

# Colonial Land Law, Property Rights and Malay Peasant Inequalities: Ungku Aziz on Land Subdivision and its Consequences

Jomo K. S.

**Abstract:** *Colonial laws and policies radically transformed access to land in the Malay peasant economy. Colonial law recognized private property rights, making land a commodity to be owned, bought and sold. This undermined shifting agriculture and created conditions for landlordism and tenancy. When used as credit collateral, land could be lost through loan default. While large tracts of land were secured by some members of the pre-colonial ruling class, peasant differentiation was mainly due to colonialism. Increases in land cultivation no longer simply reflected demographic growth as lawful cultivation required legally alienated land and the best available land was alienated to big, especially British, plantation interests. The result of Islamic inheritance law and customary Malay inheritance practices in this context was more joint ownership and subdivision of landholdings while concentration of land-ownership led to tenancy and sharecropping arrangements. Hence, landlordism, land hunger and landlessness were primarily consequences of colonialism. All this has had complex implications for Malay peasant agricultural investments and farm viability, resulting in abandonment of peasant land cultivation of unviable farms in recent decades. While both colonial and post-colonial authorities have wanted to preserve a yeoman peasantry to ensure political stability, they did not act decisively to resist undermining the Malay peasantry. can look up to as examples of exemplary intellectual leadership, as well as, academic scholarship.*

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## 1. Introduction

During his most productive decade from the mid-1950s to the mid-1960s, Royal Professor Ungku Aziz contributed influential writings on rural poverty, nationalism and other subjects that fired his generation. Like his peers, his work was basically institutionalist in orientation, and likely to be rejected

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Corresponding Author. Food and Agriculture Organization of the United Nations, Rome, Italy,  
Email: [jomoks@yahoo.com](mailto:jomoks@yahoo.com)

Note : Much of the historical material for this article is drawn from Jomo (1986: chapter 4).

by contemporary economic orthodoxy. Yet, it was precisely such culturally sensitive analysis that inspired his basically simple, but nonetheless eminently feasible proposal to establish the Muslim Pilgrims Management Fund (Lembaga Urusan dan Tabung Haji) as a financial savings institution without interest in the sense of a promised fixed rate of return.

His work has also been dismissed as morally driven, but analytically lacking in rigour; in this regard, he has been unfavourably compared with his contemporary and rival, Dr Clifton Wharton, Jr, later US Deputy Secretary of State in the first Clinton Administration (Jomo 1990). This essay will locate his pioneering work on subdivision of Malay peasant land holdings and some of its ongoing socio-economic consequences, relevant to this day. It will do so by showing that colonial land law fundamentally changed the institutional context for Malay peasant agriculture, rendering it increasingly in-egalitarian and unviable. The colonial legal emphasis on transferable property rights undermined agricultural systems based on cultivation rights for the tiller. The gradual decline of peasant agriculture in the post-colonial period therefore has to be understood as a consequence of the increasingly uneconomic size of land owned and the failure of the rental market to resolve this problem due to property rights. One consequence of Muslim inheritance (*far'aid*) law and Malay customary (*adat*) practices operating in the context of colonial land law has been the growing phenomenon of abandoned or 'idle' agricultural land (Pazim 1990; also see Stivens, Ng & Jomo 1994).

## **2. Colonial Land Policy and Law**

The bases of Malay rural land rights prior to colonial intervention was usufructuary, and hence, rested primarily on the condition that it was worked (Jomo 1986: Chapter 1). Consequently, there was little accumulation of land for purposes other than cultivation. Since land was not rendered scarce by the prevailing rights system, most farmers could cultivate as much land as they needed or were able to work. However, ownership under colonial land policy and legislation—in all its variations—bore no relation to those pre-colonial premises.

Two aspects of colonial land policy worked in tandem to fundamentally transform land tenure conditions involving the peasantry. First, the new land laws introduced by the British juridically defined a new relationship between peasant and land, and hence, to the rest of society. Secondly, colonial land alienation policy controlled the availability of land for peasant cultivation, and also required cultivators to farm under conditions defined by the colonial state. Land as tradable or transferable property was also to have its effects on land prices and on the use of land as collateral for obtaining credit.

There were many differences between the land laws introduced in the Straits Settlements and those adopted in the Malay States of the hinterland. Significant variations also existed among the peninsular Malay States,

especially between the Federated Malay States (FMS) and the other States collectively referred to as the Unfederated Malay States (UMS). Lack of uniformity also extends to matters of land administration. The Torrens system of land registration – developed in the British settler colony of Australia to facilitate capitalist expansion in land matters – was adopted in the Malay States; British land law, with its strong feudal heritage, was considered less suitable. Unlike the ‘less efficacious system of registering deeds’ adopted in the Straits Settlements – which had been colonized earlier – the Torrens system established an ‘indisputable right of ownership to registered land’ through the issue of title certificates.<sup>1</sup> Nevertheless, several crucial elements are common to the land laws of Malaya.<sup>2</sup> Though subsequent post-colonial land codes have managed some degree of standardization, the British colonial legal legacy is very much alive to this day.

Under the colonial land laws, ownership involved obtaining legal rights to land properly alienated by the authorities. ‘The practical goals of the land code were to establish a favourable climate for outside investment in land, and to bring Malay smallholdings under Government control’ (Kratoska, 1975: 135). As capitalist interests and immigrant peasants from neighbouring islands – attracted by the conditions established under colonial rule – began to acquire land, the balance available for cultivation diminished in quantity as well as quality.

Colonial rule fundamentally transformed the conditions of land alienation, and therefore of access to land. ‘Under the terms of the new legislation, all land which had not been alienated, nor reserved for a public purpose, nor reserved forest, was considered to be State Land, the ownership of which rested in the ruler of the State in which it was located’ (H. Wilson, 1975: 130). Once virtually freely available, land was thus rendered scarce by a combination of legal, economic and environmental conditions, making acquisition of cultivable land by purchase increasingly necessary. In the new conditions accompanying colonial rule, land, the primary means of production in Malay peasant society, was systematically brought under state or private control, and transformed into a commodity which could be accumulated as a form of investment. The growing commercialization and monetization of the economy hastened this process, encouraging land transactions and investment in land property.<sup>3</sup>

The imposition of colonial land laws signified the end of swidden agriculture, practised by most Malays in the peninsula outside the long-standing Malay agricultural settlements established on artificially irrigated (wet) rice (*sawah*) plains in northern Malaya. The pre-colonial Malay land systems had been compatible with prevailing agricultural practices; for example, (temporary) usufructuary rights while working the land were consistent with the needs of shifting cultivation. British-imposed land legislation – designed to serve the interests of capital – was incompatible with this long-standing practice, which did not require permanent rights to land ownership.

Colonial land legislation was only one of many blows to swidden agriculture. Colonial rule also brought about a rapid expansion of mining or agricultural land alienated to capitalist interests, diminishing land available for shifting cultivation. The new land laws meant that cultivation of land without permission from the owners constituted a violation of property rights. Whatever the validity of the pre-colonial Malay ruler's claim to eminent domain over land was, under colonial rule, this became a reality with new significance (David Wong, 1975). Land now ultimately belonged to the state, with some alienated to private interests. Without legally recognized rights to land use, shifting cultivation – the livelihood of most Malay peasants – became illegal. Despite this, however, shifting cultivation practices among Malays took some time to disappear.<sup>4</sup> While administrative and legislative forces put an end to an agricultural practice well adapted to the economic and demographic environment of the Malay peasantry, little effort was made to create conditions for a viable alternative: it was the peasants who had to adapt to the new conditions created by the British.

Lim Teck Ghee (1976) has suggested that, whatever their differences on legislative and administrative details, the land policies advocated by early colonial officials were unanimously 'liberal' in order to attract immigrants to engage in sedentary agriculture. In contrast to the previous emphasis on trade for the Straits Settlements, the envisaged motor of economic growth in Malayan hinterland was to be agricultural expansion. The policies succeeded, and there was a considerable inflow of settlers almost from the outset.

Legislation and other aspects of colonial rule, geared to promote this general policy, were especially in favour of larger British concerns.<sup>5</sup> This liberal colonial land policy was also reflected in the revenue system, e.g. in the form of low quit rent rates. Large capitalist interests, especially British mining and plantation interests, were assured by colonial administrators of easy and cheap access to land, which was often accumulated speculatively, in excess of their anticipated capacity for utilization. Better land – for instance in terms of mineral potential, soil quality, terrain or access to communications – tended to be allocated to plantation interests, especially to the more powerful and influential ones. The British also devised a 'system of dual agricultural land taxation, a light one on the affluent European planter and a heavy one on the native cultivator' (Lim Teck Ghee, 1976: 129). There were other discriminatory aspects of colonial agricultural policy and practice;<sup>6</sup> discrimination against the peasantry in favour of capitalist interests was not confined to land matters.

### **3. Land-Ownership and Peasant Differentiation**

Later and contemporary landlord-tenant relations in Malay peasant agriculture are often said to have originated from allegedly 'feudal' pre-colonial relations; according to this view, land tenancy today has its origins in 'feudalism'.<sup>7</sup> This perspective on class relations with regard to land is not grounded in Malayan

history. In fact, the contemporary process of differentiation in relation to land actually developed from conditions created by the peasantry's integration – under colonial auspices – into the world economy.

Emphasis on the colonial origins of contemporary peasant class structure does not, of course, deny pre-colonial influences. The successful establishment of colonial hegemony was partly achieved through the cooptation of important sections of the pre-colonial ruling class. The various British concessions to secure and sponsor this alliance included the generous distribution of land property to members of this class. Most of this land is still under peasant agriculture; the rest has either become residential land or been integrated into capitalist enterprises, such as mines and plantations.<sup>8</sup>

Besides large land concessions to members of the pre-colonial ruling class and their heirs, other factors contributed to the unequal distribution of land among the peasantry at the beginning of the colonial epoch. It was a colonial practice to encourage land development by providing those with money and or influence with undeveloped land to be worked – rent-free for some years – by agricultural settlers (T. B. Wilson, 1958: 13). After such land had been developed, rents would be introduced. Another procedure was to allow settlers to open and develop land in exchange for some land for themselves.<sup>9</sup>

Generally, ownership of large tracts of agricultural land lends itself to the establishment of plantations employing wage labour. However, where agricultural production tended to be organized on the basis of the family unit, as has generally been the case for rice cultivation until fairly recently, such large pieces of land may instead be subdivided for operational purposes. Nevertheless, in so far as the subdivided parcels are contiguous and remain under common registered ownership, such large land areas are still represented in cadastral maps as lots, the legal units for payment of quit rent.<sup>10</sup> Evidence from such maps suggests that only a small proportion of rice land is owned in large lot titles<sup>11</sup> (Goethals and Smith, 1965: 24; Lim Teck Ghee *et al.*, 1974: 35).

Demographic pressures on socially, rather than ecologically, limited land resources have resulted in an increasing subdivision of holdings that has often led to the eventual displacement of impoverished owners in favour of wealthier ones. However, the concentration of land-ownership is not the converse of subdivision; nor is subdivision alone a sufficient condition for the impoverishment or total dispossession (in terms of land owned) of small land owning peasants (Barnard, 1970: 34). The very importance of land as a means of production to peasant agriculturalists motivates the impoverished peasant to hold on to his property as long as it continues to yield some income. Even when sale or forfeiture (on account of an unredeemable mortgage) becomes necessary, land tends to be reluctantly given up, in bits and pieces. Hence, accumulation of land property in a situation of limited availability of land necessarily involves someone else's dispossession.

Thus, ironically, the non-substitutability of land in agriculture simultaneously emphasizes and limits the significance of land-ownership distribution patterns in understanding wealth and income distribution in peasant society. In present technological conditions, land still remains the most important means of production in agriculture,<sup>12</sup> though with the spread of large-scale commercial rice farming, ownership – while still important – has declined in relative significance. Despite the recent relative increase in the significance of peasant agricultural means of production besides land, the peasant's relationship to land-ownership was still commonly taken as the primary criterion for identifying strata among the peasantry, at least until the 1970s (Kessler, 1974; Husin Ali, 1972, 1975).

Generally, there has been an important long-term trend towards some concentration of land-ownership and operation on the one hand, and growing impoverishment and dispossession on the other. The tendency towards concentration is the result of a complex process, and cannot merely be attributed to 'original' inequalities in land alienation at the outset of agricultural settlement; this is perhaps most obvious on the early government-organized agricultural and development schemes where the original settlers started off with equal-sized lots (Swift, 1967: 243; Selvadurai, 1972a: 26).

One consequence of this 'land concentration' has been the frequently cited fragmentation of farms, involving the agglomeration of non-contiguous lots under common ownership. Another possible effect of the concentration of land-ownership is tenancy, though this is not a necessary consequence. In the past, concentration of land-ownership, especially in rice areas, has resulted in the exploitation of tenants (including share-croppers), rather than wage labour. Tenancy and its corollary, landlordism are the main criteria employed in the following discussion to analyse the process of class differentiation among the peasantry since the advent of colonial rule. However, the concentration of land-ownership or even large scale farming on rented land has also led to the reorganization of production involving the exploitation of wage labour. In fact, recent technological changes in rice production have involved the further transformation of the relations of production, and hence those of exploitation, involving' further extension of wage labour or capitalist relations of production in Malay peasant society.

#### **4. Joint Ownership and Land Subdivision**

It was the vogue to attribute peasant poverty to population growth<sup>13</sup>, supporting such assertions with superficial evidence. Besides the 'uneconomic size' of most peasant farms, there was evidence of considerable landlessness among the peasant population by about 10,000 each year, according to a 1974 estimate by the then Deputy Director-General of the Federal Land Development Authority. Citing the 1970 national census, he also stated that about 342,000 rural Malay families either had no land or possessed plots of inadequate size (*New Straits Times*, 22 June 1974).

Careful critical examination of factors underlying the ostensibly demographic pressure on land shifts responsibility for peasant land hunger away from the population growth rate to the legal and economic aspects of the land situation in Malaya (Jomo, 1986: Chapters 3, 4). Land scarcity as a social condition, rather than the outcome of exclusively ecological and demographic factors,<sup>14</sup> accordingly requires a shift in attention to the conditions of peasant agricultural production—specifically, to the availability of land.

The related phenomenon of rural squatters as a manifestation of land hunger in Peninsular Malaysia has yet to be accorded serious and systematic study.<sup>15</sup> Given the insecurity of illegal cultivation, it is remarkable that rural squatters have not been deterred altogether. The existence of such illegal cultivators is testimony not only to peasant land hunger, but also to the availability of arable land, and, more specifically, to the economic and legal, rather than ecological and demographic limits which currently constrain peasant land usage.

The distributive effects of the Islamic inheritance system have frequently been blamed for the current condition of Malay peasant landholdings, which are often subject to joint- or co-ownership, subdivision, and fragmentation. The distributive effects of customary Malay (*adat*) inheritance systems are considered to be somewhat similar, though they are cited less often.<sup>16</sup> The distributive consequences of these systems of inheritance are, of course, different from other systems, such as primogeniture, which upholds the right of the first-born male to exclusive inheritance, and does not therefore have similarly divisive effects through the inheritance process. In contrast to Islamic and *adat* inheritance systems, primogeniture for example, disadvantages those who would otherwise have a right to at least some property. Clearly then, primogeniture is relatively more in-egalitarian in principle and consequence.

Although the practice of Islamic and *adat* inheritance systems among the Malay peasantry obviously predates colonialism, joint ownership, subdivision, and fragmentation of peasant landholdings does not seem to have been significant in pre-colonial times. Rather, these features only became significant with the development of colonial land legislation and policy, particularly the constraints on land alienation for peasant cultivation. Only the imposition of colonial legal restrictions on increasing cultivated land to accommodate population increases caused peasant population growth to have such effects. Therefore, it is not the inheritance systems, but the conditions created under colonialism and persisting thereafter, which bear primary responsibility for the sub-divisive effects of demographic increase on landholdings.

Division of land-ownership is manifest in both the increase of joint- or co-ownership as well as in the physical subdivision of landholdings. Both these tendencies tend to encourage the sale of affected land; leading to the concentration of land-ownership.<sup>17</sup> Joint ownership is often preferred to subdivision because of problems identified with ownership of smallholdings (Fisk 1964: 13). It may also be chosen because of the difficulties and

expenses involved in effecting physical subdivision, or the desire of the co-owners to keep the farm holding intact for other reasons. Co-ownership due to Islamic rules of inheritance has led to shares of small and awkward sizes. Joint ownership discourages investment and other measures to increase productivity, especially over the long term, while encouraging tenancy as an interim solution to the problems of allocating land use among the co-owners themselves. 'Co-ownership tends to result in neglect of land or use of poor techniques, lack of conservation measures and unwillingness to make long-term improvements to the land. It also tends towards landlordism because it is simpler *for* the co-owners to share the value of the rent rather than any other economic arrangement' (Aziz, 1958: 24).

Discussing some effects of subdivision on peasant production, Ungku Aziz (1958: 24) pointed out that the reduction of farm size as a result of subdivision makes it less feasible to employ certain more productive techniques; some techniques and equipment – which can yield higher outputs – are more difficult or expensive to employ on smaller holdings, i.e. without certain economies of scale. Certain common farming problems – e.g. different operation schedules of neighbouring farms and negligence by neighbours – are exacerbated when there are more smaller-sized farms due to subdivision. Subdivision also tends to lead to farm fragmentation. 'A consequence of subdivision is that farmers find a single piece of land too small. In order to make better use of their time and energy they try to operate several pieces of land. Generally the pieces they inherit, buy or rent will not be contiguous. This process where the pieces of land on particular farms are scattered about the village is called fragmentation' (Aziz, 1958: 23).

To overcome the problem of inadequate land, especially on small sub-divided lots, peasant farmers increased farm sizes by various means, consolidating property rights through renouncement, gifts, exchange, and sale. Generally, however, tenancy is the most important means of enlarging farm size. The consequence of these various actions is the consolidation of various small parcels of land into farms of more viable size. Other factors besides physical subdivision have also contributed to the phenomenon of farm fragmentation.<sup>18</sup> The dispersal of parcels incurs greater time, effort and cost in transporting the farmer, his equipment, farm animals, other farming material and, of course, his produce. Travel time and cost can thus affect production on fragmented rubber smallholdings as productivity in rubber tapping is affected by the time at which incisions are made and latex begins to flow. Parcelling also inhibits the introduction and utilization of new farm infrastructure, techniques and inputs because of the greater organizational and other difficulties involved (e.g. see Ooi, 1959: 204, 205). However, operating a fragmented farm may have certain advantages for multi-cropping and spreading risk.



## 5. Concentration of Land-Ownership<sup>19</sup>

Except for newly cultivated agricultural land, the accumulation of land property by some – which necessarily involves dispossessing others – or the process of concentration of land-ownership represents, in so far as land is the primary means of production in peasant agriculture, the main, though not the only form of capital accumulation in the peasant sector.

Land sales by peasants may be necessitated or motivated by prevailing circumstances, or the desire to transform the nature of one's assets. Husin Ali (1975: 82) maintained that small land assets, low incomes, and the seasonal nature of many agricultural pursuits tended to force peasants into a spiral of chronic indebtedness, sometimes culminating in land sale or forfeiture of property offered as collateral for credit. In such circumstances, extraordinary expenditures often precipitated the actual sale of land since the impoverished, and the often indebted peasant usually has no other recourse. A superficial focus on the extraordinary spending that culminates in land sale ignores the socio-economic context in which the peasant lives, and leads to the erroneous view that peasants lose their land solely because of such expenditure.<sup>20</sup> It is common for such spending to be characterized as irrational and, hence, for peasant impoverishment to be attributed to peasant irrationality. However, in view of the relatively recent origins of peasant differentiation on the basis of land-ownership, there is little reason to expect great concentration of peasant land-ownership or a highly advanced stratification of Malay peasant society, though this does not, of course, deny the significant trends which have developed thus far as well as the class differentiation along other lines which has taken place.

Land owned is not synonymous with land operated. The past dominance of certain organizational forms of rice production, especially the family's role as the basic productive unit, as well as other factors, such as the fragmentation of land property, have previously tended to limit farm sizes. Through various arrangements, especially tenancy, land is distributed for purposes of cultivation. Sometimes, land-owners rent out their own land and operate land belonging to others (usually to minimize the adverse effects of fragmented ownership), but it is more usual for owners to cultivate their own land. There are many factors, however, which mediate between land-ownership and operation, though ownership does nevertheless have a considerable bearing on land operation. Many a land-hungry farmer can only afford to rent small farm areas,<sup>21</sup> if available, and may also supplement his income with other jobs. It does appear then that the concentration and inequitable distribution of land ownership has a considerable influence on the distribution of farms by size.<sup>22</sup> However, the size distribution of farms (e.g. see Selvadurai, 1972a; Eddy Lee, 1976: 22, Table 6) reflects the distribution of farm-land ownership in a distorted fashion

Concentration of land-ownership in a situation where the peasant family remains the basic unit of production, has contributed to the development of tenancy among peasant cultivators. Available evidence suggests considerable variation in the extent of tenancy for land planted with different crops (e.g. Husin Ali, 1972), which in turn relates to variations in average farm size and the degree of concentration of land-ownership (see Jomo 1986: Table 4.16). Many factors contribute to differences in the tenancy rate (see, for example, Huang, 1975b). Differences in income obtainable from cultivating different crops must affect the economic standing of the farmer, and thus, both land-ownership and tenancy. Botanical as well as other differences in the production regimes of various crops also influence the choice of mode of exploitation. For instance, the annual (and more recently, the bi-annual) rice production cycle is certainly more conducive to tenancy arrangements than land planted with perennials.<sup>23</sup> A variety of tenurial arrangements between landlord and operator can be found in Malaysian peasant agriculture. Many minor variations exist in different places, and the terms used to characterize the various possible tenurial agreements between private individuals also vary to some extent.<sup>24</sup> Fixed rents are payable either in kind (e.g. *sewa padi* in the case of rice) or in cash (*sewa tunai*).

## 6. Tenancy and Peasant Differentiation

Growing land hunger, concentration of land-ownership, tenancy (and its counterpart, landlordism) and differentiation among the peasantry emerge as complex processes unfolding with the integration of the Malay peasantry into the British Empire and the global economy. The integration of the peasantry mainly stimulated the development of commodity production and the related growth of circulation capital, as well as the emergence of new non-capitalist relations of production, i.e. not involving the exploitation of wage labour. Since peasant social relations of production were transformed by integration – under colonial domination – into the capitalist-dominated market, they were no longer pre-capitalist. Yet, these peasant relations cannot be termed ‘capitalist’ – despite subordination to circulation, especially merchant capital – in so far as they did not involve the direct exploitation of free wage labour by capital invested in agrarian production. Caught in fundamentally new circumstances created by colonial intervention, the peasantry survived – as peasants, in so far as they continued to have private (direct) access to land, the primary means for agricultural production – though subject to ongoing change.

Hence, the peasantry, under colonialism and since, has been irreversibly transformed by its integration into the world economy and its subordination to capital. Subject to the logic of capital accumulation in its various forms, the peasantry is inextricably tied to the market, and hence peasant production is dictated by the rationality of commodity production. These forces, subordinating the peasantry to the hegemony of capital and the market, have also set in motion new processes of differentiation among the peasantry itself.

Unlike the pre-colonial class structure – in which peasants were generally not significantly stratified at the village level, though they were subject to extra-local class domination – after colonial integration, peasants became subject to differentiation at the village level as well. ‘Sub-division and fragmentation interact as causal factors with indebtedness, tenancy, and other features of rural poverty in a cumulative process of circular causation, not only to bring about increasing inequalities in the distribution of rural income, land and capital, but also to expedite the disintegration of the very kampong socio-economic structure itself’ (Aziz, 1958: 24). As accumulation of rural wealth on the one hand and peasant impoverishment on the other were manifested in the growing concentration of land-ownership, peasant relations of production increasingly involved land tenancy, rather than the generalization of wage labour relations.

The complex dynamics of subdivision and concentration of land-ownership, and the recent origins of peasant differentiation have had a major bearing on the social relations, forms and consequences of peasant differentiation. ‘The concentration of ownership in the three areas has not led to a clear-cut class system made up of landlords on the one hand and tenants on the other’ (Husin Ali, 1975: 84).

The gravity of the tenancy situation among rice cultivators was highlighted by the 1952 and the 1955 reports of the Rice Production Committee. These resulted in the colonial government’s promulgation of the Padi Cultivation Control of Rents and Security of Tenure Ordinance 1955, legislating a rent ceiling and prohibiting the ‘tea money’ practice, among other things. Certain aspects of the ordinance, ostensibly a piece of legislation to serve the interests of tenants, raised serious doubts as to its true purpose; for example, it prohibited tenancy agreements for ‘less than one season or more than one year’ (quoted in T. B. Wilson, 1958: 94).<sup>25</sup> In a situation where agreements are not made for less than a season for obvious reasons, this maximum limit actually increased insecurity of tenure by prohibiting leases of longer duration. While rents previously below the newly legislated maxima were raised to the officially tolerated maximum levels, it was found that rents already exceeding these maxima were very rarely lowered (Lim Chong-Yah, 1967: 169). Ambiguities in legislation have tended to be resolved in favour of the stronger party, invariably the land-owners. Perhaps, most significantly, the legislation was not backed up with any effective enforcement apparatus. The Ordinance has been described as having been ‘completely ineffective’<sup>26</sup> (Selvadurai, 1972a: 29)

The gravity of the tenancy situation was exacerbated as the ‘counter-productive’ impact of the 1955 Ordinance became more apparent. A Ford Foundation-sponsored team presented a report critically examining the 1955 legislation and recommending alternatives (Goethals and Smith, 1965). Failing to fully recognize and take account of the nature of the post-colonial state in

relation to the vested interests at stake, the authors suggested comprehensive legislative and implementation measures for the Malaysian government's consideration. Subsequently, the Padi Cultivators (Control of Rent and Security of Tenure) Act 1967 was duly passed by Parliament. Though legislatively superior (see Selvadurai, 1972a: 29-30), the Act has suffered a fate similar to that of the 1955 Ordinance. Responsibility for implementation rests with State governments, which have been assigned constitutional authority over land-related matters. Rural landed interests, generally more strongly entrenched at the State level compared to the federal level, have ensured that the Act has largely remained a dead letter.

There appears to be considerable resistance from landlords to the stipulations of the 1967 Act. Economically and politically weak, tenants have not been in a position to ensure effective implementation (Selvadurai, 1972b: 35). Many observations have been made of rents exceeding the stipulated legal maxima (e.g. see Barnard, 1970: 49; Horii, 1972: 59; Lim Teck Ghee *et al.*, 1974: 60, 61).

Land is the primary means of production for peasant farmers. Colonial legislation and policy radically transformed the significance of land in the peasant economy, and hence peasant relations of production. Land law in the colonial order recognized private property rights in land, rendering it a commodity to be owned, bought, or sold. The new legislation, together with several other measures taken by the colonial government, undermined the practice of shifting agriculture. More importantly, the colonial situation created the conditions for landlordism and its corollary, peasant tenancy. By becoming property that could be traded or used as credit collateral, land could also be subsequently lost through loan default.

Large tracts of land were provided by the colonial authorities to some members of the pre-colonial ruling class, enabling them to become landlords. However, the origins of peasant differentiation are to be found in other new tendencies generated by the colonial situation. Unlike during the pre-colonial era, subsequent increases in land cultivated no longer corresponded to demographic growth. In conformity with colonial law, lawful cultivation could only be done on legally alienated land. In the colonial economy, the best available land – in terms of soil conditions, access to communications, etc. – was alienated to capitalist interests, especially British businesses.

With Islamic inheritance law and customary Malay inheritance practices operating in this context, the outcome has been a generally increasing ratio of peasants to land, manifested mainly in greater joint ownership and subdivision of landholdings. Together with other factors differentiating the peasantry according to wealth, there has also been some concentration of land- ownership among peasants. Hence, the phenomena of landlordism, land hunger and landlessness are primarily consequences of the peasant situation under colonialism. The integration of the Malay peasantry into the

world economy has given rise to new non-capitalist relations of production, fundamentally different from the pre-colonial class relations involving the peasantry.

Concentration of land-ownership has mainly led to tenancy (and share-cropping) arrangements. Peasant strata may be differentiated according to tenurial status, i.e. location in tenancy arrangements. The peasantry may be analytically differentiated into several related strata by using criteria such as land owned, land cultivated, and the nature of the labour process. However, these divisions still appear to be somewhat ameliorated by kinship ties, and there is considerable ambiguity about the nature and extent of social consciousness. While there have been rising rental rates, with increases somewhat obscured by changes in tenancy arrangements and forms of rent payment, this trend does not appear to have kept pace with rising agricultural land prices.

This, of course, has complex implications for investment trends in peasant agriculture. For instance, recent investments in rice production will focus on means of production other than land, with the necessary concentration of land for management purposes resolved (at least temporarily) by rents or leases, or government-sponsored land consolidation for operational purposes, rather than by the more difficult, controversial, and more expensive route of acquiring outright ownership. While the colonial and post-colonial states have wanted to preserve a yeoman peasantry to secure political stability and support, it has not sought to resist the tendencies contributing to peasant differentiation.

## Notes

1. David Wong has comprehensively discussed the emergence and legal significance of such legislation in the Malay States. Lim Teck Ghee (1976) has provided a detailed historical account of the development of the prototype land legislation in Perak. Jacoby has also discussed the significance of the law affecting land tenure for peasant cultivation (IBRD, 1955). See Das (1963).
2. 'The system of land-tenure as it evolved in the Federated Malay States of Perak, Selangor, Negri Sembilan and Pahang served as a model for successive British Agents and Advisers in the Unfederated Malay States of Kelantan, Kedah, Perlis, Terengganu and Johore.... In this, it reflected the tendency of British policy towards uniformity, but the application of similar legislation to a number of disparate communities, differing in density and composition of population, methods of cultivation, the extent of the intrusion of alien economic forces, and the degree to which customary inheritance practices have been modified by Islam, resulted in a land tenure situation displaying considerable local variation' (H. Wilson, 1975: 120).
3. '... in Krian, in 1874, it was difficult to get ten dollars an *orlong* for excellent rice land by *pulang belanja* [return of expenses], but when security of tenure and the full right of alienation of the soil were introduced in the district by the

British Government, it became possible to sell the same land for \$60 or \$70 an *orlong*' (Maxwell, 1884).

4. Legislation prohibiting swidden agriculture by Malays was enacted and introduced in Selangor in 1886 and in Perak a decade later (Lim Teck Ghee, 1976: 67); 'no effort [was] spared to secure a *settled* population of agriculturalists' (Swettenham, 1948: 261; emphasis added).
5. For example, agricultural land exceeding 100 acres in size was exempted from reassessment in the 1890 Selangor land code formulated by Maxwell (Lim Teck Ghee, 1976: 19).
6. '... the easier acquisition of state-sponsored credit by planters, the greater participation by Government and heavier investment of state revenue in plantation agricultural schemes and the lack of interest shown by Government experimental gardens in native crops' (Lim Teck Ghee, 1976: 130). Administrative actions adopted to improve peasant agriculture were few and even these 'proved to be more in the way of half-hearted, disjointed and niggardly measures rather than a concerted programme' (Lim Teck Ghee, 1976: 141).
7. For example, 'Fixed rents originated as feudal dues, which were continued after the disintegration of the Raja feudalism' (T. B. Wilson, 1958: 10).
8. The significance of these land concessions has yet to be thoroughly surveyed, let alone analysed, though suggestive glimpses are available. In Mukim Gunung, Kelantan, for example, 271.6 acres, or 32 per cent of the 848.4 acres of agricultural land there was owned by the Sultan of Kelantan, with a further 378 acres owned by other members of the Kelantan royal family (Mohd Noor, 1974: 41-7).
9. Husin Ali (1964) found that some of the wealthier early settlers of Kampung Bagan used bonded or indentured labourers (*orang tebusan*) from elsewhere in the Malay archipelago to develop agricultural land. Decades later, in the early 1960s, these earlier arrangements were still reflected in the tendency for descendants of the earlier settlers to become landlords, and for descendants of the indentured labourers to be tenants.
10. Of course this does not preclude the existence of large owners with holdings consisting of many lots of small size, but there is limited evidence of this phenomenon.
11. 'There are only one hundred and twenty titles of over thirty-five acres each (10 Kedah *relong*) in the whole of the west coast padi plain from the southern district boundary of Krian in Perak to the northern Siamese border of Perlis. These few large titles are outstanding in size, and range up to 210 acres each with an average of 95 acres, whilst throughout this area, all rice land titles averaged only five acres. Consequently this handful of titles accounts for over 11,000 acres or about three per cent of the main rice land area in which they are found.  
'Each title often has more than one owner, usually the result of subdivision or inheritance. But fragmentation is less common and less advanced than on holdings of normal size, and it tends to be outweighed by plural ownership,

i.e. the possession by the same owner of whole or part shares in other holdings. In one instance in Krian, six persons are named as co-owners on each of four large titles, which together total over 900 acres of rice land.

‘Over all the rice lands of north-west Malaya, approximately three owners existed for each of these large titles, i.e. about 350 owners owned about three per cent of the main rice land area in the form of large holdings. Thus only a small proportion of the main rice land is shown, by the *prima facie* evidence of the cadastral sheets, to be concentrated in the hands of a few proprietors, although some of these possess some very large properties’ (T. B. Wilson, 1958: 63-4).

12. Rent has been identified as the largest cost item in rice production, e.g. see T. B. Wilson (1958: 22); and Lim Chong-Yah (1967: 168). Selvadurai (1972b: 16) estimated, from a survey of rice production in Krian, Perak, that land accounts for at least 82 per cent of total ‘farm capital’. This should be viewed in the context of the extent of tenancy in rice production, since for the average farm size of 3.1 acres, only 1.6 acres is owned, while the rest is rented. However, such estimates may now have to be revised downward in recognition of recent technological changes in rice and other agricultural production requiring heavy investments in machinery, chemicals, etc. Nevertheless, it is hardly likely that such increases in fixed capital investments detract from the centrality of land to peasant production.
13. ‘The root cause of poverty boils down to a race between population growth on the one hand and technological progress and opening up of new lands on the other’ (Lim Chong-Yah, 1967: 173).
14. ‘... over-population is likewise a historically determined relation, in no way determined by abstract numbers or by the absolute limit of productivity of the necessities of life, but by limits posited rather by *specific conditions of production*’ (Ho, 1970: 92).
15. Current studies have only touched on them tangentially (e.g. see D. Guyot, 1971; Mohd. Noor, 1974; Husin Ali, 1975).
16. Kuchiba and Tsubouchi (1967: 470) mention that inheritance according to Islamic law and Malay custom (*adat*) were about equal in number in the Kedah village they studied.
17. ‘...the increase in the number of joint owners, and the diminution in the size of the interests of individual owners, was a strong incentive to sell the land to someone in a position to purchase it as a composite unit. The new owners were naturally not the impoverished and landless in the reservation, but persons who already owned substantial income-producing holdings or who had other substantial sources of income’ (Fisk, 1961: 21).
18. ‘... under the combined effects of scarcity of land, the question of the peasant’s place of residence after marriage, the laws of inheritance, etc., the land owned by the peasants is geographically dispersed, and the result is a strong tendency to fragment the cultivated land holdings’ (Kuchiba and Tsubouchi, 1967: 472).
19. Concentration of land-ownership refers to the process whereby land parcels, previously owned separately, are brought under common ownership. In so far

as such land is not contiguous, it gives rise to fragmentation of land owned. Concentration, as discussed in relation to land-ownership, cannot therefore be viewed as analogous to the concentration of capital.

20. For example, Swift (1967: 251) has argued that maintenance of a certain level of ‘normal’ consumption is not a major cause of land sales. Instead, he suggests, land transfers are usually caused by the incurrence of extraordinary expenditure.
21. For example, pre-season rent payments economically limit the amount of land a poor peasant—who might otherwise be willing and prepared to cultivate a larger area of land—can rent.
22. Barnard has suggested that most rice farmers who are able to cultivate more than the ‘economic minimum’ have at least two parcels. ‘This suggests that the process of accumulation of land by a minority has, in the long run, possibly as great an effect on patterns of landholding as the opposite process of the fragmentation [*sic*] or division of holdings into increasingly smaller units among the majority’ (Barnard, 1970: 34).
23. For example, slaughter tapping of rubber trees by tenants can affect the long-term productivity of the trees, whereas similar possibilities with tenant rice farmers are more difficult to come by.
24. The five basic types of agreements defined in terms of form of rent payment, and ownership and trust arrangements are listed here together with the most common equivalent Malay terms (T.B.Wilson, 1958: 11):

fixed rent	<i>sewa</i>
crop-sharing	<i>pawah</i>
lease	<i>pajak</i>
loan	<i>gadai</i>
mortgage	<i>jual janji</i> (literally ‘promissory sale’)
ownership	<i>sendiri</i>
trust	<i>pesaka</i>

25. ‘The Ordinance specifies the duties of tenants to practise good husbandry, but does not specify the duties of landlords to keep a clean title, make up-to-date registration of ownership details, pay land dues and rates, and maintain survey boundary marks. The Agreement Form prescribed by the Ordinance requires tenants “to defray all expenses and perform all work necessary for the construction, and putting and keeping in order of any dams, etc.” which is landlord’s responsibility as a capital improvement and, if executed by the tenant, should be subject to compensation’ (T. B. Wilson, 1958: 95).
26. The exception which proved the rule took place in parts of Kedah for one season: ‘Police prosecution of eight landlords for extortionate rents in four *mukim* of Kedah in 1956 and 1957, did ensure almost 100 per cent registration of tenancy agreements in the 1956/57 season compared with an overall 15 per cent registration for the rest of Kedah and Perlis’ (T. B. Wilson, 1958: 96).



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