

## CHAPTER 13

# MULTIPLE OWNERSHIP, FRAGMENTATION, AND CONSOLIDATION

### 1 Prefatory

1.1 Much suffering would be avoided if only we could remove the causes of the many debilitating diseases which afflict the human race, but despite new technologies and all the discoveries of science it has not yet always proved possible to do so. We must therefore continue to use resources, which might otherwise be put to more productive purposes, on curing those who contract these diseases, and we must try by prophylactic measures to prevent their recurrence, or at least to reduce the chances of it. The two conditions known as 'fragmentation' and 'multiple ownership', when they reach severe proportions, can fairly be described as diseases of land tenure. In this chapter we shall discuss these two conditions under three headings: 'Causes', 'Cures', and 'Prevention'.

1.2 Both fragmentation and multiple ownership can be the result of the division of property on the death of its owner (though, of course, this is by no means the only cause). If the land of a deceased owner is sold, distribution among his heirs can be made in the form of cash payments. If the land is not sold, its distribution can be effected in two ways: the first is to 'partition' the land, i.e. divide it physically between the heirs in parcels commensurate with their shares; the second is to leave the land undivided, and to allocate to each heir an 'undivided' share in the ownership of it. Before discussing the causes, cures, and prevention of fragmentation and multiple ownership, we must examine further these two methods of distribution and explain the meaning of 'subdivision', 'fragmentation', and 'multiple ownership'.

### 2 Definition of subdivision, fragmentation, and multiple ownership

2.1 *Subdivision* means the division of something that has already been divided and, since any existing parcel of land must necessarily be regarded as a 'division', any further division of it can be termed a subdivision. Thus the process of partitioning land among heirs or co-owners necessitates 'sub-division'. Subdivision may, of course, result in a parcel of any size and the word in no way implies a necessarily adverse effect on land usage. Indeed, the purpose of subdivision is usually to secure more intensive development; for example, farming land close to a growing town may be better developed if subdivided into market gardens or residential plots.

2.2 *A fragment* is "a piece broken off; a (comparatively) small portion of anything; a detached, isolated or incomplete part", and fragmentation is "a

breaking or separation into fragments".<sup>1</sup> An object is fragmented when it is broken into small pieces, and a 'fragment' is one of these pieces. In the context of land, therefore, a fragment can arise only as a result of subdivision. Two kinds of fragmentation can be envisaged: "The division of rural property into undersized units unfit for rational exploitation, and the excessive dispersion of the parcels forming parts of one farm."<sup>2</sup> In the first case (which, of course, can also occur in urban property) each of the undersized units is the property of a separate owner, whereas in the second case one person owns a number of separate undersized parcels.

2.3 Fragmentation, by this definition, must always be a harmful process; it impairs or prevents the use of the object fragmented.<sup>3</sup> Therefore the excessive dispersion of the units of use of a farm which constitutes fragmentation must be distinguished from that dispersion which does not adversely affect production but is justified, or even necessitated, by agricultural convenience or efficiency. In mountainous country, for example, where sharp variations in soils occur, a farmer may require separate plots on the hills and in the valleys in order to grow different crops. Some degree of dispersion may also provide useful insurance against damage from natural hazards such as hailstorms or irregularities in rainfall.

2.4 We are not here concerned with such rational dispersion, but only with excessive dispersion of the sort that adversely affects farming operations. Dispersion of the latter kind often involves waste of time and effort in travelling from plot to plot; results in unnecessary roads and paths or suffers from the lack of them; creates difficulties in regard to fencing and water supplies which may inhibit the efficient keeping of cattle and so deprive the farmer of the benefits of mixed farming; or makes irrigation and the use of mechanical equipment difficult, if not impossible.

2.5 In this chapter we shall use the word 'fragmentation' to cover both kinds of fragmentation. Where it is necessary to distinguish between the two kinds, we

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<sup>1</sup> SOED

<sup>2</sup> Moral-Lopez and Jacoby *Land Consolidation Legislation* 4

<sup>3</sup> We must point out, however, that Sir Bernard Binns (Agricultural Officer of the Agriculture Division of FAO) began the FAO study *The Consolidation of Fragmented Agricultural Holdings* (FAO Agricultural Studies No. 11 Washington DC 1950) by defining fragmentation as "a stage in the evolution of the agricultural holding in which a single farm consists of a number of discrete parcels, often scattered over a wide area". This definition was adopted in the Report of the Conference on African Land Tenure held at Arusha in 1956 (at 12). The Report (still following Binns) then went on to say that there may be sound reasons for fragmentation, thus distorting the ordinary meaning of the word, for nobody would ever associate 'fragmentation' (or the verb 'to fragmentize') with any deliberate or beneficial division of land, or of anything else. 'Advantageous fragmentation' is a contradiction in terms unless fragmentation is given a special meaning out of line with ordinary use; there is no need for this since the neutral word 'dispersion' is available to signify any sort of 'scattering of discrete parcels' beneficial or otherwise. We should perhaps add that a fragment is no less a fragment merely because of a change of ownership by which, instead of being part of a farm, it becomes a separate independent holding though still incapable of economic exploitation. Indeed, the most intractable form of fragmentation is that which occurs when the 'pieces broken off' (i.e. fragments) are separately owned, for then only alternative employment off the land or unused land elsewhere can effect a remedy for those whose holding cannot be increased in size except at the expense of land owned by others in the same area.

shall use the term excessive dispersion to mean a degree of dispersion in which the natural advantages such as the spreading of risks or access to a variety of soil types are outweighed by such disadvantages as lost time or inconvenient field sizes. We shall use the term excessive subdivision to describe the other kind of fragmentation in which, as a result of continuous subdivision, many holdings are of a size which is considered to be too small when measured by standards of productivity or welfare.<sup>1</sup> (These two terms, however, are not mutually exclusive since it must have been 'excessive subdivision' which has created the fragments of an 'excessively dispersed' farm.)

2.6 Multiple ownership is the result of the second method of distributing the land of a deceased proprietor among his heirs, whereby the land itself is left undivided but each heir is given a share in its ownership. The land is then owned by several persons in 'undivided shares'. (In this case it is not the land itself but the ownership of it which is fragmented.) Of course, if the land in question continues to be operated as a single unit by a representative or agent of the co-owners, multiple ownership need not have any harmful effect on efficiency of operation or on land use. It will, however, always tend to hinder, and may even prevent, dealing in the land, since frequently there will be problems in concluding a binding agreement with numerous co-owners, some of whom may prove difficult to trace. Indeed, in the long run the restriction on dealing imposed by multiple ownership will inevitably have an adverse effect on the use of the land. It may, for example, make it impossible to conclude a mortgage and so deprive the operator of the funds necessary for essential improvements; or where a change of user is desirable for optimum development, it may prevent subdivision into plots suitable for more intensive use.

2.7 Multiple ownership of land is found in most countries of the world. English law distinguishes between two sorts of multiple ownership: ownership in common<sup>2</sup> where land is held in undivided shares which may vary in size, and joint ownership, where land is jointly owned by several persons without any indication of the share of each. The principal feature of joint ownership is that on the death of one of the joint owners his rights accrue to the others who survive him,<sup>3</sup> whereas the share of an owner in common goes to his heirs.

2.8 Multiple ownership is most common in countries where there is polygamy. For example, under Islamic law (as administered in some countries) on the death of a landowner each of his wives and children receives a fixed and certain share of

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<sup>1</sup> This distinction is based on the definition of technical terms contained in *Progress in Land Reform - Fourth Report* (1966) 165, substituting the word 'dispersion' for the word 'fragmentation'.

<sup>2</sup> To avoid confusion we use here the word 'ownership' rather than the terminology of English law which refers to 'tenancy in common' and 'joint tenancy'. Tenancy in common was such an impediment to land dealing that it was abolished as a legal estate in England by the 1922-25 legislation, but still exists as an equitable interest. A man and wife, for example, frequently own the family home as joint tenants in trust for themselves as tenants in common – to the infinite bewilderment of those unfamiliar with English land law.

<sup>3</sup> This is called 'the right of survivorship', or the *jus accrescendi*. Where two or more persons are registered as joint owners, the words no survivorship entered against their names indicate that they are trustees (a suggestion originally made in para LXVI of the *Registration of Title Commission Report* (1857) and adopted in some jurisdictions, though not in England).

every parcel of land he owned. In the course of a few generations the shares are divided many times and come to be expressed in fantastic fraction!! with huge denominators running to ten figures or more. However a similar situation occurs also in monogamous societies if the law prescribes a specific share for each relative of a deceased landowner, as, for example, where succession is governed by the Napoleonic Code. If these shares are automatically and faithfully recorded in a register of title, it will tend to perpetuate this excessive multiplicity of ownership because, but for this record, the minute interest of some of the co-owners might be forgotten. In parts of Africa, for instance, where tenure of family land is governed by customary law, no written record is kept of the persons who are entitled to a share in it and the minimal shares of persons who do not exercise their rights tend to disappear in the second and third generation. Not that this necessarily makes dealing in land any easier; often the reverse, for a prospective buyer or mortgagee can never be certain that he has made an agreement binding on all interested parties and that the rights to minimal shares have in fact disappeared.

### **3 Causes of fragmentation and multiple ownership**

3.1 If we could succeed in wholly eliminating the causes of fragmentation and multiple ownership, there would be no need to spend effort and money on curative or preventive measures. We shall now examine these causes and discuss the reasons why in practice their total elimination has rarely proved possible.

3.2 Fragmentation and multiple ownership can, of course, occur only where land is privately owned, whether on an individual or a communal basis, and abolition of private ownership and nationalization of land would therefore effectively put an end to both conditions. But this is to kill the patient rather than to cure his disease (or, vulgarly, 'to throw the baby out with the bathwater'). Moreover, the principle of private ownership of land is so deep-rooted in men's nature that its surrender has usually proved too high a price to pay for avoiding the unpleasant consequences of fragmentation and excessive multiple ownership. Indeed, even in some communist countries in Eastern Europe, the principle of private ownership of land has been retained.

3.3 We have already mentioned that registration of title can be a contributory cause of excessive multiplicity of ownership, for it is the fact that ever-diminishing shares are recorded which restricts the negotiability of the land by keeping alive worthless shares which otherwise might be forgotten. Abolition of the register would not, however, prevent the holding of land in undivided shares; it might allow small and uneconomic shares to disappear and so mitigate the difficulties they present, but this would be at the cost of depriving landowners of the many advantages conferred by registration and, in any case, it would still by no means be certain that such shares had finally disappeared.

3.4 Undoubtedly the principal cause of fragmentation and multiple ownership is the cumulative effect over successive generations of the laws of succession where there is no rule of primogeniture, and particularly where there is plural marriage. The right of inheritance is an integral feature of private ownership, and attitudes to this right are based on long-established custom, sometimes hallowed

by religious beliefs. Any legislation which provides that an inherited share in land can be compulsorily eliminated is often so unpopular that it cannot be implemented. But in any case, even if this social attitude to inheritance could be changed such legislative measures alone would not be likely to result in total elimination of fragmentation and excessive multiplicity of ownership, for in most countries there are pressing economic factors which tend to increase the incidence of these two 'diseases'.

3.5 For instance, particularly in developing countries, growth in population is leading to competition for scarce land, and fragmentation may result from sales as well as from inheritance. Even where unused and potentially fertile land is available, as in many parts of Africa, its development may be denied by lack of water or communications or by the presence of pests such as the tsetse fly, and the technical difficulties of bringing such land into use are often beyond the present resources of governments. The problems created by this increasing competition for land are aggravated in many countries by lack of alternative employment for the surplus population in services or industry. All must live on and from the land and so must preserve a firm stake in its ownership. In the absence of national insurance schemes this stake is essential for security in sickness or old age. While the population grows, the land itself, the only present source of livelihood, is frequently over cropped and yields less each year. At the same time improvements in agricultural techniques may result in a reduction in the demand for labour and so make worse the problem of underemployment.

3.6 These economic factors are some of the most stubborn of the underlying causes of fragmentation and multiple ownership. Eradication of these causes requires economic measures which pose daunting problems: the economy must be diversified to provide alternative sources of employment; land hitherto unused must be developed; provisions for insurance in sickness and old age must be made; the rate of population increase must be reduced and the population stabilized. The solution to these problems, most of which in any case are not the direct concern of land administrators, will require time and resources. For the time being, therefore, we must continue to rely only on cures and preventive measures, and in these land administrators have a vital role to play.

#### **4 Cures for multiple ownership**

4.1 The 'disease' of multiple ownership – the fact that it hinders or prevents dealing and so impedes development – can be 'cured' in several ways: (1) by partition of the land, (2) by appointment of trustees or representatives to deal in the land, (3) by incorporation of the co-owners, or (4) by the compulsory sale of sub-economic shares.

##### **(1) PARTITION**

4.2 Partition is the process whereby each of the co-owners becomes the owner of a single defined subdivision of the land in proportion to the size of his undivided share. It is the obvious 'cure' for co-ownership, for it immediately puts

an end to it. But partition among all the co-owners is only sensible if the ratio of their number to the area of the co-owned land allows each of them to receive a suitable parcel of reasonable size and shape. If the co-owners are more in number than the parcels which, on subdivision, can be created without contravening planning or economic principles, then the shares of one or more of the co-owners must be eliminated in the manner described below; or one of the other 'cures' must be adopted.

4.3 A partition may, however, often be a practical solution in the case of family lands, particularly if it is possible to confine the partition to those members of the family who have an active share evidenced by their occupation and use of a portion of the family land at the time of partition. The Malawi Registered Land Act 1967 makes specific provision for the partition of family land,<sup>1</sup> and Local Land Boards are to be used to effect it; but this idea has not yet been actually tried in practice.

## (2) APPOINTMENT OF TRUSTEES

4.4 Where partition would result in uneconomic parcels or is not feasible for some other reason, a 'cure' can be provided by vesting the shares of the co-owners in one or more trustees with powers to deal on behalf of all the co-owners. This is the method adopted since 1925 in England through the imposition of a 'statutory trust for sale' on all land conveyed to or held by two or more persons, whether as tenants in common or joint tenants. All powers of dealing with the land then rest with the trustees who do not necessarily have to sell, but may continue to hold the land on behalf of the beneficiaries who, indeed, may be able to give directions as to what they want done.<sup>2</sup> The importance of this device, however, is that the beneficial interests of the various co-owners are kept off the title and a purchaser is concerned only with the 'legal estate' vested in the trustees for sale. Provided he pays his purchase money to the trustees for sale, he takes the land free of all rights of the beneficiaries.

4.5 A similar device appears in the Sudan Land Settlement and Registration Ordinance 1925, which in two simple sections (added in 1951) provides for the appointment and registration of statutory trustees and prescribes the effect of doing so.<sup>3</sup> Although this method would seem to have the merit of simplicity, it proved unworkable in practice owing to the refusal of the sharia court to appoint trustees, because Islamic law allows such an appointment only in the case of absence or disability. The same sort of 'cure' has been adopted in Lagos State in Nigeria, where the Registered Land Act 1965 made provision for the registration of family land in the name of not more than ten 'family representatives', thereby enabling dealings in the land to take place. These representatives are in no way relieved from their duties and responsibilities to the family, but insofar as a bona fide purchaser for value is concerned they are to be regarded as the proprietors and

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<sup>1</sup> s101

<sup>2</sup> See M & W 422

<sup>3</sup> ss99 and 100

neither he nor the indemnity fund is concerned if they do not do their duty.<sup>1</sup> Recent legislation in Kenya also provides for appointment of representatives of a 'group' which is defined as "a tribe, clan, section, family or other group of persons whose land under recognize customary law belongs communally to the persons who are for the time being the members of the group", as a prerequisite to registration of title to the land used by groups for such purposes as communal ranching of cattle.<sup>2</sup>

### (3) INCORPORATION OF CO-OWNERS

4.6 Negotiability of land held in multiple ownership can also be facilitated through incorporation of the co-owners, i.e. they become shareholders in a company which is a legal person. This is the method adopted in the Maori lands of New Zealand, where the co-owners of Maori freehold if more than three in number, may be incorporated by order of the Maori Land Court, provided that the owners of more than half of the aggregate shares in the land have consented to this arrangement<sup>3</sup>. The corporate body has, of course, the same power to deal in land as an individual Maori.

### (4) COMPULSORY SALE OF UNECONOMIC SHARES

4.7 Measures to provide for the compulsory sale of uneconomic shares are often used in conjunction with other 'cures' for multiple ownership. The Maori Affairs Act of New Zealand defined an 'uneconomic interest' as an interest the value of which does not, in the opinion of the court exceed £25 and uneconomic interests are automatically and compulsorily acquired by the Maori Trustee.

4.8 In some countries legislation limits the number of co-owners who may be registered and provides for the compulsory sale of any share that may be uneconomic. Thus the Kenya Registered Land Act 1963 provides that not more than five persons may be registered as the owners of any parcel of land.<sup>4</sup> "In cases of inheritance where there are more than five heirs the intention is that the African court should decide which five of them are to take the land and how the others are to be satisfied or compensated. In some cases the money, livestock and other movable assets of the deceased may be sufficient to satisfy the excluded heirs; in others, it may be necessary for the court to order the payment of compensation by the registrable heirs to the excluded heirs."<sup>5</sup> The same Act also contains a useful safeguard. If an owner in common applies for the partition of a parcel of land which is incapable of suitable partition, the registrar may put an end to the co-ownership by selling the parcel and sharing out the proceeds among the co-owners, one of whom, if he wishes, may buy the parcel if the parcel is capable of partition but any of the resultant shares is then too small the Registrar may add it

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<sup>1</sup> ss 124-6

<sup>2</sup> Land (Group Representatives) Act 1968

<sup>3</sup> Maori Affairs Act 1953

<sup>4</sup> s101

<sup>5</sup> *Kenya Working Party Report on African Land Tenure* (1958) 36

to the share of any other proprietor or distribute it among the other proprietors, the proprietor acquiring the share paying its value to the proprietor losing it.<sup>1</sup>

4.9 It should be noted, however, that the ownership of land "confers a certain social prestige which the owners are loth to relinquish".<sup>2</sup> The extinction of even a demonstrably worthless share by a positive act of the Registrar often excites resentment which is increased in Muslim countries by what appears to be, and indeed is, an interference with *sharia* law. "Who are you to change the law of Allah?" an indignant old woman asked a registrar who was trying to eliminate her tiny share in a small parcel of land.

## 5 Cure for fragmentation

### (1) DEFINITION OF CONSOLIDATION

5.1 The cure for fragmentation is consolidation. The dictionary definition of 'consolidation' is "combination into a compact mass, single body, or coherent whole", and in the context of land consolidation, this means re-planning the proprietary land units within a given area and redistributing them in units of economic size and rational shape. Consolidation is thus the cure for both kinds of fragmentation, excessive dispersion and excessive sub-division of holdings, and we shall use the word in this sense. The word is, however, widely used both in a narrower and in a broader sense. The legislation of West Pakistan, for example, restricts its meaning by defining it as "the re-distribution of...the lands in an estate...so as to reduce the number of plots",<sup>3</sup> and the legislation of several Indian States similarly uses it only in connection with 'excessive dispersion'. In other parts of the world, however, particularly in Europe, 'consolidation' implies a much wider process of agrarian reconstruction, involving not only the regrouping of dispersed holdings and the enlargement of farms, but also such measures as drainage works, improvement of soil structures, land reclamation, resettlement of population, construction of buildings in the common interest or the re-adjustment of land-use practices. Integrated measures of this kind go far beyond the simple replanning of proprietary land units, which is the essential feature of all consolidation.<sup>4</sup>

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<sup>1</sup> s105

<sup>2</sup> D & S 65

<sup>3</sup> Consolidation of Holdings Ordinance 1960 s2

<sup>4</sup> The terminology of consolidation is not yet standardized. The definition of technical terms contained in *Progress in Land Reform - Fourth Report* (1966) 165 defines 'consolidation of holdings' as meaning reallocation of parcels to eliminate fragmentation (of the sort that we call 'excessive dispersion'); 'enlargement of holdings' as meaning amalgamation of holdings to remedy excessive subdivision; and 'land consolidation' as a general term covering consolidation of holdings, enlargement of holdings, land improvement, the building of roads etc.", thus making a rather confusing distinction between 'consolidation of holdings' and 'land consolidation'. P Moral-Lopez and E H Jacoby in *Principles of Land Consolidation Legislation* devoted a chapter to the full integrated process under the title 'Statutory consolidation - ordinary procedure' and then a chapter to 'Special methods and procedures' which included accelerated procedures for the grouping of scattered plots without important associated works".

5.2 Much of the existing legislation on consolidation is modern, as many countries have started organized consolidation programmes only within recent years. Consolidation is, however, a well-tried process, and some countries, particularly in northern Europe, enacted legislation more than 150 years ago. This early legislation was designed solely to rectify excessive dispersion of holdings; provision for farm enlargement and associated measures of land improvement is a feature of the more modern legislation.<sup>1</sup>

## (2) THE ENCLOSURE MOVEMENT IN BRITAIN

5.3 Consolidation took place in Britain so long ago that the fact that it took place at all tends to be forgotten, not least because it is called 'enclosure'.<sup>2</sup> For many centuries there existed a method of land cultivation known as the common or open-field system. The arable village land was divided into three large and unfenced fields, which were cultivated in a triennial rotation (wheat the first year, spring crops the second, and lying fallow the third). The three fields were divided into strips of about an acre each in area, and every villager was allotted several strips, not all adjacent to each other but scattered about the fields, so that he would have a share in soils of different quality. Each villager had the right to pasture his cattle on the field which lay fallow, as well as on the 'waste land', which consisted of the less valuable parts of the common property not included in the arable land.

5.4 The rigidity of this system precluded improvement, and as far back as the thirteenth century statutes were enacted to allow the lord of the manor to appropriate the common land to himself, provided that he left the tenants sufficient pasturage in the waste. Although during the fifteenth and sixteenth centuries manorial lords succeeded in enclosing more and more of the common land, it was not until the second half of the eighteenth century and the first half of the nineteenth that wholesale enclosure took place both in England and in Scotland. This was the age of 'improving landlords' who put their capital into their land and who studied and practised scientific agriculture and stock-breeding of a sort quite impracticable in the open-field system. At first the enclosures were carried out by private Acts of Parliament, but in 1801 the process was simplified by the Inclosure (Consolidation) Act.<sup>3</sup>

5.5 The Inclosure Act 1845 further facilitated enclosures but the growth of large towns made it desirable to set aside areas for recreation, rather than to enclose them all for cultivation, and the Inclosure Act 1852 prevented enclosures being made without the consent of Parliament. By 1860 it was practically impossible to obtain this parliamentary sanction and enclosure for private purposes was virtually over when registration of title came to be introduced in

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<sup>1</sup> See Moral-Lopez and Jacoby *Land Consolidation Legislation* for a comparative study of the consolidation law of 31 countries, but unfortunately there is no reference to Kenya where a massive programme of consolidation was in progress at the time.

<sup>2</sup> The spelling 'inclosure' is invariably used by English legal writers and in statutes, but historians and others use 'enclosure'. 'Encumbrance' presents similar difficulties to a writer with a foot in each camp.

<sup>3</sup> See 3.2.2

1862. Nevertheless the enclosure movement is of particular interest to students of land registration for two reasons.

5.6 First, the methods used in enclosure proceedings could have been a model for systematic adjudication.<sup>1</sup> "The practice of the General Inclosure Act – the result of an extensive and long-continued experience – might be followed almost without alteration", wrote Robert Wilson in his plan for systematic adjudication, which was rejected by the Commissioners in 1857, and he copied out the marginal notes of some of the sections of the Act to indicate how it would merely be necessary to alter the titles of the officers employed.<sup>2</sup> Cheshire described the process in words which might have been written of consolidation in Kenya if we substitute 'committee members' for 'commissioners': "Commissioners visited the locality, publicly took evidence from those who desired and those who opposed enclosure, and made a final award by which they granted to each person a self-contained freehold estate in lieu both of the scattered strips and of the rights of common he formerly possessed."<sup>3</sup>

5.7 The second reason why the enclosure movement is of importance to the English system of registration of title is that it produced a stable pattern of landholdings defined by durable fencing. The strips of land in the open-field system which had been divided merely by impermanent 'balks' of grass, gave place to the fenced fields which give rural England the chessboard appearance it still retains (though hedges are being increasingly removed in the interest of mechanized farming). Thus, though the large-scale ordnance maps only showed field boundaries and no property boundaries were determined at the time of survey, the maps could be used to illustrate the register in a way not possible in some countries of continental Europe where the strip system was retained and there was no fencing to mark the boundaries; surveys adequate for fiscal records were not considered suitable for title registration, and for that purpose special demarcation and survey have been required.

5.8 Enclosure in Britain, however, was by no means an unmixed blessing. "In the re-division of the open fields and common wastes among individual proprietors and farmers, there was no intention to defraud the small man, but no desire to give him more than his apparent legal claim. Often he could not prove a legal claim to the rights he exercised in the common. Oftener his legal rights to keep cows or geese there, or his personal right in one or two strips in the village field, were compensated with a sum of money which was not enough to enable him to set up as a capitalist farmer or pay for the hedging of the plot allotted to him; the compensation might, however, pay for a month's heavy drinking in the ale house. And so he became a landless labourer."<sup>4</sup> Arthur Young who believed that "the magic of property turns sand into gold"<sup>5</sup> and was a most vigorous

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<sup>1</sup> See 11.8

<sup>2</sup> Registration of Title Commission Report (1857) Appendix Part A 89

<sup>3</sup> Cheshire 557

<sup>4</sup> Trevelyan A Shortened History of England 457

<sup>5</sup> Meek Land Law and Custom in the Colonies 243

advocate of enclosure wrote, in 1801, "By nineteen out of twenty Inclosure Bills the poor are injured and most grossly."<sup>1</sup>

5.9 Yet in Denmark, where enclosure also resulted in the disappearance of the open-field system and of the medieval village communities, the consequences were not so disastrous. As in England, impetus was given to enclosure in the middle of the eighteenth century by progressive landlords. Among these were the Counts of Bernstorff who, on their manor near Copenhagen, devised and carried out consolidation operations on their own initiative. Their principles and procedures were copied by other landlords and later embodied in a new Consolidation Act in 1781. Consolidation was virtually completed in Denmark before 1835, by which time only about one per cent of the land had not been consolidated, but the reforms were carried through with due regard to the interests of the cultivators and with the aim of preserving the medium-sized farm as a typical holding. "The interest of all classes down to the poorest was carefully considered with excellent consequences in the agricultural Denmark of today."<sup>2</sup>

### (3) THE MODERN PROCESS OF CONSOLIDATION

5.10 Differing principles and procedures have naturally been adopted by the many countries which are currently engaged in consolidation measures. The choice of action open to governments is affected by variable factors such as the level of education of the farming community, the rate of population increase, the availability of capital, and different farming practices. In particular, developing countries, where opportunities for employment outside agriculture are often severely restricted, face problems different from those experienced in developed countries. We shall not attempt to describe and compare the many different approaches to consolidation, for such a task would take us far beyond the subject of this book. There are, however, certain general features common to consolidation everywhere which we should briefly consider.

5.11 Consolidation operations can be divided into two stages. In the first or preparatory stage the consolidation area is defined, the existing land parcels are determined, the rights exercised in these parcels are ascertained, and the land is classified and valued. These operations are not necessarily all conducted at the same time, and they may (and indeed frequently do) serve purposes unconnected with consolidation, such as tax assessment. In the second stage a 'consolidation scheme' or 'consolidation plan' is drawn up and implemented.

5.12 Dowson and Sheppard listed seven operations required after the consolidation area had been defined.<sup>3</sup> They were writing principally in the context of consolidation in Europe but their list is just as valid for developing countries, such as Kenya where, since their book was published, a countrywide scheme has provided immense experience of particular relevance to our theme because consolidation is combined with adjudication and registration of title in the form that we expressly recommend.

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<sup>1</sup> Trevelyan A Shortened History of England 457

<sup>2</sup> *Ibid* 456

<sup>3</sup> See D & S 68

5.13 The first two requirements in the Dowson and Sheppard list are:

- (i) Preparation of a plan of the proprietary land units in the consolidation area.
- (ii) Preparation of a schedule showing the names of owners, the number and areas of their parcels, any subsidiary interest, the type and quality of the land and any other relevant particulars.

The two components of adjudication of title (which we have described at length in Chapter 11) are (1) the identification of the parcel and (2) the identification of its owner, together with any qualifications of his ownership. It follows, therefore, that if a register of title has been compiled for all parcels in the area and kept up to date, these first two processes will not be required.

5.14 The register of title, however, will not show the type and quality of the land but, in any case, that information is more appropriate to the next requirement:

- (iii) Classification and valuation.

5.15 In the final analysis consolidation is an operation in the exchange of land. The farmer gives up the land that he is using and receives other land in its place. Farmers who submit to this upheaval wish to be satisfied that the exchange is fair. Ideally, they should receive on reallocation land not only of the same kind but also of the same area as they held before. For example, the farmer who before consolidation owned irrigated land will scarcely be content to receive his entitlement entirely in rain land, even though its area is greater and its value the same as the total of his former holdings. Almost all legislative systems seek to establish the greatest possible equivalence in terms of quality and value between land contributed and land allocated; but to use area as the only basis of exchange, as practised in Kenya, is exceptional, though several countries stress the importance of equating area; the legislation of the Indian State of Uttar Pradesh, for example, decrees that the new holding allocated must not vary in size from the total area of fragments by more than 20 per cent, except with special authorization.<sup>1</sup>

5.16 Obviously, however, unless the land throughout the consolidation area is uniform in kind and value, the new land received must differ in several respects from the old parcels which have been given up. An accurate and acceptable classification and valuation is therefore normally prerequisite to consolidation, though if a cadastre already exists, as in many European countries, little or no more extra work will be required for the purpose of consolidation. For example, there could scarcely be a more detailed classification and valuation than that effected in Germany under the Law of 1935.

5.17 The categories into which land can be classified are capable of considerable variation, beginning first with the need to distinguish present from potential use. Arable, pasture, woodland, waste are obvious categories; but so are upland and lowland, sloping and flat, rain land (with zones of rainfall) and irrigated (or irrigable) land; soil may be light or heavy; the locality may be accessible or inaccessible, for physical reasons or perhaps merely because of the distance from market; the possible combinations and permutations seem limitless.

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<sup>1</sup> Consolidation of Holdings Act 1953 s15

Classification and valuation clearly require professional skills which will often be in short supply in developing countries. This shortage can be overcome in some cases by a system of comparative valuation carried out by local committees, since consolidation is based on the exchange of land and what really matters is that each parcel should be valued in relation to the others. For this purpose, the process of comparative valuation effected by village communities in consolidation programmes in India has proved successful and has the merit of simplicity.

5.18 This Indian process is briefly as follows. The committee first agrees which is the most valuable fragment of land in the consolidation area, regardless of its size but taking into account any factors such as soil fertility and permanent improvements. This fragment is accorded the highest valuation rating, say ten. The committee then accords to each other fragment in the consolidation area, again regardless of its size, a comparative valuation of ten or some lesser figure. The entitlement of an owner can then be calculated by multiplying the area of each of his fragments by its valuation figure. During the reallocation stage every landowner will receive his entitlement in terms of valuation and area combined, and his consolidated holding may therefore be larger or smaller than the total area of his former fragments.<sup>1</sup>

5.19 Dowson and Sheppard's last four requirements constitute the 'consolidation scheme' or 'consolidation plan'. They list four documents:

(iv) A plan showing the proposed layout of the new parcels.

(v) A schedule showing the number and area of each new parcel, the owner's name, the classification and valuation of the parcel, and the apportionment of existing incumbrances.

(vi) A statement of the cash balances which each owner must pay to persons adjudged to be entitled.

(vii) A statement of the cost of the operation, showing the quotas borne by the State, the Local Authorities, and the landowners, apportioning the landowners' quota between the owners of the different parcels.

5.20 The last document is not, of course, required in those countries where the State bears the full cost of consolidation, or where it recoups its expenses by the imposition of a fixed fee. Though it is an established principle that public funds should be spent only in the general public interest and not for the benefit of specific private individuals, it can fairly be argued that consolidation is in the public interest as being a means of improving the utilization of national resources. Moreover, consolidation invariably involves some measure of compulsion and it is questionable whether a farmer should have to pay for a service which he is forced to accept, perhaps against his will. But in many countries it is not these arguments, but rather the inability of the farmer to meet the cost of consolidation that is the determining factor. In practice few governments find it practicable to recover the whole sum involved, and so usually meet from public funds the full cost of all technical services and major engineering works for land improvement.

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<sup>1</sup> See Government of India, Planning Commission - Report on the Consolidation of Holdings (1958) 27-32

5.21 The object of a consolidation scheme is to produce fewer parcels of better size and shape, but that alone is not enough; it would be futile to go to the trouble and expense of consolidation if the new holdings were not planned so that the best access to them is obtained. The road pattern in fragmented areas is usually unsatisfactory; either there are too many roads or too few. A change in the layout of holdings will nearly always necessitate a changed pattern of roads. Another consideration, even more important, is to ensure that the danger of soil erosion is avoided. Furthermore, many countries take the opportunity of the wholesale redistribution of land during consolidation to reserve sites for essential community services. For example the Kenya legislation makes provision for the extra area required for such sites to be calculated as a percentage of the entitlement of all landowners in the consolidation area and deducted accordingly.<sup>1</sup> Syrian legislation makes similar provision for the reservation of areas required for public works and installations.<sup>2</sup> These three elements of planning: the siting of the new holdings, the new road pattern, and the reservation of community sites, may be regarded as the minimum planning requirements of the simplest consolidation programme. At the other end of the scale are the integrated land improvement works to which reference has been made earlier in this chapter.<sup>3</sup>

5.22 Consolidation necessarily involves the creation of a new record of rights to the consolidated land units and so where there is a less efficient form of record (or no record at all) it provides an opportunity for the introduction of registration of title. For example, where land in customary tenure is consolidated, it would obviously be wasteful if the information regarding ownership and boundaries of the consolidated holdings were not utilized to start a register of title, particularly as the register provides useful machinery for controlling subdivision and preventing eventual fragmentation of these holdings.

5.23 The reorganization of farms for operational purposes without changing the actual ownership of the holdings may be a useful expedient in certain circumstances. "In essence, the arrangement is that individual owners let their holdings to the government or to the co-operative society and in return rent a compact block of land in the same area, which may or may not include their original land."<sup>4</sup> This was in principle the method adopted in the highly successful Gezira scheme in the Sudan.<sup>5</sup> The land in the scheme, having been settled (i.e. 'adjudicated') and registered, was compulsorily hired by the Government for forty years and divided into 40 *feddan* holdings (i.e. 48 acres or just under 20 hectares) suitable for irrigation and known as *hawasha*. The Government then let these *hawashas* on annual tenancies, each of the original landowners being entitled to the tenancy of one *hawasha* whatever the size of his original holding; but if he owned land in excess of 40 *feddans* he was also allowed to nominate one tenant in respect of every 40 *feddans* of excess; he continued to be paid as owner an annual

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<sup>1</sup> See 15.9.10

<sup>2</sup> Decree-Law 161 on Agrarian Reform 1958

<sup>3</sup> See para 5.1 above

<sup>4</sup> Binns *The Consolidation of Fragmented Agricultural Holdings* 31

<sup>5</sup> See Gezira Land Ordinance 1927

rent for all the land he originally owned. Thus a landowner could become the sub-lessee of land of which he was still the registered owner.

#### (4) COMPULSION IN CONSOLIDATION

5.24 The extent to which governments should resort to compulsion in the execution of consolidation programmes has been much debated. Success is sometimes claimed for consolidation carried out by private individuals without recourse to statutory sanction and, indeed, often without any direct help from the government. A group of farmers may agree among themselves to pool some of their fields to be worked in more compact units than was previously possible; for instance in Kenya, some years before the start of the first official consolidation an enterprising chief persuaded the people of his own *mbari* (clan) to consolidate their holdings which were dispersed throughout the clan land. We have described above how in Denmark the Counts of Bernstorff (uncle and nephew) effected consolidation on their own initiative and without recourse to legislation.<sup>1</sup> They were, however, operating on their own land and the consolidated holdings were redistributed to existing tenants (who were then enabled to buy the reversion and so became the owners). Similarly the Kenya chief was redistributing clan land among the landholders within the clan, who in their turn acquired rights of ownership replacing their previous derived or subordinate clan rights.

5.25 Voluntary efforts of this kind must be distinguished from the solitary effort of the individual farmer who is concerned only with his own dispersed holdings. It will rarely be possible for a farmer, anxious to consolidate, to find other persons, equally anxious, who have land contiguous to his own; at best, all he can usually hope to achieve is a partial consolidation which enables him to have more of his land close to his main holding. Furthermore, a partial consolidation of this nature could even complicate subsequent consolidation operations on a general scale in the same locality, for it will leave scattered fragments which are difficult to regroup unless all the land is taken into account at the same time (as it was, for example, on the Bernstorff estates).

5.26 In practice, assistance by the government with technical services and finance is invariably necessary and, in order to ensure success and justify the often considerable expenditure, consolidation must be conducted as a systematic operation taking in all the land within the consolidation area, whatever the size of that area. Systematic consolidation, like systematic adjudication, must inevitably involve a measure of compulsion;<sup>2</sup> for, although farmers may be well aware of the need to consolidate their holdings, there will always be some who believe that they have suffered loss in the process and are unwilling to accept the final apportionment unless compelled to do so. In a densely populated countryside, with little opportunity for alternative employment, there are bound to be dissentients from any comprehensive scheme. A measure of legislative compulsion is therefore

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<sup>1</sup> See para 5.9 above

<sup>2</sup> See 11.3.1

essential, but though this is accepted almost everywhere, two important safeguards are necessary if a consolidation scheme is to succeed.<sup>1</sup>

5.27 First, before any scheme is started, governments should make sure that consolidation has the necessary local support. Many countries write a requirement into their legislation that a scheme must be acceptable to a majority of landholders (based on area or number or both combined). To secure this majority consent governments, particularly in developing countries, will often have to carry out an educational programme. This can pose its own problem unless the programme is carefully planned and consolidation is shown to be prerequisite to registration of title which is so much easier to make popular. In Kenya, where consolidation was not undertaken until local enquiry confirmed strong local demand, the Lawrance Mission found "a widespread demand for quicker registration", but it was certain "that this demand is the result of continuous and dedicated urging by officials and leaders of public opinion, and that in many areas there is widespread lack of understanding among the people of the nature of the land reform processes and of their effects".<sup>2</sup> In the event, in some areas, land requiring consolidation was registered without it, thus ignoring this basic essential for the introduction of registration of title into areas of customary tenure.<sup>3</sup>

5.28 The second safeguard essential to the consolidation procedure is to provide in the legislation adequate safety-valves in the way of procedures for appeal at all stages of the operation. It goes without saying that the procedure itself must contain basically fair and acceptable provisions (e.g. in the way of 'equivalence rules', and in particular in regard to subordinate interests such as mortgages and tenancies which must be taken into account in the reparation), but the appeal provisions are also vital. In some countries these appeals are heard by the ordinary civil courts, as in Belgium, but frequently the consolidation legislation provides that appeals should lie to bodies expressly created by such legislation; Indian legislation, for example, generally removes these matters from the court and places them within the sole competence of the consolidation authorities; or appeals may lie to special consolidation commissions consisting of government officials and interested farmers, which we shall now discuss.

#### (5) ASSOCIATION OF LOCAL PEOPLE WITH CONSOLIDATION PROCEEDINGS

5.29 The bitter pill of compulsion can sometimes be sugar-coated by inducements offered by the government, such as credit facilities, subventions for the reorganization of the new holdings or for drainage works, or tax concessions. One way, however, to ensure acceptance of the necessary compulsion is to associate local persons with the whole process of consolidation. How this is done in Kenya, where adjudication and consolidation are conducted as one operation, is described and analysed in Chapter 15.<sup>4</sup> In that country local committees of elders

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<sup>1</sup> See *Working Party Study on Land Consolidation in Europe* (1959) 76-7 for details of land consolidation procedure in eleven European countries.

<sup>2</sup> Lawrance Mission Report (1966) 23 para 79

<sup>3</sup> See 15.3.1

<sup>4</sup> See 15.9

are made responsible for the executive functions of adjudication of existing rights, replanning, and reallocation of consolidated holdings.

5.30 Consolidation by co-operative societies provides a similar approach. "The formation of a compulsory co-operative as part of the machinery of consolidation schemes has been a feature of such schemes in several countries including Germany and Italy, but the outstanding example of consolidation by voluntary co-operatives alone was in India prior to independence. In the Punjab, where co-operation for credit and other purposes was already well established, co-operative consolidation on a voluntary basis and without special legislation was introduced in 1920. Before a society could be formed, at least 90% of the owners of land had to apply for consolidation and to offer 75% of the village land for redistribution. The rules pledged every member to accept the plan of redistribution approved by two-thirds of their number, to submit all disputes to arbitration, and not to carry out any future change in the ownership of land without the consent of the Society. At first members only undertook to accept the new distribution of land for four years, but in fact no consolidation scheme was ever afterwards upset, and the four-year limitation was dropped."<sup>1</sup> As elsewhere, voluntary consolidation of this kind posed difficulties and progress was slow.

5.31 Not surprisingly co-operative societies or local committees of elders have not in general proved suitable bodies to exercise executive powers over the replanning of a consolidation area and the reallocation of land, even when assisted, as they have been in Kenya and in India, by technical staff of the Government. Committees of local persons are often likely to lack planning expertise and be disinclined to make the unpopular decisions which the situation demands. In any case they will be largely dependent on the official staff which serves them.

5.32 There are, moreover, two better ways of associating local people with the actual process of consolidation: first, by forming local committees of farmers whose function is advisory to the consolidation authority, which alone exercises executive and sometimes judicial functions; or second, by appointing joint boards (or commissions exercising judicial functions), comprising both technical officers of the Government and local farmers, in which executive and sometimes legal powers are vested. Most countries which are currently operating consolidation programmes adopt one or the other of these two methods. The legislation of most Indian States, for example, vests executive and judicial powers in the consolidation authority, an officer of the Government, but requires him to consult with *ad hoc* committees of local farmers.

## 6 Prevention of fragmentation and multiple ownership

6.1 Consolidation is a costly and time-consuming operation which invariably causes considerable upheaval. The effort and trouble involved would seldom be justified if the advantage gained were to be rapidly dissipated by refragmentation of the consolidated properties; it would be equally wasteful when multiple ownership has been eliminated to allow it to recur to impede negotiability again.

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<sup>1</sup> *Co-operatives and Land Use* 92

Many governments therefore take positive measures to prevent a recrudescence of both 'diseases': fragmentation and multiple ownership.

6.2 Unfortunately we must accept that, whatever preventive measures are taken, total and permanent prevention is rarely practicable. As we have already explained, prevention can be achieved only by eradication of the causes of fragmentation and multiple ownership, and stubborn economic factors often render this impossible. Preventive measures should not, however, be abandoned merely because they are not wholly effective, any more than we can afford to abandon preventive measures against human or animal diseases for that reason. For instance the cause of malaria is known to be the anopheline mosquito, but it has not yet generally proved possible to eliminate mosquitos; we therefore accept the need to cure infected persons, and at the same time we take all possible measures to control the disease by preventive measures such as prophylactic medicine, the use of nets or protective clothing, and spraying houses with insecticide. So too in the case of fragmentation or multiple ownership; the causes cannot yet be eradicated, so we must be prepared to cure either 'disease' when it occurs and, having cured it, do what we can to prevent its recurrence. Our efforts may be only partially successful, but at least they will mitigate the worst symptoms of these 'diseases' and postpone the day when such drastic remedial measures as consolidation will again become necessary.

6.3 Since the causes of fragmentation are rooted in social custom and are made intractable by economic factors, attempts to prevent it cannot hope to succeed through the imposition of legislative controls alone. Educational programmes and financial inducements must play an important part in any campaign to prevent refragmentation; above all, an economic background must be created which makes refragmentation unnecessary. We cannot, however venture into that field, but must confine our discussion to legislative measures aimed at restricting or controlling subdivision and at preventing increase in co-ownership. Such measures are a feature of the laws of virtually every country which has carried out consolidation, and so far as they are effected through the land register they are directly relevant to the theme of this book.

6.4 There are two approaches to 'anti-fragmentation' or 'control' legislation of this kind which we shall term 'rigid' and 'discretionary'. Under the rigid approach either a total prohibition is placed on all subdivision in a prescribed area or a minimum holding is fixed below which no subdivision is allowed in any circumstances. For this approach, it can be argued that it simplifies the administration of the law and has psychological advantages because landowners will more readily accept a fixed and universal prohibition than a general rule which is capable of different interpretations. Prescribed minima are, for example, a common feature of planning and building regulations, and, where new building or subdivision is concerned, are very effective. There is no scope for argument. This is a powerful reason for a fixed minimum and it should not be lightly rejected.

6.5 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, waterlogging and so on. The level of farm operation will vary from farmer to farmer and under intensive cash crop farming a high income can be obtained from a very 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 vary as time passes. It can even be argued that it may cause more economic harm to divide a large, well-established farm (though several times larger than the statutory minimum) than it would a farm which is already too small for efficient exploitation. And when it comes to the income derived from a small share in a farm held in multiple ownership, who is to say that it is uneconomic? Nevertheless, the rigid approach is frequently adopted. For example, the legislation of most Indian States fixes a 'standard area' for different regions and totally prohibits partitions which would result in a parcel of an area smaller than this. Provision is, however, made for the owner of a 'fragment' (the term given to a parcel smaller than the standard area) to transfer it to the owner of a contiguous holding, and there are some States where there is no prohibition on partition of a fragment.

6.6 Under the discretionary approach the legislation permits each application for subdivision to be examined on its merits. It follows that a feature of this approach is the establishment of a control board to carry out such examinations. The principles on which these boards must base their decisions can be written into the legislation or laid down by administrative instruction, but interpretation in each case is left to the boards. This approach admittedly complicates administration, but it enables subdivisions of economic benefit to be allowed, which would not be possible under the rigid approach. The Kenya and Malawi Land Control Acts, briefly described in Chapter 12<sup>1</sup> are examples of the discretionary approach to control legislation, but the main purpose of those Acts was to protect persons unfamiliar with the concept of private ownership of land when the introduction of registration of title made transfer easy. This purpose does not lend itself to the rigid approach but requires the exercise of discretion in every case. Control legislation may also be introduced for other purposes, such as the control of transfers between persons of different races, or to reduce speculation in land.<sup>2</sup>

6.7 Provision to restrict multiplicity of ownership is usually contained in the registration statute itself or in regulations made under it. A minimum registrable share (sometimes expressed in terms of a maximum denominator) or a maximum number of co-owners is stipulated. In this case there is no concept of 'minimum economic area'; it is solely the number of co-owners of the parcel which affects its negotiability, and so a rigid approach can be adopted and a minimum share or maximum number of co-owners fixed and applied throughout the country. Kenya legislation, for example, while making it possible for the Minister to prescribe

<sup>1</sup> See 12.8.9,10

<sup>2</sup> e.g. Swaziland Land (Control of Speculation) Act 1971

different maxima for the registrable number of co-owners or different minima for the share in any particular registration section, provides that meanwhile a maximum figure of five co-owners shall apply to the whole country. No attempt has yet been made to vary this fixed figure. If on the death of a landowner the number of heirs exceeds five and the land is incapable of partition, the court must approve arrangements whereby those heirs who cannot be registered as co-owners are compensated by those who can.

6.8 We must not expect control legislation by itself to be wholly effective in preventing refragmentation, or even the recurrence of multiple ownership. Moreover, the operation of such legislation usually imposes an unwelcome burden on the land registry; it may even constitute a real danger if it proves unworkable, for manifestly unworkable law tends to bring the law into contempt. The ugly fact is that, in many developing countries, satisfactory alternative employment off the land is not available for those persons whose share in the land, whether divided or undivided, is unregistrable; until it is available they have no other choice but to stay on the land and try to eke out a livelihood from it. Thus there is a dilemma; if the control procedures are rigorously and effectively operated and permission to subdivide is repeatedly withheld, the land will nevertheless continue to be subdivided despite the register, which inevitably will cease to represent the actual position on the ground. If, on the other hand, the control procedures are not operated rigorously and effectively, and permission is given for many subdivisions which ought to be refused, the register may reflect the actual position, but the process of refragmentation will be facilitated and hastened.

6.9 However, this difficulty is universal. In Europe the Working Party on Consolidation of Holdings reported: "Experiences, however, have proved that minimum sizes alone will not be sufficient to stop fragmentation on the land use level and in the final result may even lead to serious discrepancies between the land records and the actual situation in the field."<sup>1</sup> In India the Planning Commission reported that "regulation of partitions is not free from difficulties, which are administrative and economic as well as social. Co-sharers may avoid formal partitions and subdivide the lands informally, which would be administratively difficult to prevent. The enforcement of the law will result in rendering one or more co-sharers landless."<sup>2</sup> But other means of preventing refragmentation, such as education, persuasion, and even inducements, reap slow rewards. Statutory control of subdivision, despite all its limitations, must remain a necessary preventive measure for many years to come – unless, indeed, the idea is accepted that all such measures, if not useless, are at least more trouble than they are worth and that nothing is to be done except repeat the whole process when next it becomes necessary.

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<sup>1</sup> Working Party Study on Land Consolidation in Europe (1959) 71

<sup>2</sup> Government of India, Planning Commission - Report on the Consolidation of Holdings (1958) 94