

Agricultural Land Law in the Great Transformation from Industrial to Sustainable Society

—Protection of homestead farmers and sustainable agriculture against agricultural trade liberalization—

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Introduction

The notion of rule of law has been developed in association with market economy within a nation state. It supports a free market system through legal control of state power (rule of person) on the one hand and restricts a runaway market through the legal regulation by state power as public power, on the other. If a free market goes beyond the borders of a nation state, it would easily be a runaway market because of a lack of state power at the transnational level. How to establish the rule of law at this level and how to reconcile it with that of nation states' would be a very important issue in Asia, too. I will take the case of agricultural trade liberalization in order to consider this issue.

I'd like to start my short story from an assumption that it is an obligation of a nation state to save life of a nation by securing foods. All nation states have foodsovereignty, because food is like energy strategic goods for a state. First of all, the state must make an effort to provide foods for himself in his territory. Trade of foods should be only a supplement for it. In order to keep self-sufficiency in food, the state must adopt an agricultural policy to realize a sustainable agriculture which can be achieved mainly by maintaining homestead farmers who treat agricultural land with care to transfer it to the next generation in their family.

The agricultural policy to maintain homestead farmers is different from country to country .

In Japan, which is limited in area in stark contrast to USA or Australia, agricultural land policy and land acts have been necessary to keep land in hands of family farmers, besides the financial aid to them which can be seen more or less in all countries. With agricultural land acts we managed to save agricultural land, though quite a little of land has been diverted to the other use meeting a demand of economic growth.

I. The landlord system before World War II in Japan

The landlord system was substantively different from the modern system of farm lease. The tenants had to pay an enormous amount of rents to the landlord. They were not rents comprehensible under a capitalist system, but more similar to those under the feudal regimes. In addition, the rights and obligations embraced by the two parties were not well defined. In times of poor harvest, the landlord might be lenient enough to reduce the rents, but as a return of gratitude, the tenants were compelled to offer labors in favor of the landlord. This landlord system included domination over the personality of tenants ought to be evaluated from the perspective of a pre-modern social relationship. It destabilized the operation of tenant farmers. In order to reduce the number of consumers in a family and assist family finance, female members in the family in particular had to earn wages at the garment factories. The Japanese capital which centered on light industries was then able to procure cheap labors from rural areas. In addition, instead of expanding agricultural production, landlords who managed to collect high rents from the tenants were eager to invest in securities issued by garment industries with the money they had after paying land taxes. The state also spent extensively on capital growth with taxes they collected from the land lords. Japanese capitalism therefore started from its reliance on accumulative capitals and cheap labor from the rural areas. The feudalist landlord system in the rural areas was indispensable for the establishment phase of Japanese capitalism.

Japanese capitalism which brought in excessive profits after the First World War shifted its focuses from light industries to heavy chemical industries and moved into the phase of monopolistic capitalism. The capital at this stage no longer had to rely on the agricultural areas. The relative portion of land taxes within national finance decreased. Instead, the portion of income tax increased. Social structure in the 1930s also enabled increased

II. Agricultural land reform and agricultural law after the War: Establishment of the farmers' land ownership system

Under the post-War American occupation policies, agricultural land reform was carried out to dismantle the landlord system which had become the hotbed of fascism. The government then bought the land back from the landlords at a price that was nothing more than free forced takings and redistributed it to the tenants at a price as good as a free gift. As a result, small-scale self-reliant farmers who owned less than one hectare of agricultural land widely emerged.

1953 Agricultural Land Law was adopted in order to stabilize the achievements of agricultural land reforms and to prevent revival of the landlord system. The Law took the following approaches:

- (1) It was considered most appropriate for agricultural land to be owned by the cultivators themselves;
- (2) Transactions in agricultural land should be subjected to administrative permissions, and acquisition of rights (by ownership or lease) with regard to agricultural land should be confined to farmers;
- (3) In order to secure the availability of agricultural land, acts that seek to convert agricultural land to other non-agricultural uses should be subjected to administrative permissions;
- (4) The rights of lessee were enhanced.

This Law has then been revised for several times and remains applicable today to retain its important role in securing the availability of agricultural land.

III. High economic growth and reforms of the agricultural land system

Agricultural land reforms liberated tenant farmers from the control of landlords, making them independent managers and as a result led to enhancement of agricultural productivity. However, at the same time, because the reforms gave rise to widespread small agricultural operations, small-scale agricultural structures set in. In consequence, income gaps started to develop between farmers and workers who earned their wages in non-agricultural industries.

Then the government in the 1960s introduced programs aimed at developing self-sustaining managers, which could help raise agricultural incomes to a level comparable to that of wages earned by workers in other industries. The objective of these programs was to expand the scope of agricultural management. By the end of the 1950s and early 1960s, Japan was in a period of rapid economic growth, and the government saw in this a chance to enable expansions in the scope of agricultural managements. In the years of high economic growth, needs for labor force rapidly increased. As a result, many small-scale farmers abandoned their land in the agricultural areas and migrated to the cities to work at factories. The government expected farmers who remained in the rural villages would buy the abandoned agricultural land and expand their own agricultural managements.

But such expectation proved wrong. In reality, specialized farmers rapidly decreased in number and agriculture was then dominated by a large number of small-scale and stabilized part-time farmers. This was due to several reasons. Rapid economic growth also created job opportunities at the local town level and offered favorable conditions for farmers to be engaged in other industries while keeping their work on the farms. Ironically, part-time agricultural work became possible because of labor-saving due to the introduction of mechanical equipments into the agricultural sector in order to expand the scope of operations. Many farmers also considered it a shame to sell off their farm since farms were conceptualized as family assets to be succeeded by the next generation. In somewhat contradictory terms, with the rise of land price, farmers considered land as a valuable asset and tended to keep it on hold until further price increases.

Realizing that operational expansion based on transfer of agricultural land ownership was difficult, the government began to shift its policies towards promoting agricultural managements based on land lease. However, the obstacles standing in its way were the

existing provisions of the Agricultural Land Law, which protected the interests of lessees. For the lessors to terminate a lease at the end of the term, the lessors had to notify the lessees of their intention to decline extension of the contract within an appropriate period of time. But this notification on declination to extend the contract required prior administrative permissions which were issued only in exceptional cases. Even termination of contract based on consent required administrative permissions. Due to these provisions, lessors were conscious that once their land was leased out, it would be difficult to take it back. They became reluctant in entering into a lease.

The government then tried to remove these obstacles by revising the Agricultural Land Law in 1970 to allow for termination of contracts based on consent to proceed without prior administrative permissions. Moreover, with regard to any lease which runs for a period of more than 10 years, there would be no need for permissions to notify the declination to extend contract.

However, notwithstanding these revisions, operational expansion based on lease did not develop as planned. Policy makers at the time were confronted by contradictory realities. Over-emphasis on lessees' rights would lead to the declination of lessors to lease out their land, whereas reduced protection of lessees' rights would destabilize land lease business. The policy makers then took resort to the following measures to escape from this dilemma. They stopped the attempt to adjust the legal relationship between the lessees and the lessors and started considering how to structure a system that would help formulate *de facto* trusts between the two parties. In other words, they paid attention to the traditional roles of the village communities in farmland management and established a framework mechanism in which farmland could be self-managed by the community of farmers. The relationship in terms of rights and obligations collectively determined by the farmers would be exempted from the application of the Agricultural Land Law. They therefore initiated a system that could sustain the farmland of local communities. Based on this logical concept, the Law on Promotion of Agricultural Land Use was adopted in 1980 to introduce a new type of lease right called the agricultural land use right. If, for instance, local farmers collectively agree to limit all contracts on agricultural land use right in the community to last for three years, these contracts would terminate automatically once the term ends and the land would

therefore be returned to the owner. This agricultural land use right became widely popular. Almost all agricultural land leases nowadays are created in the form of this use right. However, establishment of this use right is being diverted from the fundamental framework of self-management by farmers. Farmers' consents and plans exist only in form. In reality, the system is merely used as a means for expansion of agricultural operations.

IV. Confrontation in Agricultural Land Policy under the WTO regime and TPP Debate

Economic globalization affects commercial transactions in agricultural goods. We all know that the WTO commitment requires liberalization of the agricultural goods markets. The Japanese economic groups which earn income from exportation of industrial products have called since the middle of 1980s for liberalization of imports in agricultural products. Responses from the agricultural sector to this demand may be roughly explained in two contradicting stances.

One is the argument that liberalization of agricultural markets supposedly leads to influx of cheap agricultural goods. Large-scale effective agricultural management bodies should be nurtured to become competitive enough to cope with the influx.

The other argument says that agricultural activities in general are not confined to the function of agricultural production, but should be considered a way of livelihood serving a multi-functional purpose. This argument therefore seeks protection for Japanese agricultural goods.

Contemporary Japanese agriculture is mostly sustained by family management. However, the former argument considers that agriculture should be transferred from ineffective family operations to effective managers, such as listed corporations which are competitive at the marketplace.

On the contrary, the latter argument proposes that the protection of family managers itself insures multi-functional aspects of agriculture.

V. New Interpretation of Cultivators-based Principle (Selbstbewirtschaftsprinzip)

The existing Agricultural Land Law adopts the principle that only natural persons who are not only manager but also directly engaged in agricultural cultivation or conceptually similar legal corporations working in agricultural production can become right-holders of agricultural land. This is called the cultivators-based principle (like Selbstbewirtschafteterprinzip im Bäuerlichen Bodenrecht in Switzerland or Grundstückverkehrsgesetz in Austria). For instance, the Agricultural Land Law does not allow general listed corporations to become right-holders of agricultural land.

1. Original Intention of law drafter

Certainly, when the Agricultural Land Law was first drafted, the legislative intent behind this principle was to prevent the return of the landlords who used to live parasitically on tenant farmers or the real producers. The fruits of labor were made to belong to those who actually cultivated the land.

The economic groups criticize that to apply such outdated provisions at this moment when the danger of parasitic landlord's revival has already gone is forming a barrier against engagement in agriculture, and blocks effective uses of agricultural land. They argue for abolishment of the Agricultural Land Law.

However, it is an undeniable fact that the existence of agricultural land has been secured thanks to these provisions of the Agricultural Land Law that exclude non-agricultural operators by requiring strict factual review of whether or not those who acquired agricultural land actually engage themselves in agricultural activities. Since Japan does not have an integrated and powerful territorial planning and construction law system as that existing in European countries, the Agricultural Land Law is taking on the task of saving agricultural land from development pressures. This is by no means an outdated function.

2. Multiple Functions of Agriculture

Nowadays the needs for flood prevention, development of water resources, preservation of natural environment, traditional landscapes and cultures, etc., are socially known in general as resulting from agricultural production activities in rural areas. The pre-condition for the agricultural sector to deliver its multiple functions sufficiently and appropriately into the future requires that conventional actors in agricultural production permanently reside in the local area and continue their production work, and unceasingly maintain the functions of

the collectivity.

The Agricultural Land Law has contributed to the uninterrupted continuity of the relationship formed over the years between humans, on the one hand, who reside permanently in the local areas to carry out agricultural activities, and, on the other, the agricultural land as well as its surrounding natural resources (such as water and community properties, etc). This contribution will continue into the future. We can therefore reconfirm the significance of the cultivator-based principle of the Agricultural Land Law in the current context.

3. Sustainability

Moreover, by making ownership and lease-rights an intermediary in the relationship between the land as an object of labor and the farmers, the cultivator-based principle helps ensure continuous relationship between the farmers and the land, and at the same time, demands unity between the main operators and their actual engagement in agricultural activities. Farmers not only engage themselves in agricultural activities, but also take on responsibility for operative decision-making, by mobilizing different elements together, such as their own sensibility, feeling and experiences in the changing climate, and the traditional techniques that they used in working the land. Under the cultivator-based principle, the three elements - land ownership, self engagement in agricultural activities and responsibility of management, are formed into one body, which gives birth to the inherent love for land and nurtures particularities in the agricultural products. This will lead to non-exploitative use of land as a means of production.

In contrast, listed corporations are typical forms of entities characterized by a clear separation among the shareholders, the managers and the workers, or in other words, the separation of ownership, management and labor. Corporations having offices in Tokyo try their best to acquire farmland in rural areas, employ local farmers as workers in order to develop agricultural operations. In this case, farmers are no longer managers. They are only expected to work in conformity with operative instructions sent from the headquarters in Tokyo to local offices through emails and phone calls. They are no longer concerned with, or responsible for, the kind of products or the resulting impacts on the soil caused by operations done in conformity with these instructions. The overall unity that existed

VI. Inclination towards Abolishing Agricultural Land Act

1. Revision of Agricultural Land Law in 2009

Nevertheless, in Japan, arguments for the development of efficient and competitive entrepreneurial agricultural operations to cope with the economic globalization are gaining in importance day by day. Amendments to the Agricultural Land Law, which originally prohibited agricultural land acquisition by enterprises, have been submitted to the Diet for debates.

In June 2009, the Japanese Government launched a legal amendment project to liberalize land lease in response to pressures from economic groups and demands by the neo-liberal political forces. The bill was passed in the Diet. The revision stipulates that everybody can lease agricultural land. This gives rise to concern that entities in charge of agricultural production will shift from local farmers to enterprises of overwhelming capital resources. Alternatively, there is a risk that the system of agricultural land management by farmers' groups will collapse as a result of this.

2. Joining in Trans-Pacific Partnership (TPP)?

The Japanese government is now forced to renounce its food sovereignty and going to the direction opposite to realizing self-sufficiency in foods and a sustainable agriculture by participating in Trans-Pacific Partnership, (TPP) which provides for full trade liberalization with no exceptions as a condition of participation. If the Japanese government would decide to participate in TPP and to abolish a tariff on rice, homestead farmers would become extinct and the rate of self-sufficiency in food would fall below 14%, which is a result of test calculation announced by the Ministry of Agriculture, Forestry and Fisheries.

The government explained that this decline in food self-sufficiency might be avoided by improvement of agricultural structure, i.e. enlargement of a scale of management. For example, if a large company with competitive cost and large-scale agricultural management could enjoy scale merit, the rate of self-sufficiency would rise up.

Agricultural Land Act prohibits a juridical person in general from purchasing agricultural

land in order to keep it in hands of homestead family farmers. This act would be abolished, because the provision would be a serious obstacle to the intention of the government.

Homestead family farmers shall vanish from the countryside in Japan together with traditional idyllic landscape. What shall remain there? Sustainable agriculture by the competitive food industry or the motor industry? I can't imagine it.

Concluding remarks

Thus the rule of law at transnational level, which demands a free trade as universally valid principle, compels the nation state to abolish its locality which regulates the commodification of agricultural land.

My position is that we can realize a sustainable agriculture only by protecting the existence of homestead farmers through maintaining the regulation of agricultural land transportation and establishing the nation state food sovereignty.

If agriculture is evaluated only on the basis of its being a means of producing cheap agricultural goods, the multiple functions of family-based agricultural operators would be left out of vision. This would cause serious troubles. The way of setting up an agricultural land regime that meets the demand of contemporary society for economic sustainability should be to emphasize on the retention of the existing Agricultural Land Law, which confers acquisition of rights over farm land only to those farmers who are directly engaged in agricultural cultivation.

Formulating law at transnational level, we should not ignore the legal developments occurring at the level of respective nation states.