on the questionable proposition that "Succession is not a land tenure matter" (1979:18). The St. Lucia Land Reform Commission in its Interim Report described Meliczek's suggestion as "ill-conceived and drastic" (1980:7), and that reaction apparently reflects at least in part the St. Lucian attachment to the island's Civil Law heritage.

Meliczek's specific suggestion is difficult to evaluate. One suspects that it might have little impact. Nieces and nephews and other collaterals succeed only when there are no descendants of the deceased. There are no figures on how frequently this happens, but one would suppose it is not very frequent, perhaps not frequent enough for the abolition of their rights of succession to have any significant impact. And it is not clear that a more drastic limiting of heirs would be surer of impact. This approach is based on the assumption that family land is somehow caused by the intestacy provisions. It has been argued above that this is not the case; that while the Code provisions may have played some role, family land has come into being as the result of more fundamental economic factors.

In time, though it is difficult to predict the time frame, testamentary dispositions will become more common and fewer and fewer St. Lucians will die intestate, relegating the rules governing intestate succession to a much more minor role than they play today.

**4.2.2 Forfeiture of Undivided Shares for Non-User of Family Land.** This suggestion was again made by Meliczek (1975:37). It has not received serious discussion though its simplicity has much to recommend it. It would in fact work a large-scale, uncompensated expropriation of land rights from some co-owners for the benefit of those actually farming the land. But a great many St. Lucians hold undivided shares in family land which their relatives are farming, and would clearly be unhappy to see those rights cut off. It is difficult to imagine this proposal obtaining sufficient support for passage.

**4.2.3 Government Acquisition and Resettlement of Family Land.** In 1958, Foreman suggested "procurement by the Government of 'family land' freeholds for consolidation, development and redistribution as may be required from time

to time" (1958:13). In 1963, G.I. Beckford and L.G. Campbell suggested that government should be given the power to purchase all family lands and to re-settle those lands with enterprising farmers. They urged that the farmers on the land not be given preference in the resettlement, as this would encourage their relatives to continue to press claims against them (Mathurin, 9.144). There has been no follow-up. Both proposals would seriously disrupt cultivation on the family lands in the short term, and the second would discriminate against precisely those whom a reform should assist: those who have demonstrated a commitment to farming these lands.

The Team of Experts of 1957 made a somewhat similar suggestion, described by Foreman (1958:13): Land in an area was to have been leased by its owners to the government at a rent based on its unimproved value. A majority of co-owners would have made the decision to lease, but if they did not, the parcel would have been compulsorily purchased by government. The land once under government control would have been developed, re-parceled, and sublet to the same farmers in economic units. The principal advantage of this approach, its authors urged, was that it left the family landowners with their original rights, honoring the "very strong prejudices on the part of the whole community" in favor of "freehold tenure." One is compelled to wonder whether most family landowners would feel their ownership rights were being respected. The disruption of cultivation in the short run would be even more considerable than in the proposals discussed immediately above, because individually owned parcels would be affected also. Foreman considered, probably correctly, that a less complex and more permanent resolution of the family land question was desirable (ibid.:14).

4.2.4 Imposition by Law of Minimum Sizes of Holdings. Meliczek in 1975 suggested a minimum size of holding be fixed between 1 and 2 ha (1975:34). The St. Lucia Land Reform Commission endorsed this suggestion in its Interim Report but suggested a flexible minimum which recognized differences in ecological conditions (1980:9).

Unfortunately, setting a minimum size of agricultural holding is difficult. Simpson, in Land Law and Registration (s.13.6.5), notes that a rigid approach, setting a strict minimum acreage below which no subdivision is permitted, works well enough in an urban setting but:

When we come to agricultural land, however, the rigid approach appears negative and arbitrary; it is extremely difficult to fix a minimum area which is generally valid. What constitutes an "economic minimum" must inevitably be based on a number of assumptions regarding the level of farm operation needed to provide an average family with an arbitrarily chosen income, and there can be no uniformity in such matters. The land itself may vary in respect of soil fertility, slope, and waterlogging, and under intensive cash-crop farming a high income can be obtained from a small acreage, whilst under extensive systems of production more land is required to achieve a given income. The very notion of an "average family" is misleading, as the size and composition of every family continuously varies as time passes . . . .

Simpson goes on to suggest that the only solution is to confer discretion for each proposed subdivision to be examined on its merits (13.6.5). The drafts of a Land Adjudication Act and a Land Registration Act prepared pursuant to the Land Reform Commission's suggestions incorporate this approach and it cannot be stressed too strongly that this is the correct approach. Not only is it very difficult to set strict minimums for agricultural holdings but where these have been imposed, as in the Sudan and Kenya, they have proved unenforceable. Because heirs appreciate that the minimum would prevent the distribution of the land among themselves, they simply do not register successions. This undermines the entire registry system and renders it useless as a source of data for planning.

Subdivision is in the end an economic phenomenon, the result of too many people relying on too little land, without other options for a livelihood. Because they have little choice but to subdivide, attempts to legally limit subdivision simply drive it underground. The solutions must in the end be economic: land redistribution if landholdings are skewed or provision of economic opportunities outside the small farm sector.

**4.2.5 Adjudication of Shares and Partition.** In discussion of the need of St. Lucia for the introduction of an improved system of land registration involving systematic adjudication of titles, Meliczek (1975:26) has noted that opportunities for partition will arise during the adjudication process. While these opportunities should be seized where parcels are large enough to be divided, care must be taken not to turn the Adjudication Officer into a probate judge. The adjudication process can be utilized to accomplish some partitions, but only in the simplest of cases. Otherwise, it will become

bogged down and the time and cost of adjudication will be greatly increased. The draft Land Adjudication Act makes provision for partitions which can be speedily accomplished to take place during adjudication, in accordance with the standards set out in the Civil Code, but the more complex cases must be left to the normal processes of law once the adjudication has been completed. This approach is described in greater detail at 5.2 of this report, where it is related to other measures in aid of the reduction of co-ownership.

4.2.6 The Trust for Sale. The Interim Report of the Land Reform Commission (1980:8) concluded that the problem of family land is one of "negotiability of land, and not of entitlement to land," and that the easiest and cheapest means of solving the problem lay in the introduction of the "trust for sale" concept. A trust for sale simply involves the facilitation of transfers by appointment of a limited number of trustees empowered to act with respect to the land, and specifically to sell it, on behalf of all the co-owners. This suggestion had been made by several experts prior to the Commission (see the excerpt from the Interim Report below) and more recently seconded by Lawrence (1979:3-4,13). The Commission's remarks are worth quoting at length (1980:12-13):

We suggested earlier that the concept of the trust for sale can be used as a cure for the evils of multiple ownership and fragmentation. This device does not of course limit the number of co-owners or affect their rights to the property but it narrows down the number of persons involved in the negotiability of land, as the shares of the co-owners become vested by operation of law in one or more trustees (not exceeding four) who are given the powers to deal with the land on behalf of all the co-owners.

Where a "statutory trust for sale" is deemed to arise by operation of law, it is usual to include an accompanying provision restricting the number of persons who may act as trustees at any one time. They are the legal owners and all powers of dealing with the land rest with them, but they do not necessarily have to sell since there is usually a power to postpone the sale. If however, a decision is made to sell then only a maximum of four signatories are required instead of the concurrence and signature of all the co-owners. . . .

As long ago as 1960, Clark (p. 12) in a draft Land Registration Law attached to his report proposed the introduction of the Statutory Trust for Sale as a solution to the problem of family land. This proposal had and still has the strong support of the local Bar Association (Allsebrook, pp. 12, 28, and 31). In addition, consequential and beneficial amendments to the Civil Code which will have the effect of containing the problem of

undivided ownership and compelling a sale instead of a partition of land held by several co-owners, have also been welcomed by that body (Allsebrook, pp. 19-20). The Civil Code itself in its section on "Trustees" frequently mentions the "trust for sale" and actually contains a provision which limits the number of trustees which may be appointed to four, although the concept itself has not yet been introduced; whilst both Lawrence (pp. 8 and 14) and Allsebrook (pp. 19-20) repeat the oft-mentioned recommendation for its introduction into law in St. Lucia, with the latter actually providing model legislation which may be followed, once the decision to introduce it has been taken in principle (pp. 47-55).

The Land Reform Commission recommended the introduction of the trust for sale. St. Lucian officials indicated that it is an acceptable approach, but that its introduction must be voluntary.

4.2.7 Voluntary Individualization of Tenure Promoted by Provision of Government Credit. There is one important possibility which is mentioned in some recent reports by consultants representing donors but not pursued by the Land Reform Commission (perhaps because of no evidence of donor funding for it at that time). If provided with credit, the co-owners in possession of family land may be able, using the market in undivided shares in land, to acquire the interests of their co-owners not in possession. Areas now under the family land tenure would thereby be upgraded to individual ownership.

In his 1975 report (1975:36), Meliczek mentions this possibility, though he does not incorporate it in his recommendations. Lawrence in his 1979 report (p. 5), suggested one version of how such a program might work:

(iii) Capital aid to establish a "revolving fund" for consolidation of family lands by liquidation of nonviable undivided shares or undivided shares held by persons not resident on the land in favor of one or more of the co-owners actually farming the land; this exercise would be carried out by a board appointed by the Government, which in the absence of agreement of the co-owners would be empowered to order liquidation; compensation for undivided shares liquidated would be payable by the persons benefiting from the liquidation but immediate payment would be made to owners of liquidated shares from the revolving fund and the beneficiaries would be required to repay the amount involved to the fund over a period of years.

Lawrence, however, does not in the final analysis recommend this approach, apparently because there is little experience with it. He notes that the only

instance in which he is aware of its being attempted is with the Maori lands in New Zealand (1979:8).

Meliczek did not incorporate this approach in his recommendations because he doubted that many co-owners would be agreeable to the buying out of their interests. He notes (1975:30) that those who prefer to leave family land unchanged include "a large portion of co-owners who, under normal circumstances, have no intention to live on the land or to cultivate it, but still like to maintain their claim because it provides them with a feeling of security. The eventual payment of a compensation may not be attractive enough for most of them to voluntarily give up their claim."

#### 4.3 A Composite Strategy

The Agricultural Structure Adjustment Project developed a composite strategy. Of the various proposals noted above, two were rejected primarily because they ran counter to the perceived values and interests of so many St. Lucians that they appeared unlikely to be enacted. These were the changing of the Civil Code's rules on intestate succession, and forfeiture of undivided shares by nonusers of the family land. Another proposal, government acquisition and resettlement of family land, was rejected both because it appeared to involve a gratuitous disruption of production, at least in the short term, and because it would be unpopular.

But the other proposals were considered to have merit, and were incorporated in a strategy, the elements of which were:

- 1) simplification of tenure patterns by partitions carried out during adjudication of title under the proposed Land Adjudication Act;
- 2) introduction of the trust for sale to facilitate the adjudication and registration of family land and to render family land marketable and mortgageable;
- 3) amendment of the Civil Code provisions on partition to minimize subdivision; and
- 4) provision of credit to enable family land farmers to buy out the interests of their co-owners, and thus upgrade their land to individual ownership.

The integration of these elements into a tenure reform strategy is examined in greater detail in the next section of this study.

## 5. The Agricultural Structural Adjustment Project

Land registration and the associated survey and adjudication of titles under the project will affect all rural land on St. Lucia, both family land and individually owned land. Land in the capital, Castries, was excluded because of budgetary considerations but land in the other towns of the island will be registered. The project's objective is to provide secure titles and thereby to (1) facilitate land transactions which would lead to more rational patterns of ownership and use, and (2) facilitate lending to farmers by giving them titles which lenders will accept as security for loans. But, it was argued, family lands will not benefit from these measures if they remain in the present ill-organized state of co-ownership. There is thus a tenure individualization component aimed to transform holdings of family land to individual ownership. The elements of such a strategy have been noted above, but how would they function in practice, in relation to one another and in relation to the processes of land adjudication and land registration? This can best be set out in a time sequence.

### 5.1 The Legislative Phase

In this phase a package of legislation required for the land registration/tenure individualization component of the project would be enacted. These include, first, the Land Survey Act, the Land Adjudication Act, the Land Registration Act, and the Agricultural Small Tenancies Act. The Land Adjudication Act and the Land Registration Act contain provisions for adjudication of shares and partition (4.2.4 above) and for the creation of trust for sale with respect to family land (4.2.5 above). (The Agricultural Small Tenancies Act does not have any particular relationship to the other three closely related bills, though it represents a needed reform.)

### 5.2 The Land Adjudication Phase

Once the legislative package is enacted, land survey and adjudication preparatory to land registration will begin. The minister responsible under the legislation will declare an area an adjudication area and appoint an Adjudication Officer to supervise the work there. The Adjudication Officer may divide this area into adjudication sections or treat the entire area as a single adjudication section. He will then proceed to the determination of titles and demarcation of boundaries, creating an adjudication record which will become the basis for the first land register for the area. Three elements in the tenure individualization strategy are operative during this phase.

**Adjudication of Shares and Partition.** The Adjudication Officer will find some parcels of family land where partition (the division of the parcel according to the shares of the co-owners, creating individually owned parcels) is a viable option. The adjudication process is an instrument whereby partition may be effected relatively quickly and cheaply. The additional work load created by the effecting of partitions must however be limited or it could drastically increase both the time and the costs involved in adjudication of an area.

The draft Land Adjudication Act thus calls for the Adjudication Officer to accomplish partitions only in noncontentious cases, which can be handled quickly. Where all adult co-owners not absent from the country are represented before the Adjudication Officer and consent to a partition, he will proceed with the adjudication of the shares of the parties and partition the parcel accordingly. Unlike a court in a petition action, he will not proceed unless all the parties agree to the partition. The cases in which such a partition is likely to occur are those in which co-ownership has not become widely dispersed over several generations, but has arisen fairly recently and there are only a few co-owners. The Adjudication Officer will operate under the same strictures of the Civil Code as does a court concerning avoidance of partitions which create impractically small parcels (Art. 645), but unlike a court in a partition action he will not proceed to an order to sell the parcel where partition is impracticable. Instead, both in the case where the co-owners do not agree to partition and in the case where partition is impracticable, he will note the parcel as co-owned in the adjudication record. (A co-owner who wishes to force a partition upon reluctant co-owners will still have his option of an action for partition in the courts, and in the case where a partition is impractical, a sale may then be ordered.)

In the noting of the parcel as co-owned on the adjudication record, a second element in the tenure individualization strategy will come into play:

**Voluntary Introduction of Trusts for Sale.** Where co-ownership is found to exist and no partition is desired and feasible, there are three options. If the co-owners present documentation which clearly demonstrates their respective shares (as where the co-ownership has its origin in an estate which has been properly administered), they can be recorded as co-owners with the respective share of each shown. But if the estate is an unadministered estate or the respective shares are unclear for whatever reason, the adjudication

officials must not be placed in the position of a probate court, and required to conduct the prolonged inquiries necessary to identify all the heirs and their shares. Instead, the parcel would simply be registered in the name of the "Heirs of \_\_\_\_\_," their ascendant who last held the parcel individually.

In both cases, however, the co-owners have a third option, the creation of a trust for sale. This is a voluntary step. A trust for sale will only be created if a majority of all the co-owners making claims in response to the notice of adjudication agree to this, and only if that majority includes all those who are possessing part of the parcel. If the co-owners decide to create a trust for sale, they will then decide by majority vote who the trustees shall be. These are to be no more than four of the co-owners, and are to be selected from among the co-owners in possession.

**Voluntary Individualization of Tenure Promoted by Provision of Government Credit.** This element of the tenure individualization strategy will begin to come into play during the adjudication phase, but will extend beyond it. The role of the Adjudication Officer in this process will be to publicize the possibility of a co-owner obtaining a loan from the government to buy out undivided shares of his co-owners, leaving himself as an individual owner. He will indicate the means of reaching such an arrangement and the manner in which application may be made to banks extending the credit. He then has no further role in the process, except that if a loan is made and deeds of transfers of shares are completed prior to finalization of the adjudication record, he may correct the adjudication record and show the land in individual ownership rather than as co-owned under a trust for sale. It seems improbable, however, that many such deals will be completed prior to the finalization of the adjudication record.

### 5.3 The Post-Registration Phase

When co-owned land has become subject to trust for sale, this land will be able to enter the land market. Whenever the trustee(s) sell the parcel of co-owned land, it becomes the property of the purchaser in individual ownership. Prior to the adoption of trusts for sale, a co-owner seeking to buy out the shares of other co-owners would have to approach each and every one of them and persuade him to deed over his undivided share. Now, if the co-owned land has been registered in the names of trustee(s) under a trust for sale, he will need to deal only with these trustee(s). He will not be purchasing undivided

shares, but the trustee(s)' title to the parcel. It will be the responsibility of the trustee(s) to divide the proceeds of the sale among the co-owners in a manner proportionate to their undivided shares in the property.

#### 5.4 Summary and Open Questions

The legislative phase involves the creation of the legal bases for land adjudication and registration and for the tenure individualization strategy. The adjudication phase sees three elements in the strategy operative: (1) where co-owners agree to partition and the parcel is large enough to make partition practicable, the Adjudication Officer creates individually owned parcels by partition; (2) where partition is not carried out, the parcel may be registered as co-owned under a trust for sale; and (3) the Adjudication Officer publicizes the credit program for tenure individualization and, in the event a co-owner can obtain a loan and buy out the shares of his co-owners prior to finalization of the adjudication record, notes the parcel in the adjudication record as individually owned rather than co-owned under a statutory trust. In the post-registration phase, voluntary individualization of family land tenure promoted by government credit continues, but is facilitated by the fact that some family land is now subject to trusts for sale. Any co-owned land which is sold by the trustee(s), whether in connection with the credit program or otherwise, becomes the property of the purchaser in individual ownership.

Two sets of uncertainties concerning the above scenario should be noted. One set involves the difficulty in predicting the level of response to the opportunities for tenure individualization. The other set arises from the difficulty in predicting whether the adjudication and registration of titles to family land will result in loss of the use of the land, or render less secure the position of any significant number of users of family land who are not legally co-owners.

**The Response to Tenure Individualization.** Because family land tenure involves intra-family economic relationships rather than arm's length economic relations between strangers, levels of response to tenure individualization opportunities are difficult to predict reliably.

With respect to the element of credit-supported acquisition of other co-owners' shares, buyer response is perhaps less problematic than seller response. There are figures to suggest that co-owners in possession are anxious to have better title to their land and that their incomes can support

the acquisition of other co-owners' interests if credit is provided on somewhat longer terms than is present banking practice. Will they be willing to risk disrupting family relations by attempting to buy out the interests of the other co-owners? Probably. After all, they are simply being encouraged to make offers, which may be refused. This project element has been specifically framed to avoid compulsion in acquisition of land or interests in land. And the backing of a well-publicized government program with developmental justifications should make the buyers more comfortable in pursuing the matter with their relatives.

But what of seller response? Consider the position of the co-owners not in possession. The size of their aggregate interest in a particular parcel of family land will be quite large, never less than half the interest in the property and usually much more. But the size of the individual shares will be quite small in many cases, perhaps a sixth, or a tenth, or a twenty-fourth interest. Many of these co-owners will be making their income outside of agriculture. The cash value of their shares will in many cases not be impressive. Will they consider it adequate incentive to give up what that share represents to them: the connection with the family, with the home village, the security represented by a place to retire and, without purchasing land, to build a little house with a kitchen garden? Will the cash offered be attractive when they consider that accepting it may mean a need to purchase land at retirement, at a price which it is difficult to predict? Remember that no land tax is being paid by these co-owners. Even if access to a larger parcel of Crown land is provided as part of the compensation, will it be attractive given the pull of the home village?

Far too little is known about the situations, attitudes, and expectations of such co-owners to permit confident answers to these questions. Virtually all attitudinal research concerning co-owners has been with the co-owners on land rather than those who are absent at jobs in the towns or abroad. Undoubtedly some may find attractive the offer for a purchase of their share, but how many will do so? Here it must be stressed that most of the co-owners of a parcel must accept the offer for the program to be successful. It will not confer any great benefit upon a co-owner in possession to acquire only some of the shares of his other co-owners. Even if only a few hold out, he remains a co-owner. Unless the credit can make him a full owner, it is not justifiable

economically. Given the number of small shareholders who may exist with respect to many parcels of family land, this is a daunting prospect.

It is of course possible that not all other co-owners would have to be bought out if the parcel were of good size. Two or three co-owners might form a group to buy out the others, then partition the parcel among themselves. Or if only a few small shares owned by absentees remained outstanding, a partition could be made which set aside house sites for them. And if a trust for sale is in place, the process will be considerably easier.

Similar uncertainties exist with respect to the opportunity for facilitated partition during the adjudication process and the trust for sale mechanism. Will many co-owners take advantage of the opportunity for facilitated partition? In how many cases will co-owners agree to appoint trustees? Even if trustees are appointed, how often will there actually be a sale?

There is finally the question of the law of intestate succession. It appears that it is not politically feasible to alter the law of intestate succession at this time. But will the project then be expending funds to achieve individual ownership, only to see this lapse into co-ownership after an intestate succession in the next generation? The answer here is that, hopefully, the incidence of wills should increase in coming years and prevent this from happening in many cases. But it is difficult to predict with confidence how soon testamentary dispositions will become common.

**The Impact on Non-Co-owners Using Family Lands.** There are many indications that informal allocations of family land for use, made by decisions of various co-owners over the years, do not reflect the Civil Code's conception of who constitutes an heir. There are many persons residing on and using family land who are not legally co-owners. It is difficult to make any estimate of how many of these there may be, but that they should be substantial, recalling the frequency of births out of wedlock and the Civil Code's provisions on intestate succession. There would appear to be two potential categories: surviving "non-spouses" of couples who lived together out of wedlock, and illegitimate children and their descendants.

Under the Civil Code, a surviving spouse takes a one-third share in deceased spouse's land (see the Appendix). But if the couple was not married, then the survivor of the couple is not a spouse, and has no rights under the law of intestate succession. Stable unions not formalized by marriage are

common in St. Lucia and the practice followed on this point in the case of unadministered successions to family land does not correspond to the Civil Code. Many surviving "non-spouses" are in fact holding family land of their deceased "non-spouses." These are elderly persons with no other means of support.

Again, under the Civil Code's provision on intestate succession, illegitimate children generally do not inherit from their mothers and never from their fathers. They are heirs only if there is a failure of relatives of the deceased to twelve degrees, and if the deceased is a woman (see 1.1 above). Clearly this is an unusual circumstance. There are legitimation procedures, but this option does not appear to be utilized often by rural people. Do the informal allocations of family land for use, made by decisions of various co-owners over the years, reflect the same attitude toward illegitimate children as that of the Civil Code? Woodson (1982:29) indicates this is not the case. At Morne Panache,

informants were of two minds about the status of illegitimate children (SLC Yich déyo, yich bata) at inheritance. The majority of the informants held that "tout yich se yich" (all children are children), implying that all of a person's children are, regardless of legal status, equal and entitled to the same inheritance rights. On the other hand, several informants felt that illegitimate children should be provided for separately prior to inheritance. If this had not been done, they were considered entitled to a portion of their inheritance, but a much smaller one than the legitimate children. Perhaps the most important point about this sort of disagreement among informants is the extent to which the resolution of such inheritance problems depends on the attitude of deceased persons toward outside children (e.g., the conduct and attitudes of a parent toward his or her illegitimate children prior to death) and whether or not amicable social relations existed among the parties involved.

Given the number of unadministered intestate successions plus these attitudes, those farming family land may include substantial numbers of illegitimate children or descendants of illegitimate children. These are not co-owners, because they were never heirs. When and if a partition is made, or trustees under a trust for sale make a sale, or a co-owner is buying out interests of other co-owners, what will be their position?

## 6. Conclusions, Open Questions, and a Research Agenda

### 6.1 Conclusions

Family land emerged on St. Lucia following the end of slavery in the 1800s in the legal context of French Civil Law. It constitutes an avoidance of the Civil Code provisions on intestate succession, which are inappropriate given man/land ratios in the smallholder sector. A comparative review of family land in the Caribbean suggests that particularistic explanations of family land, such as the argument on St. Lucia that the Code provisions have caused family land, are incorrect. The origins of the tenure throughout the Caribbean appear to lie rather in the common factors of a limited land resource, rapid population growth, and an unstable job market requiring considerable labor mobility.

Co-ownership at Civil Law is conceived as a transitional state leading to partition of the succession. The Civil Code does not set out any rules to govern co-owners' rights with respect to one another or third parties. Customary rules have evolved to govern these relations but they have no force in courts of law. In following these customs over several generations, situations of possession and use have been created which have very little relation to those which would have resulted from compliance with the law. We have only a very limited sense of the way in which the tenure system functions.

Family land has been said to be an obstacle to agricultural development on several grounds. A careful examination indicated that family land tenure has reduced, not increased, rates of subdivision and resultant fragmentation of holdings. It can be argued that by rendering land unmarketable, family land tenure has reduced consolidations worked through purchase and merger. This is somewhat speculative. Family land clearly does not, however, provide farmers with secure production opportunities. While the farmers do not feel in any danger of being ousted from their holdings by other co-owners, there are battles of attrition over small areas of land and over shares in perennial crops. Disputes are common and day-to-day land use decisions are affected (e.g., cultivation of perennials on family land is discouraged). Finally, family land is not marketable because of the difficulty (in light of the number and uncertain identity of all the co-owners) of obtaining a clear

title. And because family land is not marketable, it is not acceptable to lenders as security for a loan.

Best estimates suggest that family land constitutes between 25 and 35 percent of St. Lucia's privately owned farmland in terms of acreage. The problems which it poses for St. Lucian agriculture are thus significant and many solutions have been proposed. Two of these, amendment of the Code's provisions on intestate succession and forfeiture of shares by co-owners not farming, have been rejected by St. Lucia officials as too drastic and unpopular to obtain enactment. Proposals for government acquisition and redistribution of smallholdings have also been rejected, both because they would be unpopular and because they would cause major short-term disruptions of cultivation.

The planners of the Agricultural Structural Adjustment did however find support for other solutions, several of which were drawn from the recommendations of the recent St. Lucia Land Reform Commission. A strategy was developed for the project which included several of these in concert, coordinated to implement a policy of tenure individualization for family lands:

- 1) facilitation of economically viable subdivisions, accomplished in the course of the land survey and adjudication of titles prior to registration;
- 2) introduction on a voluntary basis of the trust for sale, by which the shares of the co-owners become vested by operation of law in one or more trustees (not exceeding four) who are given powers to deal with and sell the land on behalf of all the co-owners; and
- 3) provision of government credit to permit co-owners to buy out the shares of other co-owners, the objective being to have all shares in a parcel eventually vested in one individual.

## 6.2 Open Questions

There are several uncertainties of considerable importance concerning the tenure individualization elements in the project, and the impact of registration of titles generally. First, because family land tenure involves intra-family economic relationships rather than relations among strangers, levels of response to tenure individualization opportunities are difficult to predict. Will many co-owners take advantage of the opportunity for facilitated partition? Will potential sellers of small shares find the monetary incentive, probably quite modest, adequate for them to give up what the share represents:

the connection with the family, with the home village; the security represented by a place to retire and, without purchasing land, to build a little house with a kitchen garden? Will, as anticipated by project planners, share-purchasing consolidate ownership in the hands of possessor-farmers; or will it be used by urban dwellers with influence and cash to speculate in real estate, buying out poor relatives? If the objective of marketability of land now under family land tenure is achieved, what impact will it have upon distribution patterns?

Equally important, how will the process of adjudication and registration of titles affect those in possession of family land, perhaps all their lives, under questionable title? The development of patterns of possession of family land has been an extra-legal process, and holders of family land include substantial numbers of children of unmarried parents, or descendants of such children. Legally, these are not co-owners because illegitimate children cannot generally be heirs. Will the claims which might be brought against them be considered to have lapsed with the passage of time? The legal position is unclear. Also of concern are the survivors of informal unions, who have continued to use land of the deceased "spouse." They have no rights at law. How will they be treated?

It is difficult to estimate the extent to which these problems will arise. Much will depend on the atmosphere and expectations created by publicity for the program and the style of the adjudication process itself. There is clearly a need, however, for careful monitoring.

### 6.3 A Research Agenda

As noted earlier in this paper, there has as yet been no serious study of family land in St. Lucia. Since the tenure is to be affected by the introduction of cadastral survey and registration, it is important that a research program begin now. Such a program would have three phases: a baseline phase, a monitoring phase, and an evaluation phase.

The research agenda for the Baseline Phase would be aimed at a substantial increase in our knowledge of family land, so that, understanding its operation at status quo, it will be possible to understand the changes which will come. Elements for study in this phase would include:

- **Family decision-making.** The family is the most important rural institution in St. Lucia and, in the rural areas, perhaps the only vital one. What Clarke notes of Jamaica is equally true of St. Lucia: ". . . the

strength of the kinship group is associated with ownership of land and the customary procedure of transmission with its implicit acknowledgment of responsibility for all children" (1953:83). There has been no study of the family institution in St. Lucia, and this seems a precondition for a full understanding of family land tenure. There is a particular need for examination of economic decision-making and dispute resolution within the family.

- **Succession situations.** This is perhaps a part of the previous research task, but it deserves emphasis. Smith's work on Carriacou could serve as a model.
- **Smallholder land acquisition strategies.** Examination of institutions and how they mediate land claims should be supplemented by an examination of the individual farmer's perspective on land acquisition--how the farmer puts together a viable mixed-tenure farm. A productive approach is biographical, in terms of land use and land acquisition.
- **Attitudes of co-owners.** As noted earlier, all attitudinal surveys to date have as interviewees only resident co-owners, those present on the land when the interviewers appeared. Generalizations in the literature about non-resident co-owners' attitudes are highly speculative and study is required.
- **Family land disputes.** There is a need to determine whether this tenure is as fertile a source of disputes as is sometimes claimed. A dispute study would have to cover disputes dealt with by either the courts or informal dispute settlement mechanisms. The types of disputes found to exist generally provide valuable pointers toward "trouble-spots" in a tenure system's operation.
- **Security of tenure.** It should be possible to establish empirically how often non-resident co-owners do press claims for shares of family land; how often such claims are successful; and how much land is affected.
- **Credit impact.** A study of lending to smallholders should reveal the impact of tenure on banks' lending practices.
- **Crop takings by non-resident co-owners.** An attempt should be made to quantify the amounts of crops taken; to establish what kinds of crops are taken; by which relatives they are taken; and in what circumstances they are taken.

- **Land Use/Land Tenure Correlations.** It should be possible to verify whether land tenure effects land use patterns. Do farmers holding multi-parcel farms favor non-family land for investment or for certain crops which might on family land be subject to relatives' claims?

It is important that the above issues be tackled before implementation of the land registration programs begins, and that the research establish baseline data by which to judge the impact of the project. As implementation reaches those areas covered in the first phase of the study, the study could move into a Monitoring Phase. This phase would examine the demarcation and adjudication process itself. On the one hand, mechanisms must be devised to ensure that the records left by the officers implementing the process give the fullest possible picture of what has taken place. But there will be a continuing need for field research, focused on the following issues:

- **Creation of trusts for sale.** How many family land owners are responding to this opportunity? Who are the trustees? How is a family making the decision? What interests are decisive?
- **Partitions.** Are many partitions of family land are occurring in the course of demarcation? In what situations are co-owners asking for them, and why?
- **Share purchase.** Who are the co-owners attempting to take advantage of this opportunity? What responses are they receiving? What factors appear to influence the outcome?
- **Dispossession of unentitled occupants.** Is this concern with respect to "widows" who were not legally married, children born out of wedlock and their descendants being realized? To what extent and in what circumstances?
- **Identification of unanticipated consequences.** The project will produce some side-effects which planners did not expect, and these should be identified and monitored.

In the third and final research phase, the Evaluation Phase, the research would attempt to assess the impact of the project, looking primarily to those areas surveyed and registered early in the life of the project. Issues addressed in this phase would be the same as those addressed in the baseline and monitoring phases, for the purpose of measurement of the impact of the project. In each case, the objective would be to establish whether the levels or character of certain types of behavior (e.g., land transactions, lending

against land, planting of permanent tree crops, treatment of children born out of wedlock with respect to land) have been affected by the project. Such early indications would be valuable, both in terms of any remedial action necessary and because causal relationships land registration and other phenomena will become more difficult to establish as time passes and other variables intervene.

Adequate monitoring and evaluation of this project would appear important from A.I.D.'s viewpoint because this is the first land registration program on this model which A.I.D. has funded. The experimental title individualization components deserve particular attention. There are real problems with family land, in spite of the valuable social security function it has served. It remains to be seen how effectively the measures incorporated in the project address these problems, and who will be benefited and who disadvantaged in the process.

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### Appendix: The Civil Law of Immovable Property on St. Lucia

St. Lucia is a Civil Law jurisdiction, the relevant law being contained in the St. Lucia Civil Code of 1897, modeled on the Québec Civil Code of 1866 which was in turn modeled on the Napoleonic Code of 1804. The St. Lucia Code was introduced by the British administration some sixty-five years after the long competition between the British and French for the island had been resolved by the cession of St. Lucia to Britain under the Treaty of Paris in 1814. That cession contained the express condition that the French Civil Law should continue to be the law of the island.

The Civil Code has been amended in many respects since its enactment, and there were extensive revisions in 1956, when a revised version of the Code was promulgated. These amendments have almost invariably involved the introduction of concepts from the English law in which, ironically, the legal profession of the island is trained. The laws of real property and succession, which are of primary relevance in family land matters, have however been least affected by this process and retain their distinctly Civil Law character.

The Civil Law of immovable property is relatively straightforward. Land, buildings, and growing trees, crops, and fruit are categorized as immovable property, a category which corresponds very closely to the English legal category of real property. The Civil Law is free of the complexities introduced into English and American land law by the doctrines of tenure and estate, and instead adopts the simple concept of allodial ownership. Co-ownership is conceived as ownership in common at English law (there is no joint ownership at Civil Law). Each co-owner holds a fractional interest in the entire parcel of land, without that interest being identified with any particular fractional physical part of the parcel. The concept of lease is much the same, and the Civil Law's hypothec differs only in minor respects from the Common Law mortgage.

In the following sections, an attempt is made to summarize the rules governing succession to immovable property, which may occur by will or through the law of intestacy, which law determines who shall inherit and in what proportions where the deceased has left no will.

### 1. The Law of Wills

A brief comment will suffice here, since it is generally when there is no will that family land develops. Any owner of immovable property may make a will and although more sophisticated modes are available (the notarial will and the "English will"), a simple holographic will suffice. It must be written and signed by the testator but requires neither notaries nor witnesses, nor is it required to follow any particular form (Art. 788). The testator enjoys complete freedom of testation, there being no prohibition of his disinheriting his spouse or any or all of his children. Nothing would prohibit a testator from leaving his land to more than one of his legatees in common ownership but this is not generally done (resort to a will often has as its object the avoidance of the ownership in common by heirs which arises in cases of intestacy). In spite of this relatively accommodating legal regime, few wills are made by the proprietors of smallholdings, most of whom are illiterate. (Wills are more commonly employed by owners of large estates.) Most smallholdings thus pass to heirs in the manner prescribed by the law of intestacy in the absence of a will.

### 2. The Law of Intestate Succession

The rules of intestate succession pass title in the property to lawful heirs in the order established by law (Art. 549). Where there is a surviving spouse and children, the spouse takes one-third and the remaining two-thirds of the estate is divided equally among the children (Art. 567B). If there is no surviving spouse, the children take equal shares in the entire estate (Art. 568). Children and other descendants succeed without distinction of sex or primogeniture, or whether they are the issue of the same or different marriages (Art. 568). Where one of the children of the deceased has died before him, that child's descents, if any, will take his share (Art. 563).

If, however, there are no children or other descendants, then a surviving spouse, if any, will take a one-third share, and the remaining two-thirds are apportioned between ascendants (typically the mother and/or father of the deceased) and collaterals (relatives who are not descendants or ascendants of the deceased, but with whom the deceased had a common ascendant, e.g., uncles, aunts, cousins) (Art. 567B). If there are neither a surviving spouse nor

descendants, the estate is shared between ascendants and collaterals (Art. 567B). The priorities set out by the Code to determine the apportionment of the estate among various categories of ascendants and collaterals are complex, with the proportions varying depending upon the existence or non-existence of certain categories. It is, however, unusual that a property owner dies without either a surviving spouse or descendants. Finally, illegitimate children do not inherit any share whatever unless there is no surviving spouse and no relatives to the 12th degree, and even then they only inherit if the deceased was a woman (Art. 578 and 579).

When a landowner dies intestate, there are certain consequences and procedures to be followed. These are set out in Art. 586. The land vests in the Chief Justice and Puisne Judges severally until an administrator for the estate is appointed. Someone, usually one or several of the heirs, applies to the Court for the grant of letters of administration (i.e., appointment as administrator). Where the deceased died wholly intestate (i.e., with none of his property affected by a will) the administration must be granted to an heir if an heir applies. Once an administrator or administrators are appointed the estate vests in them for the purpose of division according to law among the heirs. In one circumstance an administrator need not be appointed: if all the heirs accept the intestate succession unconditionally the Court may decline to appoint an administrator and may simply make a declaration in writing of the persons upon whom the succession devolved. This will commonly happen when there is only a single heir but is otherwise unusual.

The administrator will proceed to settle any debts of the deceased out of the estate (Art. 594). He may sell immovable property of the deceased to do so (Art. 593). The administrator then conveys the remaining immovable property to the heirs according to their appropriate shares. He may convey it to them undivided as co-owners according to their shares. Alternatively--but only if all the heirs agree--he may partition it according to their shares and deed over each heir's share to him (Art. 596). The administrator is required to "perform all his obligations with the least possible delay" and must convey the property to the heirs not later than one year after the date of the letters of administration, though the Court may extend this period for good cause (Art. 599). He is liable to the heirs for theft, waste, or neglect in his administration of the succession (Art. 603).

### 3. The Law of Partition

We have already noted that an administrator may only partition with the consent of all the heirs. But no such consent is necessary once the title has vested in the co-owners. The Code declares: "No one can be compelled to remain in undivided ownership. A partition may always be demanded notwithstanding any prohibition or agreement to the contrary" (Art. 632).

If a co-owner desires partition he would normally first attempt to obtain the agreement of his co-owners and if this is forthcoming they can effect the partition themselves by deed on the mere authorization of a Judge. This can be done even if some co-owners are absent or incompetent. If however even one of the other co-owners present and of age does not agree the owner seeking partition must obtain it through an action for partition (Art. 636). This can be an extended process. A valuation of the land must be made by experts who are chosen by the parties interested or who, upon the request of such parties, are appointed by the Court. Their report must declare the grounds of their valuation, whether the land can be conveniently divided and in what manner, and must determine in case of division, the portions which may be made of it and the value of each portion (Art. 638). If the parcel has not previously been surveyed, this will require a boundary survey at considerable cost. A recent amendment of the Town and Country Planning Act requires a topographic survey of the whole area in common ownership (Meliczek, p. 18). And the Land Development (Interim Control) Act (no. 8 of 1971) makes the Development Control Authority's consent necessary for development of land (s.7), defining "development" to include subdivision and "land" to include land under any tenure and in particular, undivided shares in land (s.2). Fortunately, both acts are administered by the Development Control Authority.

If the land is to be divided, the shares are to be worked out by one of the co-owners if they can agree among themselves which of them should do this; if not, the shares will be set by an expert appointed by the Court and are afterwards drawn by lot (Art. 647). But the Court is instructed by the Code that the separation of land into small parcels is to be avoided as much as possible (Art. 645). If the Court concludes that the land cannot be conveniently divided, it may order its sale by licitation (a judicial sale to the highest bidder) over objections by co-owners (Art. 640 and 653A). In that case the co-owners before a notary proceed to the division of the proceeds of

the sale according to their shares in the land (Art. 641). Alternatively, if the other co-owners are willing to buy out the share of the co-owner or co-owners seeking partition, the Court may if it thinks fit order a valuation of that share and its sale to other co-owners (Art. 653C). In this case those other co-owners remain co-owners in the land in enhanced shares.

Partitions are however sought relatively infrequently by co-owners. This is in part because the land may be so small that it would not be partitioned by the Court and the co-owners do not want it sold. Even if a co-owner does want it sold, he is often not willing to disrupt his relations with his co-owner relatives by forcing a partition or sale upon them.

#### 4. The Law of Prescription

The Civil Code recognizes acquisitive prescription, under which a party in possession of land for a prolonged period can thereby acquire ownership (Art. 2047). The requisite period of possession is thirty years for land (Art. 2103A) and the possession must be continuous and uninterrupted, peaceable, public, unequivocal, and as proprietor (Art. 2057). This legal mechanism is generally most useful in clearing titles and bringing legal status into line with objective facts but it does not usually permit a co-owner in possession to prescribe against the other co-owners. Legal practitioners have indicated that the courts consider a co-heir does not take possession "as a proprietor" as required by Art. 2057 but on behalf of his co-heirs. And the Code provides that if the possessor begins to possess for another, he is always presumed to continue to do so if there is no proof to the contrary (Art. 2059). The Code does not specify what would constitute such proof but local lawyers indicated that the courts would, for instance, accept proof that a co-owner in possession had for thirty years consistently barred the other co-owners from the land and refused to honor the customs which have developed to govern the relations between co-owners in possession and other co-owners. This is not a common situation and so the law of prescription does not provide in most cases an escape from the "precarious and ill-defined state of indivision."

#### 5. Marital Community Property

It should be noted that there is a situation other than succession in which co-ownership can arise. The Civil Law regime of marital property is that of community property, a species of co-ownership. Land purchased by a husband or wife during their marriage is presumed to be co-owned. Land which

is received by gift or inheritance by one of the spouses during marriage is, however, individual property of the spouse who receives it unless the contrary is clearly specified. There is little if any farmland in the smallholder sector held as community property.