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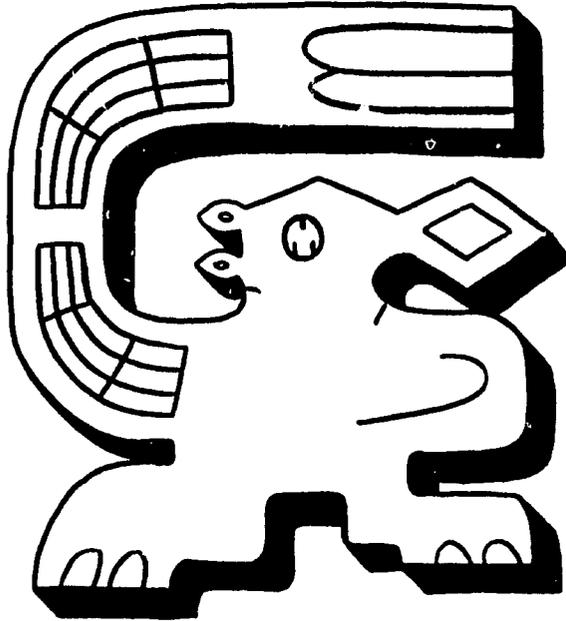
9. ABSTRACT

This essay explores the processes of institutional innovation relevant to problems of economic development in less developed countries, particularly the development of agricultural economies through market arrangements in an economy which honors the Anglo-American values of freedom, equality, and related social purposes. It traces the evolution of market relationships in England since the Norman Conquest, and comments on tenure and credit relations in Nigeria. The author emphasizes that the Anglo-American path toward individualism over the centuries is not a model for social and economic development in tropical African countries, and that the modern specialization of scholars has left economists ill equipped to understand a system of economy as a human organization. Consequently, modern economists leave the larger tasks of institutional innovations to revolutionaries, or to the common sense of natural leaders strong enough to rise to positions of power and influence.

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The Institutional Basis of an Agricultural Market Economy

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The Institutional Basis of an Agricultural Market Economy

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The central concern of this essay is to explore the means and the meaning of the achievement of a market orientation in an agricultural economy undergoing development. Our purpose is to shed some light upon the processes of institutional innovation which have relevance for the problems of national economic development in what are now called "developing" countries. In one aspect of this endeavor, we review the processes of institutional innovation in the Anglo-American experience. This is done not because we consider the achievements of this tradition to provide a model which might be followed literally in the developing world, but, rather, because such an inquiry may help focus attention on the basic issues or requirements which must be met if investments for development, resource allocation, and consumer choices are to be achieved through market arrangements in an economy which also honors freedom, equality, and related social purposes. Furthermore, the only alternative to seeking insights out of experience regarding desirable courses of action is to rely upon the absolutes of ideology, dogma, or revelation.

The emphasis centers upon the development of agricultural economies. Although, admittedly, this aspect of development long has been of major concern as a substantive field, the more fundamental reasons for this emphasis are the recognition that the less developed countries

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are predominantly agricultural and that agricultural development increasingly is recognized as being a fundamental but most intractable aspect of development.

Western-trained economists are market-minded to a remarkable degree. The basic theoretical conception in what we now call microeconomic theory provides criteria for the optimum allocation of resources among and between firms and households which would be achieved by an all-inclusive system of competitive markets. Similarly, in macro theory, the money markets, supplemented by the operations of fiscal policy, are conceptualized as the instruments for stabilizing the flows of monetized purchasing power. This market-mindedness sets Western-trained economists apart somewhat from the economists of the socialist countries, but even this differentiation of viewpoints reflects fundamental differences in the institutional means for achieving exchange.

When thought moves from microeconomic theoretical concepts to agricultural development policy, as is done with high competence by Yujiro Hayami and Vernon Ruttan,¹ the prescriptions for policy take the form of accepting competitive price theory as the basic rationale for development policy from which are derived the conditions which need to be met by institutional innovations if markets are to function effectively. Similarly, when note is taken of the great faith which is currently placed in agricultural development by increasing man's control over physical nature—the so-called Green Revolution—to produce the “surplus” food necessary for survival of rapidly growing populations, an enhancement of market functions usually is accepted implicitly. Granting the proclivity which production-minded technicians have for thinking in physical terms, the market problem in this approach to agricultural development virtually is resolved into stating the conditions which need to be met if “package programs” for modern “inputs” are to be feasible in terms of costs and returns.

To be able to specify with some precision the conditions which need to be met by institutional innovation if agricultural development is to be achieved through major reliance upon market performance is of great significance—there is no doubt about this. In this comment, however, we attempt to go one step further, to consider *how* institutional innovations are achieved which would meet the conditions essential for agricultural development through a market orientation. This requires above all else that account be taken of the elementary fact that economic institutions function as systems. Thus, institutional innovation must meet two different sets of criteria. First, institutional arrangements function to stimulate and guide economic perfor-

mance—of investment, production, consumption, and so forth. Second, institutions also must form a comprehensive system; this latter is basically what is meant by order—economic, political, social, and public. These criteria require that economic development be viewed in one major aspect, from the perspective of institutional development; this, in effect, requires that the development of economic systems be seen from the primary viewpoint of the achievement of an economy as a system of human organization—as systems of power, authority, and stabilized procedures. Such a viewpoint, if accepted, places in a different perspective, almost a mirror perspective, a very great deal of what usually concerns economists. In most general terms, such a shift in perspective leads to a viewing of organized human associations as the most fundamental form of interaction in which physical things are caught up as uses. The contrary view, and seemingly the one generally accepted by agricultural scientists, is to treat human organization as something superficial, as an epiphenomenon on a physical basis to use the philosophical concept.²

The Anglo-American Tradition

We now turn to a brief historical analysis of the evolution of economic institutions in the Anglo-American tradition with the purpose of understanding how innovations in institutions were achieved and in the hope that we thereby may arrive at some suggestions of value for the guidance of the processes of institutional innovation in the agricultural economies of developing countries. At the very least, this line of inquiry should suggest something of the matrix of the overall system within which institutional innovations are achieved, for the basic questions concern the achievement of order. The central subsidiary questions concern the kind of order—the way in which the achieved order stimulates performance. It is in the questions regarding the kind of order that ideologies operate most forcefully. This in turn raises the basic questions of whose will is to be honored as effective and on what. Are only the wills of officials and bureaucrats to be honored, or are the plain people to be considered as having wills of their own?

In the Anglo-American tradition, performance has been stimulated, guided, or induced through the objectification of freedom and opportunity; this is the basic context of market performance in the Anglo-American type of agricultural economies. Objectification was achieved by the articulation of working rules which specified the limits within which performance—of both public officials and private persons—is channelled. Such rules specify what persons may or may not, must

or must not do.³ In operation, the rules are conditioned by considerations of reasonableness as these are applied to the resolution of conflicts. In sum, an economic order which stimulates and supports development through markets is achieved by the articulation and enforcement of rules which specify the zones of discretion by defining the limits to arbitrary action by all participants in a system. Such arrangements create an economic order which provides at least minimal security of expectations to the participants.

The beginnings of the achievement of a modernizing economic order in the Anglo-American tradition, which economists now refer to as a market economy, are to be found, we suggest, in the historical processes by which order was first achieved and then modified to permit a wider scope for self-willed deliberate action by strategic classes of persons. Inasmuch as the economy of the British Isles was initially, as everywhere else, a land-based subsistence economy, the transformation of the system of land tenure was both the beginning of and the foundation for the more comprehensive systematic institutional innovation which followed over successive centuries.

Prior to the Norman Conquest of England in 1066, which generally is accepted as the great decisive event in the processes of modernization, the agricultural economy of England was very much like that of tropical Africa several centuries later. The social organization was inclusive—without differentiation of economic, political, or religious elements one from the other. All important questions of peace or war were decided by a council of elders.⁴ The Anglo-Saxon system of organization was deeply personal; feudalization of the system of landholding already was underway; society was organized on the basis of small geographical units (counties or shires). Land law was a matter of local custom, with land passing by inheritance but not by sale.⁵

William of Normandy conquered the country with relative ease and immediately set about building a dependable system of administration in the midst of a hostile people. The great Saxon lords were replaced by Normans and other persons faithful to William. Within 20 years, the King called a great assembly at Salisbury of all the landowners of England, and from all, Saxons and non-Saxons alike, he exacted an oath of allegiance which took precedence over all other obligations.⁶ This in effect established the fundamental principle that all land was held of the King.

By this consolidation of the obligations of landholding there was established the beginnings of a comprehensive public order. The central emphasis of William and his immediate successors was upon making secure the contributions of men to the army and the means of state

finance. One element of importance in this emphasis, we infer, is that this procedure enabled and even required that the customary rules of Saxon society be accepted at least provisionally and then selectively systematized, rather than replaced by a system of alien rules imported by the conquerors.

Feudal systems of land tenure, like the traditional tenure systems which they replace, are hierarchical in character, with reciprocal privileges and obligations between the persons of superior and inferior status. The participants in the system have a status of security-conformity. The security of tenants and lesser folks is achieved, somewhat at least, by their conformity to the customary rules of their community. We say "somewhat" because the security achievable by conformity to the rules, even when the rules are known, always can be jeopardized by the arbitrary exercise of power by the king, lords, or other persons with superior power. As it turned out, it was the search for customary rules of tenancy—accepted, generalized, and enforced by the court—which later established the Common Law in England.⁷ These customary rules were sought out by inquiry about customary practices through local assemblages in order to establish criteria for performance acceptable as reasonable by both tenants and their overlords. The central point, however, for consideration of development is that in a rigorously hierarchical system of tenure relationships the persons of lower rank act on their own volition in very limited ways only. Since the powers of King William and his successors were those of absolute prerogative, not circumscribed by judicial procedures, the only checks upon absolutism and authority were self-imposed, although this absolutism was no doubt qualified by the anticipated response of the subject people. In short, the unlimited legal power of the king placed his subject people in the position of unlimited liability to the exercise of his powers, whatever degree of forbearance may have been honored in the exercise of such authority.

As John R. Commons noted, William made no distinctions between persons and things; all in principle were subject to his will. "William and his lawyers . . . did not distinguish between his sovereignty and his property. He was both lord and landlord. The island was his and the people were both tenants and subjects. They held of him at his will, on their promises of good behavior and his promise of protection."⁸

But as under any system of social organization, ultimately it is performance that counts, and even in the most authoritarian systems there must be some degree of willingness in the participation. Whereas the inner logic of authoritarian rule may lead to ever tighter control,

there is always the qualifying necessity to exercise enough forbearance to induce the essential degree of participation.

The long struggle in England between government by centralized authority and the demands of at least the strategically placed classes of people for significant degrees of freedom need not be recounted here in detail. What is important is to note that the order established by this authoritarian rule became the matrix for the subsequent differentiation of function and eventually a sharing of power among different branches of government. This achievement of order by centralized authority, which rested basically upon the system of tenure arrangements (which in turn served as the source or seedbed for the development of constitutional law) evidently has a counterpart over much of the developing world today.

Scores of countries in Africa, the Middle East, and elsewhere are in the early stages of nation building. Fundamental to this attainment is the requirement that a stable national order be achieved as a condition of subsequent developments. One aspect of such an accomplishment is the amalgamation or incorporation of lesser principalities into a national sovereignty. Otto von Bismark converted Germany in the mid-nineteenth century from an array of principalities into a nation state. This occurred in Italy at an even later date. In a number of countries in the Middle East, the powers of the great shiekhdoms have been liquidated in this century as the central governments exercised authority more widely. In Africa, in country after country, military regimes have taken power and are now engaged in the struggle to transform collections of tribes into integrated states. In sum, the achievement of a national order is a precondition for any program of systematic institutional innovation, for a whole somehow must be created as a prerequisite for the establishment of functioning parts.

Recognition of the necessity and the political productivity of order does not, of course, assure that any and every kind of order will be equally productive. Again, the English experience is suggestive, for the formerly independent Saxons and Danes in England were never fully content with the centralized feudal order which was established by King William and his successors. The Crown ruled by royal prerogative, which from the twelfth to the sixteenth century approached absolute prerogative. The first great attempt to reduce this centralization of power came with Magna Charta, in 1215, where the nobles gained some concessions, but they still lacked any means of forcing the king to honor the privileges granted to them.

This task of circumscribing and limiting the power of the Crown was not completed until the Act of Settlement of 1700. As Commons

has interpreted this achievement:

The Act of Settlement . . . retained the King but separated him into two personalities, one a sovereign, later known as the "Crown," the other a private citizen, somewhat privileged indeed, but with rights and liberties like other citizens over his own person and his private property. . . . Thus, property was finally separated from sovereignty; not only for the King but also for all citizens. The way was opened for each citizen to become a member of two concerns—the political concern exercising sovereignty and the business concern operating property, each according to its own rules. . . . The essential features of this arrangement . . . was a compromise set of working rules.⁹

This compromise set of working rules reduced the exercise of power by the British Crown from rule by royal prerogative to government by constitutional rules. This reduction was achieved by limiting the field in which arbitrary discretion could be exercised by the Crown. No longer could the Crown demand tribute and services as needed or desired. Instead of exaction at will from the king's tenants, payments to the government were regularized as taxes levied by the parliament. In Commons's dramatic phrases, this making of the rent charges into definite taxes in terms of money by limiting the liability of the tenants created "an indefinite residuum," which marks the real ownership of land because "it marks the orbit where the will is free."¹⁰

State Power and Land Use

This reduction of rule by unlimited prerogative to constitutional government occurred originally in terms of land tenure relations. Thus, the fundamental character of the transformation may be made more evident by a brief schematic comment on the resulting interrelations of land rent and land taxes, shown in Figure 1.

We judge these sets of interrelations, outlined here,¹¹ to be integrated by rigorous implication and to have intrinsic relevance to any economy in the sense that they depict necessary, and therefore theoretical, interrelationships between the exercise of authority, the achievement of order, and an interdependence realizable only through social organization.

As the diagrams may suggest, limited sovereignty, representative government, the independent judiciary, citizenship, and private property in land, all evolved together in the British experience. Neither freedoms for the citizen nor private property rights in land can be assured dependably except by restrictions on the arbitrary exercise of power by the officials of the state, so that there is an "indefinite

Government by unlimited prerogative	Constitutional government: Government by limited sovereignty through restrictions on arbitrary exercise of power by the Crown
Controls over land distribution, use and occupancy by the Crown	Rights of taxation and police : Means of protecting the powers retained in land by : public interest in land: the sovereign government : Taxation, police power : regulations, and eminent : domain
	The "indefinite residuum," : Taxes on land the "orbit where the will : is free," with privileges : of land use and : occupancy accruing to the : owners of land; the ob- : jectification of opportu- : nities to use land : -----
	Private ownership of land: : Rent: as residual value— Security of expectations : beyond taxes—of to exploit the opportunity : freedom to use land value of land use :

Figure 1

residuum," an "orbit where the will is free," in which the liberty from invasions into privacy can mature into the substantive freedoms of the citizen enforceable by powers of government assured to citizens.

This set of interrelated accomplishments may be suggested by a schematic presentation, shown in Figure 2.

Property rights in land are dependably assured to owners only if there are dependable ways of constraining and limiting the arbitrary exercise of state power regarding land use and occupancy. That is, the value of the enjoyment of the indefinite residuum so created becomes formalized as opportunities to use and occupy land, which opportunities once made objectively secure, become the basis of property in land. Furthermore, as this bit of analysis indicates, rent and taxes are reciprocally involved one with the other. Rent as payment for the use of land, in the sense that economic rent is capitalized into land values, can emerge only as the rights to levy tribute on the land are limited. More generally, the value of the opportunities to use land privately is the residuum of the claims made upon the use of the land by the authorities who control the power of the state. Expressed differently, as Commons noted, private property in land becomes possible only by the objective specification of sovereignty,

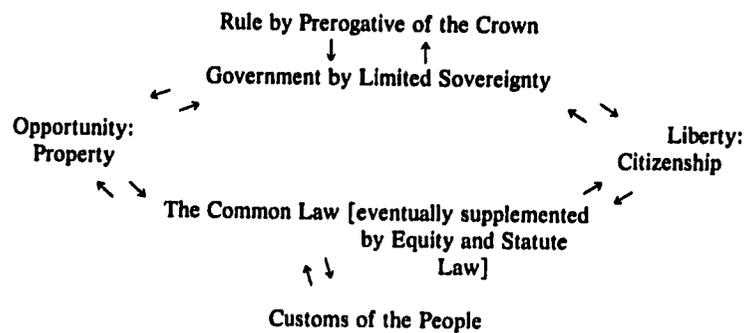


Figure 2

dividing prerogative into sovereign and property. From this differentiation came the retained sovereign and public powers over land use and occupancy, epitomized in taxes on land; the value to private persons of the exploitation of the opportunities to use land in the "orbit where the will is free" emerges as rent of land in a transactional economy honoring even a modicum of freedom of choice in the use and alienation of land. As these brief comments may have suggested, even such rudimentary distinctions as that of taxes from rent report the structure of power, authority, and nature of the working rules sanctioned by the states. This must surely be one of the generally strategic sets of interrelationships in economic and political development in our time.

One of the noteworthy legacies of the nineteenth to the twentieth century was the attempts made over much of the world, including the colonial territories, to establish some degree of representative government and the formalization of private property in land through state sanctions. In many countries, these beginnings were too feeble to stand the stresses and strains of this revolutionary twentieth century. In consequence, over much of the world, which now would be considered to be underdeveloped at the dawn of the twentieth century, these beginnings have been wiped out by either ideological or military revolutions. The first effect of such revolutions has been either to erase the distinctions between sovereignty and property in the Marxian inspired revolutions or to blur the distinction under military revolutions. Such changes follow from and are implicit in the reversion to government by prerogative. In the countries where the leaders have had a Marxian commitment, private ownership of land as well as most other forms of private economic power were eliminated. By the

reversion to rule by prerogative; the operational distinctions between public and private were eliminated, as were the distinctions between rent and taxes on land.

Although all dictatorial governments rule by prerogative, in the military dictatorships—perhaps more accurately the nonideological military dictatorship, of which there are now scores in Latin America, Africa, and Asia—the forms of private property in farm land may be kept. In such situations, the acceptance and enforcement of the kind of rules regarding land use, occupancy, and alienation which characterize private ownership of land report the degrees of forbearance by the head of government in the exercise of the power of prerogative, not the restrictions of a constitutionally defined field of sovereignty. To make the issue explicit, in any dictatorial government there is no restraint equivalent of our Fifth and Fourteenth Amendments to the Constitution, which specify that “no person shall be deprived of life, liberty or property without due process of law.” Under our due process, a person so deprived has legal recourse against the government. Stated differently, under any dictatorial government the private ownership of land and even the privacy of the citizen are privileges honored by forbearance, not judicially protected rights.

This distinction is noted not to decry the emergence of dictatorships in our time, for they may be serving a historically necessary function of creating an indispensable order, but rather to suggest that the task of institutional innovation in the rules of land tenure in such situations may be that of first protecting privileges and then devising ways to transform privileges into rights (and the correlative duties). Institutional innovations in land tenure when made operative must deal with such issues of order for the simple reason that the rules of land tenure (rules for the use, occupancy, hypothecation, and alienation of land) always function as ingredient parts of some kind of institutional whole.¹²

As this is being written (May 1974), the situation in Ethiopia could develop in directions in which these ideas could be put to the test. Here, until the present day, the Emperor has reigned by prerogative, with the exercise of power restrained by wisdom, forbearance, and the necessities of willing participation by various classes of people. The age of the Emperor foreshadows an early succession in the rule. This fact and the suffering imposed on the country by the recent prolonged drought seemingly have combined to bring popular demand for changes in the political and economic order. The Emperor evidently already has conceded much of his power to the executive. If this process of readjustment and redistribution of power were continued

with a land reform program based upon the objectification of opportunities and freedom, as was done in England prior to 1700, the private holding of land by individuals or kinship groups could become or could be made to become a means of both implementing the liberty of the citizens and energizing the productivity of farmers.

Agriculture and the Market Economy

The discussion thus far has attempted two things. First, it has sought to analyze the ways in which a hierarchical system of human relations, as embodied in systems of traditional or feudal land tenure, was modified by creating an indefinite residuum, where the will of the participants in the economy could prevail, thus establishing the bases for opportunity and freedom. Second, it has sought to suggest in a limited way how the resulting distinctions of sovereignty and property, rent and taxes, public and private, are relevant in our times to the struggles over economic and political order in the less developed areas of the world. The next step toward an understanding of the actual processes of institutional transformation basic to the involvement of agriculture in a market economy is to examine the different ways in which agriculture becomes integrated into a market economy. Three different modes of involvement need to be distinguished. The simplest and, in terms of development, the first kind of market participation is that of sale of surplus farm products. The second type is the purchase of "produced goods to be used in further production in agriculture," which becomes of major importance in an age of science and technology. The third entails the market procedures for allocating the use of land through the emergence of a land market, where land becomes a saleable commodity, alienable (usually within limits) and subject to mortgage.

The common ground existentially of these three different kinds of market relations is that they all are rural-urban interactions, for market and credit arrangements are urban-centered phenomena or creations. Second, market and credit transactions which occur in open markets involve farmers in a status of liberty-exposure. In buying and selling, borrowing and lending, farmers become bargainers exposed to the risks of decision making. This contrasts with the historical status of security-conformity implicit in feudal tenure systems, in which performance is in a context of command and obedience, or in traditional tenure systems, where security of expectations is achieved by the honoring of customs.

Thus, the involvement of agriculture in a market economy, particularly if it becomes sufficiently comprehensive to include the alienation

of land, not only pulls farmers into a new order of relations, but also requires either that the performance of farmers be adjusted to a set of exotic rules or that the rules be modified to adjust to the farmers' situations. Even a casual student of rural development in Africa today can sense the apprehension with which Africa village people consider any possibility of making land generally alienable; they seem to sense the magnitude of the insecurity implicit in a status of liberty-exposure regarding the ownership of land, where there are few, if any, promising alternative means to security of expectations regarding a livelihood.

As noted above, the most elementary type of market relationship, namely, the sale of surplus commodities from a traditional or a husbandry type of agriculture, may be nothing more than a physical exchange—of the surplus from a traditional agriculture for the surplus of a handicraft type of industry. This type of market requires a minimum of institutional innovation, for the transactions are little more than a mere exchange of goods. In such situations, common sense and some skill at bargaining may be sufficient to enable a farmer to participate in this kind of market. From time immemorial, strategically sited villages have had market days for this sort of exchange; on great occasions, these became fairs. For purposes of this comment, we need only to note that this type of exchange provided a major stimulus to the development of agriculture in Europe, coincidental with the rise of towns and cities as centers of handicraft and trade.

The second type of market relationship, that of purchasing produced goods to enhance agricultural production, also involves farmers in product markets through sale of products to acquire funds for purchase of supplies. Such market transactions of buying and selling are also almost certain to lead to credit and debt transactions. Furthermore, market transactions are basically urban oriented and involve farmers in high risks of exposure to unequal degrees of power. These risks are compounded by hazards of weather, climate, pests, and disease in a degree alien to the urban world of business and manufacturing, where physical production processes are more nearly under the control of man. The institutional basis for this kind of transaction also has a long history of development in the Anglo-American tradition.

The early markets out of which have come the subsequent laws of business were also prestate in organization. At least two major types of organization were devised in the early years of trading. From the very beginnings of transport and trade by caravan or by water, there developed an international type of market with buying and selling done according to international and even world-wide common or

customary market practices.¹³ Since the international merchants could be a major source of capital funds, rulers of the Middle Ages likely looked with favor upon having marketplaces to which the great merchant houses would be attracted. The market was, however, basically an enclave, subject to its own rules of conduct and market transactions.

The handicraft guilds developed a different kind of economy; they were organizations for the handicraft stage of production. These, also, had their own rules for conduct, market transactions, and the settlement of disputes. They too were enclaves. In Commons's terms, they were units of defensive capitalism which secured franchises in England, and these gave them some immunities in the predominantly feudal society. The guilds were self-governing associations of craftsmen which developed fairly elaborate systems of self-government, including a judiciary.

These two kinds of market organizations were developed by franchises, thus the involvement of the Crown in markets for several centuries following the Norman invasion in England was through the power to grant privileges. Such grants were the means of establishing both industry and markets in the stage of development where economic interdependence was minimal and the state was ruled by prerogative.

The granting of franchises for development is not something found only in ancient and medieval times. In this century, grants of franchise have been and are being used, extensively in mineral and timber concessions, dealerships for major import items (such as automobiles and trucks), and the establishment of processing plants, such as for soft-drink manufacture.

Coincident with the rise of an urban middle class in England—by the time of Queen Elizabeth I—protests against the exclusive privileges granted to guilds became more insistent, and the antimonopoly movement gathered momentum. In Commons's terms, the original "defensive privileges" of the guilds had become "exclusive privileges in proportion as markets and commerce advanced over militarism and agriculture and increasing numbers of people depended on buying and selling for a living where formerly they depended on command and obedience."¹⁴

It was at approximately this juncture in British development, the sixteenth and seventeenth century, that the common law was extended to embrace the customs of merchants and out of these to develop a common law of business in England in much the same manner as the creation of the common law of land tenure. The customary practices of the guilds and merchants were evaluated and selectively

given the sanction of state authority. The guilds were private associations, somewhat like trade associations today, which performed such "public" functions as regulating the quality of products, training apprentices, admitting apprentices to the ranks of master craftsman, regulating output, rationing materials among the craftsmen, and so forth. As these franchises were revoked, the government had to assume the necessary functions, the most strategic of which was the judicial function through which customary procedures were assimilated to the common law through the king's courts.¹⁵

The central point of significance, in this context, is to consider the manner in which institutional transformation occurred in the English economy as the system evolved from an aggregate of relatively independent microeconomies into an interdependent, commercialized, integrated economy. This is the essence of the process of modernization by a market orientation. Such a transformation is of major significance as evidence to the elementary fact that the systems of economy become integral parts of national political-economic systems. These transformations had at the core major refinements in the very conceptions of property which reflected or facilitated a profound depersonalization of the economy. These changes occurred as the simpler economy of agriculture and handicrafts was caught up into a monetized economy of buying and selling, borrowing and lending, and eventually the negotiability of promises and contracts.

Here we attempt to sketch out this transformation only sufficiently to suggest something of the kind of changes which were involved in making land a saleable commodity. Stated differently, we are attempting to discuss in terms of British history the kind of institutional transformation which is, or would be, involved if a traditional subsistence system of agriculture were to become market oriented with resources and products all priced in the marketplace.

The Concept of Property

The common law conception of property in England was that of the rightful holding of a physical object for one's exclusive use. Such a conception of property rights is clearly appropriate for deeply personal societies with a minimum of exchange. As Commons has remarked, "the primitive mind could not conceive of property apart from possession,"¹⁶ and, in another context, "the primitive mind could with difficulty comprehend anything but physical objects and individual persons and in this it but reflected the facts. In an age of violence, the will of powerful individuals was the government, and in an age of serfdom and villenage, physical control over persons

was scarcely distinguishable from exclusive holding of land and moveables."¹⁷ In fact, in this sort of social climate, the holding of land was more akin to our conception of holding public office than to the ownership of an object of commerce.

With the rise of cities, the increase in commerce, and the greater mobility of people, these inherited conceptions gradually were modified. Major transformations occurred in business practices, which altered the conception of property. The depersonalization of economic relations, as trade and commerce became of great importance, took the form of making debts and contracts saleable or negotiable. As one instance, shipmasters bringing cargo from overseas found that if they could sell, or discount, the due-bills for goods to a broker, the ship could put out to sea with a short turn-around time, whereas a whole year might be required to recover funds for goods if the shipmaster were to serve as his own merchant collector.

Such innovations in business and credit practices eventually required a modified conception of property. The value of property in a market economy reflects the anticipated market returns from the opportunity to use a thing. Thus, to the natural subsistence value of land in an age of relatively independent microeconomies, there was added the prospective value of the market opportunities for the sale of products. This market opportunity value of land may have had little relation to the more primitive use value of land.

The outcome, which Commons studied exhaustively, was an extension of the common law conception of property from holding a thing for personal use to the idea that value was attributable to bargaining power in the marketplace—to withholding where at least strategically placed sellers of scarce goods have some control over the flow of goods to the marketplace. In *Legal Foundations of Capitalism*, Commons traced out the basic changes in the conceptions of property accepted by the U.S. Supreme Court in a series of major precedent setting cases which were initiated in 1868, three years after the adoption of the Fourteenth Amendment to the Constitution, which prohibited any state from depriving a person of life, liberty, or property without due process of law. The question at issue in the slaughter house cases was whether the state of Louisiana had deprived butchers of valuable property by restricting their opportunities to practice their occupation by the new regulations requiring the localization of slaughtering.¹⁸

The outcome of this adaptation of concepts of property to the necessities of a modern commercialized and monetized interdependent economy was the modification of the concepts of property to embrace

(1) intangible property, which reflects the opportunity values of anticipated market behavior, and (2) incorporeal property, which reflects the value of the enforcement of debts and obligations.

It is the expansion of the concepts of property from *holding* for one's own use to *withholding* from others what they need (or wish) and do not have that is basic to intangible property. Since this latter is valued in relation to market opportunities, the value of all saleable things has this potential dimension; it is a matter of expectations regarding the behavior of other persons. This type of property is epitomized in the U.S. economy in the organized exchanges. At the core of this set of concepts there is the status of parties in market transactions of buying and selling in which the value of the liberty to engage in market transactions has a counterpart in the exposure which each party has to what the other party does. Jurists have devised the concept of willing buyer and willing seller to use as a criterion of reasonableness in settling disputes which arise from market performance.

The value of incorporeal property is, by contrast, based upon a command-obedience relationship. Debts are valuable property because the law will command performance, as in the enforcement of contracts for debt. Agricultural credit thus is based upon the procedures basic to incorporeal property. The debts are enforceable at law. Intangible property is based upon the law of opportunity; incorporeal property is based upon the law of encumbrance.¹⁹ Both formulations were achieved in our tradition by the gradual modification of concepts, largely through adjudication which resolved disputes arising within the day-to-day world of earning a living or running a business.

These changes in the meaning of the term *property* in the Anglo-American tradition were characterized by Commons as the change "from the common law meaning of physical things to the business law meaning of the price of things." The critical issue in this transformation was the discovery that the "mere promises of one person to another could be bought and sold on the money and security markets. . . . There were two circumstances which prevented the primitive common law from enforcing the assignment or negotiability of contracts": "the concept of property as tangible objects and the concept of contract as a personal relation."²⁰ A contract, in the common law, "being a personal relation between creditor and debtor, could not be sold by the creditor to a third party nor assumed on behalf of the debtor by another debtor, without the consent of the adverse party to the original contract. Being personal promises of oath and fidelity, or of reciprocal personal service of equals, the

common law lawyers could not see how other parties not originally bound to each other in good faith could become so unless they also personally pledged themselves to each other in a similar confidence." Contracts between two parties were viewed as a personal relation, and "wherever this personal relation continues, indeed, to prevail at the present day, the contract continues to be non-transferable. A promise to marry cannot be assigned by the promisee to a third party, nor negotiated upon the market. A promise to perform any special service depending on the contingencies of character or skill of the promisor cannot be transferred."²¹

Both of these forms of property, reporting depersonalized human relationships, are involved in the incorporation of credits and debts into an economy of agriculture. Where security for debt rests upon collateral for a loan, the value of the thing offered as collateral is derived from the prospective market sale value—the opportunity value. Thus, where land is saleable, alienable, in a market-oriented agriculture, the value of land reflects the anticipated opportunity value of prospective sales of products in commodity markets. It is the intangible property, this anticipated value of market access, that serves as security for loans, where debts are secured by mortgages on land. But debts are a form of incorporeal property and are made secure by the expectation that the state will enforce the duties of paying the debts, even to the point of foreclosure on the collateral. Since the incorporeal property of debts is based upon a command-obedience relationship, which has a prior claim on assets, a farmer must exercise prudence and restraint in incurring debts lest he lose everything to the creditor. It is the high risk of foreclosure for debt that makes peasant people the world over so fearful of debts. They have an endless number of examples of pauperization all around them, as in Ryotwari regions of India. It is for such reasons that agricultural credit systems, which really function as systems of debts and credits and not merely grants, are the most hazardous forms of institutional involvement in an agricultural economy undergoing modernization through the achievement of a market orientation.

Conclusions

This brief sketch of the changes in the conceptions of property in the Anglo-American tradition is intended, first, to suggest something of the nature of the involvements which occur as agriculture becomes integrated in an interdependent market-oriented economy. Although the rules for such involvements are formalized as systems of law, and references here are only to the common law of the Anglo-American

tradition, the transformation is at a deeper level, in the attitudes, perceptions, and changes in status of the participants in an economy. The functions are fundamental and universal—in an economy of free markets. Second, the brief account is a part of an attempt to understand from the perspective of a traditional society and economy what it is economists imply when they advise that such a traditional system be modernized by means of a market-oriented agriculture, including the establishment of a modern agricultural credit system. The inferences to be drawn from this sketch are not that market orientation and credit extension be avoided as means of agricultural development, but rather that we need to understand both the possibilities and the limitations of such innovations and thus formulate development programs in operational terms which take account of the critical high risk aspects of development.

The issues may be made clearer by a few comments on the situation today in tenure and credit relations in the agricultural systems of tropical Africa. Both are deeply personal. In most places, land generally is not rented, and landlord-tenant relationships have not yet developed. In Nigeria, tribute is paid out of personal recognition of the holding of land by another person; it is not basically a rent. Credit extension is in many ways in the bailor-bailee, rather than a creditor-debtor, stage. That is, a physical thing is loaned with the identical object to be returned.

The tenure systems of this vast area have the common general characteristics of a community-centered type of landholding where the opportunities to use land are allocated among the members of the land-owning group by authority of the corporate group. Individuals or nuclear families acquire usufructory tenure rights in particular tracts of land which are put to use and kept in use. These usufructory rights are inheritable but not saleable. This set of arrangements assures to persons born into the group that, within the limits of the corporate patrimony, no member of the group shall be deprived of the security of a subsistence opportunity to use the land. This is a system devised for a secure group survival, not economic progress. Although there is sufficient inequality in per capita holdings of land within and between groups to permit individual ventures, there are no general established procedures by which land can be transformed from one holder to another to approximate what economists refer to as mobility of resources, nor does the system provide security of expectations to persons making land-improving investments. In fact, such improvements merely may activate other members of the group to claim a share of the improved land under birthright privileges.

Should agricultural land in tropical Africa be made as freely alienable as is characteristic of Europe or the United States, to speak hypothetically, a shift in the status of persons with equitable interests in land from a customary status of security-conformity to a market status of liberty-exposure readily could lead to the emergence of a much larger class of landless people. Such a change in status is not merely a matter of changing the rules; where development is achieved by substantial degrees of economic freedom, there seems to be an inherent or even an endemic tendency toward a cumulative inequality. One of the great challenges to development policy, therefore, is to design procedures which enable a group to reorganize their agriculture to approximate the efficiency potential of market-oriented agriculture without thrusting the people into an unendurable degree of individualized liberty-exposure.

One clue to strategy in such situations is to explore the potentials of market orientation, which stop short of making land alienable and subject to mortgage. Another is to not take the pathway toward individualism, such as has been our history—at least not in the proximate future—but rather to explore the possibilities of building upon the sense of community or group cohesion as the mode of participation in modernized farm firms. This is indeed what is now happening in Africa.

But the crucial task in institutional innovation in agricultural development is somehow to modify the sets of institutions as comprehensive systems. This is no small challenge, for the task of analyzing systems of economy, as systems of human activity, or systems of institutions, has fallen between the stools in our modern specialization of disciplines. Economists are rigorously trained to study the operations of the system, the conversion of resources into desired commodities in an efficient manner. In this approach to economic analysis, the system of economy as a human organization is taken as a given “framework.” Lawyers are trained to settle disputes by negotiation and compromise which enable their clients to make the most of their opportunities. Meanwhile, we leave the larger tasks of institutional innovations to the revolutionaries, or to the common sense of natural leaders strong enough to rise to positions of power and influence.

Notes

1. Yujiro Hayami and Vernon W. Ruttan, *Agricultural Development* (Baltimore: Johns Hopkins Press, 1971).
2. Since considerable attention is given in this essay to systematic institutional

innovations in land tenure, particularly those basic to land markets, the implicit conception of land tenure relationships may differ substantially from commonly held views. In the United States, for example, it is a general practice for agricultural economists, positing the "Universe of Commodities" as the substantive focus of economic analysis, to accept the social or institutional "framework" of the economy as "given" or at least as noneconomic. (See Kenneth Boulding, *The Skills of Economists* [Cleveland: Howard Allen, 1958].) In conformity with this view, land tenure relations are taken to be details within the organization of farm-firms. Although such questions as whether a farmer entrepreneur is a share-tenant or an owner-cultivator may be of significance at any stage of agricultural development, they present major policy issues when viewed as elements in the achievement of more inclusive forms of human organization. In a traditional agriculture, the system of land tenure relationships is virtually synonymous with the social order. (See Manning Nash, *Primitive and Peasant Economic Systems* [San Francisco: Chandler, 1966], p. 34.) Once a tenure system is firmly established as an integral part of a comprehensive social order, it is then possible to consider tenure innovations, or any other institutional innovation, as an incremental modification of the system. But prior to, or in the absence of, a modernized system of economic institutions (a set of ordered relations of state and economy), changes in tenure arrangements, treated as mere details in farm-firms and evaluated solely in terms of "in-farm" efficiency criteria, are more likely to lead to social disorganization than stable economic progress.

3. Those ideas are drawn mostly from John R. Commons, especially his *Legal Foundations of Capitalism* (New York: Macmillan, 1924), see p. 68.
4. W. J. Shepard, "Government: History, and Theory," *Encyclopedia of the Social Sciences* (New York: Macmillan, 1937), volume 7, pp. 8-15.
5. George W. Keeton, *The Norman Conquest and the Common Law* (New York: Barnes and Noble, 1966).
6. *Ibid.*, p. 42.
7. "The policies of Henry II," who reigned from 1133 to 1189, are credited by Keeton with setting in motion "a process which was to culminate in the Common Law as we know it and which even in Henry's reign came clearly to reflect principles of equality before the law and respect for established rights and, above all, of impartial justice, of which the King himself was the fount and that were to remain its most striking characteristic in later centuries." *Norman Conquest*, pp. 46-47.
8. *Legal Foundations*, p. 101.
9. "The essential features of this arrangement, constituting a compromise set of working rules, were fourfold. First, the device of Collective Bargaining by which the collective physical power of the political concern—the sovereign or Crown—could not be exercised except by way of that mutual veto on each other of King, Lords and Commons, acting separately. Second, the device of Representation or Parliamentarism by which scattered citizens need not assemble in arms in order to exercise their veto but might do so by majority vote through representatives of their own choosing. Third, the device of Delegation of Power, by which

the actual exercise of collective power in actual transactions with citizens was taken out of the hands of the King and entrusted to various agents whom he could not remove, the executives and judges. By the last device, it became possible, without citing the King to appear in person, to cite his agents and to place limits, under the name of disabilities, on their exercise of collective power. Fourth, the device of Official Responsibility by means of which executives, judges and representatives were made liable to removal from office by impeachment or periodic election or were made subject to the decrees of the same courts which decided disputes between private citizens. . . . These various devices had been worked out through experiment and then consolidated and clinched in the Act of Settlement (1700)." Commons, *Legal Foundations*, p. 104.

10. *Ibid.*, p. 221.
11. For a similar and parallel statement, see my "Agrarian Reform Policy as a Field of Research," in *Agrarian Reform and Economic Growth in Developing Countries* (Washington, D.C.: Farm Economics Division, U.S. Department of Agriculture, 1962), p. 19.
12. It is in this kind of context that the significance of Hohfeld's classification of legal relations for emerging states is to be understood. (See W. N. Hohfeld, *Fundamental Legal Conceptions as Applied in Judicial Reasoning, and Other Legal Essays*, W. W. Cook, ed. [New Haven: Yale University Press, 1932].) Commons incorporated the Hohfeldian formulation into his analysis of transactions (see *Legal Foundations*, p. 91, n. 1). The only major attempt known to us to use the Hohfeldian analysis in the study of specification of the nature of the transformation of legal relationships (as from privileges to right) in the study of tribal law and custom is that of the distinguished anthropologist, E. Adamson Hoebel in *The Law of Primitive Man* (Cambridge, Mass.: Harvard University Press, 1964).
13. See, for example, Keeton, *Norman Conquest*, chap. 17, "The Merchants and the Law."
14. *Legal Foundations*, p. 226.
15. Commons has a superb analysis of this transformation in *Legal Foundations*, chap. 7, "The Price Bargain, Capitalism and Exchange Value."
16. *Ibid.*, p. 247.
17. *Ibid.*, p. 215.
18. *Ibid.*, chap. 2, "Property, Liberty and Value."
19. See Commons, *Legal Foundations*, pp. 235-82.
20. *Ibid.*, pp. 246-47.
21. *Ibid.*, pp. 250-51.