Agricultural Tenancy Reform: The End of Law; or a New Popular Culture?

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Abstract

This paper applies a reading of the postmodernisation of law to the incremental reform of agricultural holdings legislation over the last century. In charting the shifting legal basis of agricultural tenancies, from 'black letter' positivism to the cultural contextuality of sumptuary law, the paper theorises that the underlying political imperative has been allied to the changing significance of property ownership and use. Rather than reflecting the long-term official desire to maintain the let sector in British agriculture, however, the paper argues that this process has had other aims. In particular, it has been about an annexation of law to legitimise the retention of landowner power while presenting a rhetorical 'democratisation' of farming, away from its plutocratic associations and towards a new narrative of 'depersonalised' business.

Introduction

In his work on law and popular culture, Redhead (1995) suggests that the processes underlying the shift from modernity to late, or post, modernity - and the emergence of the 'post-literate' society - may herald the end to formalist legal positivism, with alternative methods and techniques being derived predominantly from text; the construct of law as literary (or policy?) pursuit. Within this new project, the post-modernisation of legal relations, the individual ceases to be defined in relation to other individuals, but becomes instead defined in relation to artefacts. Following Redhead, we argue that property is a significant element of this process, with the property right and its ownership (the right to

property), increasingly assuming the status of reified artefact against which *all individuals* are othered.

Central to this conceptualisation of legal relations is what Redhead (1995) suggests is a search for the mapping of a new 'post-modern jurisprudence' in which both space and place assume particular significance. With apparent reference to the simulacrum, de Sousa Santos (1987) suggests that the relationship which formalist law increasingly entertains with social 'reality' is similar to that between maps and spatial reality. This is supported by evidence from a number of western nations that rights to property are reified as both the primary subject of social policy and the basis of rhetorical market-based resource allocation.

In this reading, space is conceptualised as being capable of being 'emptied' - of deriving its value separately from its use. It is this 'emptying' of space which establishes the 'created environment' (Giddens, 1984) in which new forms of institutional articulation can be expressed. At the core of these new forms of articulation is, we argue, a post modern reincarnation of the long-standing relationship between the 'owners' and the 'users' - the landlords and tenants - of land. Although largely subject to the 'black letter' positivism of land law, this relationship arguably has stronger roots in 'sumptuary law', the regulation of conspicuous consumption. Contrary to established wisdom, that this form of regulation has been in decline since early modernity, Hunt (1996) argues that it persists, but in a highly diffuse form, dispersed throughout a range of public and private forms of governance.

An example of this process of changing (and diffusing) regulation, reflecting a decline in formalist law at the expense of cultural sumptuary law, is the relationship between the landlords and tenants of agricultural land in England and Wales. In this paper we suggest that the 'evolution' of this relationship reflects the wider cultural influences on law and society, being based on the dualism of continued rhetorical recognition of the relative power implicit in the landlord/tenant relationship in agriculture, contextualised against the changing socio-cultural construct of law. As a consequence, we argue, individual reforms of the law, such as those occurring in the Agricultural Holdings Acts of 1948 and 1984, or the Agricultural Tenancies Act 1995, need to be viewed within the cultural legal context of the empirical development of both land and agricultural policy.

During the first century of its evolution, when the vast majority of farmers were tenants, the agricultural landlord/tenant relationship reflected a largely benign 'partnership' based on the largely unencumbered social, political and financial power of landowners to dictate the terms and conditions of tenant farming. Supported by a positivist legal system in which the market-based allocation of rights, particularly in property, was both presumed and protected (Bergeron, 1993), this partnership generally resulted in a long-term view being taken of both the occupation and the use of the land. This position began to decline towards the end of the Nineteenth Century, in the face of mounting cultural opposition to the power of land ownership and increasing public regulation of sumptuary law. As a result, Parliament and the Courts began increasingly to intervene in the relationship, to

'redress' the perceived imbalance. This was achieved by improving both the statutory and financial position of tenants, with respect to their landlords.

There can be little doubt that the position of existing tenant farmers was significantly improved as a result of these reforms, particularly with regard to security of tenure and end-of-tenancy compensation. This was further reinforced by the Agriculture (Miscellaneous Provisions) Act 1976, which guaranteed existing tenants' families two generations security of tenure, subject to relatively minor qualifications. However, the simultaneous decline in both the opportunities for new tenants and the total area of farmland subject to agricultural tenancies (see Table 1) indicates that the reforms did more to contribute to the overall decline of the landlord/tenant relationship than they did to reinforce it. This came about predominantly as a result of the continued, property-based, 're-empowerment' of landowners (Marsden, 1986).

Since the 1976 Act, agricultural property law reform has been more openly based on measures designed to make agriculture apparently more 'accessible', particularly to new entrants. Paradoxically, while the imperative for this has not been driven by concern for landowner rights, but by the need to demonstrate declining plutocracy in the distribution of subsidies from the Common Agricultural Policy, the impact has been to enhance those rights. This occurred first through marginal shifts incorporated in the Agricultural Holdings Act 1984 and then, more recently, through the wholesale reforms introduced in the Agricultural Tenancies Act 1995, with its sweeping return to the 'freedom of contract' first enjoyed by Victorian landowners.

Table 1 Agricultural Land Tenure in Great Britain, 1908-1994

Year	% area rented/mainly rented	% holdings rented/mainly rented
1908	88	88
1922	82	86
1950	62	60
1960	51	46
1970	45	42
1980	42	35
1984	40	31
1992	37	26
1994	35	24

Source: MAFF (1968 and 1995)

While recognising that the 1995 legislation has created much interest, as well as claims of new activity, in the agricultural letting market (Kerr, 1994), this paper suggests that the reforms and their rhetorically-claimed 'success' are based on a wilful mis-reading of the empirical context of the agricultural landlord/tenant relationship. Drawing upon Redhead's (1995) thesis, we suggest that rather than the decline in the tenanted sector being landlord-driven, in response to the perceived reduction in the legally legitimated

power of property, it has been predominantly tenant-driven, fuelled by agricultural policies favouring farmers, particularly owner-occupiers, over landowners.

Using this reading of the process, we suggest that the recent reforms, allied to a number of other factors, indicate an altogether different agenda. This is not so much associated with the maintenance or expansion of the tenanted sector *per se*, as it is with annexing the shift within law, from positivist to populist, to transform the very nature of the relationship between agricultural landlords and tenants. In place of the former 'partnership', we argue that there is a new form of commodification taking place in which short-term financial decisions increasingly predominate. In this new model of agricultural management, notions of tenant farmers as 'stewards' or 'custodians' of the countryside are being replaced by notions of them as business people, indicating in the process that the old ideas of the 'partnership', or even the 'relationship', between individual landowners and individual tenant farmers are becoming increasingly irrelevant.

The emergence of protection: 1875 to 1976

Following the unencumbered freedom enjoyed by landlords in the Nineteenth Century, the early statutory enshrinement of tenants' rights at the end of that period (in the Agricultural Holdings [England] Acts of 1875, 1883 and 1906) can be viewed as part of wider social reforms. While the purported aim of the legislation was very much the protection of the individual tenant-farmer exposed to the worst excesses of a totally unfettered system, it actually did little more than concretise the existing, widely observed, customary practises

adopted for such matters as rent settlements and compensation. As such, the reforms did less to challenge than to underpin the existing hegemonic order, with all agricultural tenants continuing to be subject to tenancies from year to year with no security beyond the current term.

Although this system prevailed largely unreformed until the end of the Second War, it had become clear that the structure of British agriculture, if not its tenure, required overhaul. Given that, by this time, the percentage of agricultural land that was tenanted had already fallen from nearly 90% in 1900 to approximately 62% in 1948 (see Table 1), this position was, at the least, asymmetric. Two major pieces of legislation were passed, the Agriculture Act 1947 and the Agricultural Holdings Act 1948. Taken together, these measures were based on promoting the long-term stability of the agricultural economy, particularly by encouraging production, ensuring profitability and revitalising investment. This was achieved primarily through the implementation of price support measures and improvement grants, with the role of the tenanted sector largely expected to remain as it was. Notwithstanding the decline in the let sector, therefore, the landlord/tenant relationship remained, with tenants awarded security of tenure for life as an incentive to invest in their farms and businesses.

The 1948 Act was retrospective, giving all existing and future tenants lifetime security. This was heralded very much as protection not for the individual tenant but rather, in line with wider post-war social reform, for the benefit of society as a whole. A strict security of tenure regime was also introduced, regulating the service of notices to quit and

effectively limiting the occasions for evicting a well-behaved tenant to one: death. In addition, the 1948 Act also considered that a wide range of 'lesser' agreements should be converted into agricultural tenancies. This far-reaching statutory conversion was underpinned by the attitude of the courts, which repeatedly confirmed that landowners' attempts to contract out of the security provisions were of no effect.

While the 1948 Act undoubtedly made the position of existing tenants much more secure, it did little to encourage fresh lettings. Concurrently the underpinning, by the 1947 Act, of farming profitability and confidence certainly made in-hand farming more attractive. The confidence afforded to owner-occupiers by protected prices meant that landowners letting their farms under what was now a system of protected rents struggled to match the returns achievable from farming it themselves. While some of the post-war decline in the amount of let land can therefore be explained by landlords taking land back in hand rather than reletting it, there was also a parallel trend for tenant farmers to buy their landlords' interest and become owner-occupiers themselves (Orwin, 1949).

The wholesale movement towards owner-occupation may thus have been one which was predominantly tenant-, rather than landlord-, led. This suggests that the political concentration on measures to protect the tenant may, as a consequence, have been mis-directed and could have actually contributed to the decline, indicating clearly that the effect of law was increasingly at odds with the law itself.

Asset values

One impact of the legislative reforms was the development of a two-tier market in agricultural land, with a widening disparity in capital values between let and vacant possession land. This divergence, the 'vacant possession premium', has at times been so significant that vacant possession land has been selling for as much as twice the price of tenanted land (Nix, *et al*, 1987). It has been suggested (Ravenscroft, 1988) that this premium arises in part from the low rental income received by landlords when compared to the capital value of vacant possession land. The wish to maintain asset values, or indeed to enhance them wherever possible, has thus further fuelled both the trend towards owner-occupation and, arguably more significantly, the increasing reification of short-term gains over longer-term stability within the industry.

Tenant farmers have inevitably benefited individually from this divergence in asset values, in that they have been able to buy into owner-occupation at a price reflecting their own secure position. Tenants could thus take account of marriage value and effectively and comfortably outbid the investor purchaser. In 1993, for example, approximately 10% of all agricultural land purchases were by sitting tenants (Ward, 1994).

We argue that the outcome of this process led to the development of an asymmetrical position in which the tenant, as farmer, had become viewed as an important part of the agricultural economy - and thus society as a whole - while the other, the agricultural landlord, had increasingly been constructed as alien. In the post-World War II period, the landlord has been viewed much as any other investor, and had consequently not enjoyed

the tax benefits bestowed upon farmers and owner-occupiers. Indeed, tax issues have been a positive disincentive to the letting of land, arguably contributing as much to the decline in the let sector as the property reform legislation (Gibbard and Ravenscroft, 1993).

As a consequence of the combination of these legal, social and fiscal factors, allied to the increasing distrust by investors of advancing government land regulation, the trend towards asset mobilisation and owner-occupation has hardly been surprising. In-hand farming has arisen either by landlords retaining possession once tenancies have fallen in, or by selling to sitting tenants, often as a means of realising capital to meet death duties (and its successors) or to re-invest in higher yielding investments.

Continuing Reform

Notwithstanding the evidence that the socio-economic context within which agricultural law reform was operating had, if anything, contributed to the decline of the let sector, the interests of tenant farmers were further protected by reforms in the mid-1970s. In tandem with extending residential protection through the Rent Act 1977, the Labour Government of the time introduced similar measures to protect farm tenant families through the Agriculture (Miscellaneous Provisions) Act 1976. It had been observed that as farm tenancies effectively ceased on the death of the tenant, their families, whose association with the farms often went back several generations, were being displaced. Taking the view that this was inequitable, and that the most suitable person to continue to farm the land

was probably a member of the next generation of the tenant's family, the government introduced the far-reaching concept of succession.

In providing security for two 'successions' from the original tenancy, the reforms contained in the 1976 Act may well have succeeded in prolonging the life of existing tenancies, evidenced in part by the slowing of the decline in the let sector since then. However, there is little disagreement that the few remaining landowners willing to let farmland pre-1976 would certainly not have entertained doing so after 1976. As a consequence, the number of new tenancies coming onto the market since then has been minimal.

Reflecting this decline in the positivist relationship between landlords and tenants, landowners increasingly sought alternative vehicles for the devolution of their proprietary rights. As a result, a multiplicity of arrangements, such as share-farming, partnerships and contract farming arrangements, have arisen. These carry the advantage to the landowner of retaining the vacant possession premium while minimising the risk of creating a secure tenancy. Most types of arrangement eventually secured the acceptance of the Inland Revenue for treatment under Schedule D as income from farming (see Webb v Conelee Properties 1992) and most carried with them the capital taxation benefits of owner-occupied land. Armed with these new weapons, landowners could still take advantage of the skills and working capital of a farmer, without granting them a secure tenancy.

The post-modernisation of the agricultural tenancy

While meeting many of the needs of landowners, the new 'alternative' arrangements failed to gain wider acceptance, largely because they represented a rejection of public regulation, as witnessed by the land occupancy debate following the Northfield Committee Report (1979). Rather than question the extent to which the agricultural tenancy retained its relevance to a post-modernising, increasingly individualistic, society, the 'failure' of the 1976 Act reforms were soon constructed as a technical failing in which the protection of the tenant had been taken 'too far'.

Prolonged pressure by landowners and their representatives, most notably the Country Landowners Association (1990), resulted in the Agricultural Holdings Act 1984. This was an attempt to breathe new life into the system by abolishing succession for entirely new tenancies. The land market was demonstrating both the demand from existing farmers for more land and the will to part with possession by landowners. This Act was intended to relieve the pressures on the market that had resulted from the imbalance between supply and demand. However, as subsequent surveys by the Central Association of Agricultural Valuers (1996) have illustrated, it failed, and for a number of reasons:

- the continuing lack of confidence amongst landlords, particularly fearing the re-imposition of succession rights in the future;

- remaining tax disincentives to letting, most notably the reluctance on the part of the Inland Revenue to introduce a single rate of Agricultural Property relief;

- the early renewal of calls for further legislative reforms, from amongst others, the Tenant Farmers' Association (1990); and

- a belief amongst landowners that the newly introduced formula for settling rent reviews would not enable them to match open market rents for sitting tenants, meaning that the vacant possession premiums were likely to remain.

During the early and mid-1980s, agriculture was facing a period of falling incomes and growing pessimism over the future. This led to demands, from within the industry, for further legislative reform to 'enable' farmers to expand and to allow new ideas and 'new blood' into agriculture. As a result, in February 1991, MAFF issued a consultation paper (MAFF, 1991). Focusing very much on legislative reforms, the Ministry set four main objectives:

- to encourage more land to be let;
- to remove the legal complexities of the current legislation;
- to allow for diversification in the industry through flexible agreements; and
- to encourage new entrants into agriculture.

Once again the emphasis was on public regulation, but this time to deregulate and 'simplify' farm tenancies, in the belief that the existing legislation was '...inappropriate to a market driven economy' (MAFF, 1991). In 1992, following the General Election, a second consultation document was issued, retaining the doctrine of negotiated settlements between landowners and tenants (MAFF, 1992). This eventually paved the way for the Agricultural Tenancies Act 1995.

The Agricultural Tenancies Act 1995

With the creation of the new 'Farm Business Tenancy' (FBT), a mechanism has been devised which, while retaining a degree of public regulation, purports to provide a 'freedom of contract' unknown in agriculture since 1875. On the day that the Act received Royal Assent, the Agriculture Minister stated:

> ... the Agricultural Tenancies Act will simplify the present legal framework and encourage landowners to let more land. Its provisions are designed to get new blood into the agricultural industry to the advantage of us all (Waldegrave, 1995).

Reflecting a significant stage in the decline of positivist legal relations, and their replacement with an increasingly privatised form of regulation, the parties to an FBT are, theoretically at least, free to agree to any conditions they like. Yet, in a number of respects, notably, termination, rent review and compensation for improvements, the Act has provided some protection for tenants. The new law thus at once requires landowners and tenants to discard any pre-conceived ideas about tenancies and statutory protection, while concurrently recognising that their only referent is the institutional framework of existing tenancies over land.

The 1995 Act was introduced amid an atmosphere of confidence and optimism, particularly amongst the professional bodies who were to be largely responsible for administering its implementation. From the findings of its own survey (Kerr 1994), the RICS suggested that the nature and structure of the reform package had been vindicated:

> The likelihood is that over half of new rentals will be on medium or longer term lettings (ten years or more) which should allay fears within the existing rented sector that tenancy reform will mean shorter and less secure tenure (Lowry, 1994).

Heralding the potential success of the impending reforms, the RICS survey predicted the availability for letting under the new Act of a further 900,000 acres, and that much of this would be land previously farmed 'in hand' rather than the result of the formalisation of other informal arrangements, as had been suggested elsewhere (Quinn, 1996). However, whilst this trend is identified in two surveys conducted subsequent to the passing of the Act (Central Association of Agricultural Valuers, 1996 and Whitehead, 1996), the amount of land being released from true owner-occupation appears small, and cannot lead to the conclusion that there has been any increase in the size of the let sector. The later RICS survey (Whitehead, 1996) also indicates that 89 per cent of FBTs have been let for 5 years or less, and that 77 per cent of these are for areas of less than 100 acres.

As a result, the findings of both surveys suggest that the amount of land going into FBTs will fall far short of the RICS's earlier prediction and, indeed, may not even exceed the amount of land continuing to come out of the let sector. The extent to which this is attributable primarily to the failure of the FBT is a matter for conjecture. While purporting to provide the benefits associated with the 'extra-tenancy' relationships it was designed to replace, the legislation must still be seen in the light of the prevailing socio-economic context, with its growing referent of short term financial flexibility and asset mobility.

Rather than being a genuinely 'fresh' approach to agricultural law reform, therefore, it is clear that the 1995 system really represents no more than a continuation of past mistakes, principally in failing to recognise the socio-economic context within which the reforms have been situated. Rather than the power-domination which has traditionally characterised the landlord/tenant relationship, however, the current mistake involves the failure to recognise that the 1995 Act effectively signals the removal of power from this arena and, thus, the effective marginalisation of the relationship.

New entrants have historically faired badly under agricultural policy in the UK; marginalisation of the landlord/tenant relationship can only intensify this. Allied to the marginalisation, agriculture itself is an increasingly capital-intensive industry, with financial backers requiring evidence of collateral and proven ability to service borrowing. Landowners have been seeking these attributes in their joint-venture partners and have largely found them in the ranks of established farmers wishing to expand their existing businesses. The requirements for Farm Business Tenants are no different. Indeed, the first twelve months of the new regime witnessed rentals two to three times higher than sitting tenant levels, putting FBTs beyond the reach of most established smaller farmers, let alone entirely new entrants. The short term nature of the new lets will not make borrowing any easier, and the fact that 80% of the lettings are of unequipped, relatively small, blocks of land (Whitehead, 1996) certainly favours neighbouring farms.

In reflecting the evident reification of the right to property, the legislative measures being used to introduce 'freedom of contract' are themselves far from simple. Firstly, the conditions that have to be satisfied in order to ensure that a new tenancy is an FBT are complicated, involving the service of a pre-notice in much the same way as for short residential tenancies. The mechanics for avoiding the fallback rent review procedure are equally complex, while the reliance on the Arbitration Act 1950 code, rather than the existing 1986 Act code, may lead to unnecessary complications. Complex new provisions for end-of-tenancy compensation have also replaced the 1986 Act measures, which were straightforward and uncontentious (and had been largely unchanged since the last century).

The meticulous steps that the parties, effectively starting with a blank sheet of paper, have to follow in order to ensure that every issue and all eventualities are covered, have thus effectively precluded the very flexibility championed by the proponents of the system. Model agreements and precedents have predictably been prepared by a number of organisations, as well as most of the law firms handling rural work. In common with the previous forms of agricultural tenancy, the FBT has thus already assumed the guise of an 'off-the-peg' measure, rather than being the 'made-to-measure' agreement originally envisaged. In effect, therefore, all that has been achieved is the legislative legitimation of landowner wishes to be able to assert their 'rights' according to their own needs. The price extracted for this presumed freedom is, however, high indeed, reflecting not only the decline of the agricultural tenant, but also of the nature of landed property itself.

The Management of Place and Space

As a result, agricultural tenancy legislation has ceased largely to reflect its positivist, black letter antecedence, assuming instead a strong resemblance to sumptuary law. Rather than being a skilled, individualised, 'partner' to the relationship with the landowner, the role of tenant has thus effectively been undermined, thus assuming the identity of 'other', in place its former association with land owners. At the core of this process is an evident shift from 'rights to property' - the former ideas of property as social signification - to arms-length, flexible interests in which there no responsibilities or duties, just financial transactions.

Central to this shift is an increasing recognition of the essential dynamic of property - its dual identity as both place (its socio-cultural attributes) and space (its physical attributes). It is the nature of this duality which gives rise to what Fitzpatrick (1992) terms a 'mute ground' in which those seeking to own, occupy or use land experience conflicting constructs of deviance and conformity. Rather than being unidimensional, however, the subtle interrelationships between place, space and people ensure that the source - and hence the avoidance - of deviance can never be isolated from the wider socio-cultural context. The construct of the 'good' participant in agricultural production is, therefore, determined not by the land, nor the law, but by the contextualised power implicit in the mute ground which connects them.

Consequently, it is not so much space which necessarily determines practice, but rather the interplay of practice, filling and giving meaning to space, and space, informing the possibilities of practice. Rather than space - the land - being the source of the power which the dominant interests wish to protect, therefore, the power flows in the opposite direction, based on an ability to convert social place into space. It is the nature of this 'conversion', with its attendant possibilities and actualities of practice, which generates the power (Chaney, 1994).

Space, or territoriality, thus becomes the metaphorical arena in which the effects of power can be analysed and determined (Foucault, 1980), but according to the uses of that space rather than the space itself. Rather than being fixed, therefore, space is essentially a transitional project, produced in a particular form for the duration of some interactional business, then reproduced in a different form for a different purpose (Chaney, 1994). The construction of the demand, by both landowners and tenants, for 'new' agricultural tenancies is the very manifestation of Foucault's power metaphor, with the level of accessibility to these tenancies increasingly 'protected', as an allowance or dispensation, for those 'unsuited' to a social or economic stake in the ownership of rural property.

Consequently, the 'legal' resolution of the 'problem' of the availability of farmland for rent is much more closely associated with a 'civilising' mission than it is with any narrower form of legal positivism. By constructing the *other*, those demanding greater access to tenancies, as deviant, the power of the territoriality implicit in the tenure structure has effectively realigned the debate from questions about the power and signification of ownership, to those about the nature and use of space (its construction as place). The

characteristic structures of social space have therefore been appropriated to symbolise institutional form, and with it, the prescription of appropriate identities for the individual participants. Elements of the structure, such as the boundaries and rules of access to the space, thus function to reproduce the desired social order (Chaney, 1994).

Central to this reproduction of the desired social order has been the representation of such issues as technical rather than social. This has enabled claims to be made about the extent to which owners can accommodate tenants on 'their' land, but through individually negotiated arrangements rather than the corporatist structures of the past. This demonstrates clearly a politically-legitimised appropriation of power relations, with property ownership posited as a responsibility unsuited to the evident ephemerality of 'ordinary' people: they may temporarily occupy land for the purposes of farming, but only under supervision and only to undertake 'approved' activities.

Conclusions

Recent evidence suggests that the ‘farm tenancy’ may enjoy a resurgence under the new deregulated regime. We would argue, however, that the concept of the ‘tenant farmer’ has been in decline since the turn of the century and that the Agricultural Tenancies Act 1995 has done nothing to arrest this. Perhaps the greatest, and most intangible, threat to farm tenancies is that they will continue to be devalued in the eyes of the rural community. Already, with the shift to owner-occupation, tenant farmers who have not, for whatever reason, sought personal enfranchisement, are becoming regarded as second-class citizens,

the last vestiges of rural peasantry. Farm Business Tenancies will thus continue to debase the concept of tenancies and farm tenants.

The inevitable conclusion of this paper is that far from seeking to protect and enhance the significance of the agricultural landlord/tenant relationship, the recent reforms have effectively marginalised it. Tenancies will become add-ons, granted only to existing farmers who, as the few remaining secure tenancies fall-in, will increasingly be owner-occupiers in their own right. The much-heralded agricultural tenancy will thus become no more than a vehicle for expansionism, fulfilling the same role that was played by share-farming and other 'alternative arrangements' in the 1980s.

Rather than the management and administration of land representing a rational, defensible and efficient method of resource allocation, therefore, it can be argued that this process indicates a much more central concern with legitimising deviance. This is based primarily on the commodification of land, with the promotion of rights largely without responsibilities, at the expense of both the resources and the people to which they ostensibly relate. At the core of this deviance is the continued promotion of the dichotomous role of the consumer- or post-citizen - at the centre of sumptuary law. While carrying the responsibilities associated with civil and political rights, namely to maintain the primacy and exclusivity of property rights, post-citizens' (tenants') enjoyment of social rights are largely limited to those which they can purchase in an apparently free, but actually highly regulated, market.

Rather than being the neo-classical market assumed by formalist law, however, this new market for agricultural tenancies is essential cultural, reflecting a populist rhetoric of freedom in which the implicit social project of equity is nowhere to be found. Unlike the consumerism of wider, post-structuralist, popular culture, however, in this market, sellers dominate. By constructing the individual with respect to artefact - property - this market is able to appropriate the territorial specificity of agricultural land in underwriting the decline of positivist legal relations - and their increasing replacement by a form of 'hyperlegality' (Redhead, 1995) which seeks to provide a cultural replica of an original which never existed - the Farm Business Tenancy as simulacrum.

References:

Bergeron, J.H. (1993) 'From property to contract: political economy and the transformation of value in English common law', *Social and Legal Studies* 2: 5-23.

Central Association of Agricultural Valuers (1996) *Annual Tenanted Farms Survey 1996* Oxford: CAAV.

Chaney, D. (1994) *The cultural turn*. London: Routledge.

Country Landowners' Association (1990) *The reform of the landlord and tenant system in agriculture: freedom within contract*. London. Country Landowners' Association.

Fitzpatrick, P. (1992) *The mythology of modern law*. London: Routledge.

Foucault, M. (1980) *Power/knowledge: selected interviews and other writings 1972-1977*. New York: Pantheon Books.

Gibbard R., and Ravenscroft, N. (1993) *The future of the Tenanted Sector in British Agriculture: A review of the Proposals for change*. Working Paper No.11. Department of Land Management and Development, The University of Reading.

Giddens, A. (1984) *The constitution of society: outline of the theory of structuration*. Cambridge: Polity Press.

Hunt, A (1996) *The governance of the consuming passions: a history of sumptuary law*. Basingstoke: Macmillan Business.

Kerr, J. (1994) *Farm Business Tenancies: New Farms and Land.* The Royal Institution of Chartered Surveyors. London.

Lowry, M. (1994) *Farm Tenancy Reform to Bring more Land To Let.* Rural Practice Bulletin. September/October 1994. The Royal Institution of Chartered Surveyors. London.

Ministry of Agriculture, Fisheries and Food (1968) *A century of agricultural statistics*. London. HMSO.

Ministry of Agriculture, Fisheries and Food and Welsh Office Agriculture Department (1991) *Agricultural tenancy law - proposals for reform*. London. Ministry of Agriculture, Fisheries and Food. 8p.

Ministry of Agriculture, Fisheries and Food and Welsh Office Agriculture Department (1992) *Agricultural tenancy law - proposals for reform*. London. Ministry of Agriculture, Fisheries and Food. 8p

Ministry of Agriculture, Fisheries and Food (1995) *The digest of agricultural census statistics (1992-1994).* London. HMSO.

Nix J., Hill P. and Williams, N. (1987) *Land and Estate Management*. Packard. Chichester.

Northfield. (1979) *Report of the Committee of Inquiry into the Acquisition and Occupancy of Agricultural Land.* Cmnd.7599. HMSO.

Orwin, C.S. (1949) *A History of English Farming*. London: Nelson and Sons.

Quinn, J. (1996) *How is the Agricultural Tenancies Act Working in Practise?* Paper presented at the Legal Landscape for Agriculture Conference. RASE/LawNet.

Ravenscroft, N. (1988) The role of fixed term tenancies in the management of agricultural land in England and Wales. pp1-6 in Giles, A.K. and Wiggins, S.L.(editors).1988 *Management Matters in 1988.* Study no.18, Farm Management Unit, University of Reading.

Redhead, S. (1995) *Unpopular cultures*. Manchester: Manchester University Press.

Sousa Santos, de, B. (1987) 'Law: a map of misreading. Toward a postmodern conception of law', *Journal of Law and Society* 14: 279-302.

Tenant Farmers' Association (1990) *New tenancies-new blood*. TFA. Reading.

Twine, F. (1994) *Citizenship and social rights*. London: SAGE.

Urry, J. (1995) *Consuming places*, London: Routledge.

Waldegrave, W. (1995) Quoted in Ministry of Agriculture, Fisheries and Food. 1995. *New tenancy law to bring young blood into farming.* Press Release 184/95. London: Ministry of Agriculture, Fisheries and Food.

Ward, J. (1994) *Savills Agricultural Research Briefing*. Savills. London.

Whitehead, I. (1996) *Farm Business Tenancy Survey 1996*. The Royal Institution of Chartered surveyors. London

Winter M., Richardson C., Short C. and Watkins C. 1990. *Agricultural Land Tenure in England and Wales.* RICS. London.