

Reappropriating the Law to Recover Control of the Use of Land



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Quentin HECQUET is a legal expert and the coordinator of the CAJ Rhône-Alpes (Comité d'action juridique – Legal Action Committee). CAJ is a non-profit organization dedicated to improving access to the law in rural areas. In each province of the Rhône-Alpes region, a team of volunteers and staff legal experts provides rural people with participative legal guidance. The organization also performs legal trainings on different agricultural and rural topics.

While based on the example of land use in rural areas in France, this article advocates a position which could easily be transposed to an urban environment as well as to other subjects, in any geographical setting: the law is an effective field for enacting social transformation, provided communities have direct and daily ownership of it.

Land, Law, Rights

Using and accessing land as a resource, which includes its essential social functions of providing food and housing, is a cause for competition. Land is a permanent stage of confrontation between public and private interest. The biased uses of land and the inequalities in access to land push actors to find ways to restore a balance, to create regulations and to establish safeguards. In this perspective, enshrining the right to food or the right to housing would seemingly put an end to the abuses of property rights and the excessive freedom of business.

It is legitimate and necessary to create laws equipped to address new challenges and to take action to establish new rights for the population, especially the most underprivileged. But prior to doing so, the law that already exists must be examined in light of people's effective access to established rights. Indeed, declaring a right does not make it a concrete element of social reality: the right must be adapted, people must know that it exists and how to make use of it.

French land law includes numerous legal and regulatory provisions aimed at, on the one hand, balancing and planning land uses, and on the other hand, privileging the productive function of farm land. Different legal mechanisms exist but they often focus on limiting landowners' freedom to make decisions regarding the purpose and use of his/her property. To illustrate this, let's present some examples.

The Urban Planning Code, along with urban planning documents (territorial consistency plans, local urban development plans, etc.), grant local authorities the competence to define which areas of their territory may be classified as building land and what kind of building they are eligible for. For general interest or public utility projects, public legal persons have pre-emptive rights or can use expropriation processes. Land Development and Rural Settlement companies (SAFER – *Sociétés d'aménagement foncier et d'établissement rural*) have a public mandate to intervene on the rural

land market, namely to combat speculation and to establish and strengthen farms, for instance by using their pre-emptive right. In the Rural Code and the Maritime Fisheries Code, the status of tenant farming provides a public regulatory framework for farmland rentals aimed at granting stability and safety to farms. The framework establishes: a minimum 9-year lease, regulations on the price of rental, automatic renewal, lease handover to the spouse or descendant, a pre-emptive right for farmers, compensations for enhancements, strict regulation of reasons allowing the owner to recover the use of the land, etc. Farmers' pre-emptive rights can also be completed by a legal court action to demand that the pricing of their rental be reviewed. The SAFER can determine the price itself at the time of pre-emption. The regulations on oversight of facilities make administrative authorisations for extensions, mergers or new farming facilities mandatory in order to distribute cultivated land between farmers. The uncultivated land process can imply forcing an owner to farm – or have someone else farm – plots designated as farm land. There are also similar legal tools for vacant housing or empty buildings.

Despite these provisions and many others, the momentum of the artificialisation of farmland has sped up: it has become very difficult for new farms to find land; the land is concentrated in already large farms. At the same time, the prices of farmland and rural built property are increasing, terminations or non-renewals of rural leases are removing the concerned land from farming uses and there are insufficiently farmed plots and too many vacant homes. This shows that the population that most needs these rights is not benefitting from them, despite the fact that many of these rights were conquered through grassroots mobilizing.

Making the Case for an Alternative Approach to the Law

If it has been proved that existing rights are too often ineffective, then it is necessary to delve into the conditions for practising the law. Our modern societies delegate law-making to legislative power, the interpretation and enforcement of norms to judicial power and the defence of legal parties is entrusted to lawyers. This distant relationship between people and the law must be questioned, since the law is a part of every moment of everyone's life and it lays out the set of rules which underpin social life.

The law concerns everyone and it is part of our daily lives: this concrete vision of the law is the basis for the CAJ's action in favour of the access to law in rural areas. Our main goal is to provide participative and group legal support to rural inhabitants. Our methods blend solidarity-based initiatives and the participation of individuals themselves in solving their own legal problems. We do not consider the law as an abstract field exclusively limited to specialists and restricted circles. Elements of law are connected to the concrete facts that they apply to and are considered in their social, human, family, economic, professional and interpersonal context. The CAJ aims at removing barriers to the access to the law and to justice, at making legal texts more tangible, at empowering people.

Our methods are inspired by the legal aid offices that were created in urban settings in the 1970s. In rural areas, they were established by the Drôme Farmers' Organization (*Association des Fermiers Drômois*), which has presently merged into the Drôme CAJ. At the height of the AFD's activity, between 1976 and 1981, most of the cases brought before the five Drôme tribunals competent for conflicts between landowners and farmers or sharecroppers were fought by AFD delegates and the suit was won in 70 to 90% of the cases. Elsewhere, where these initiatives did

not exist, farmers and sharecroppers were defended by lawyers and consistently lost their suits in the same proportion.

CAJ: Land Issues and Methods for Action

CAJ was created in 2006 by peasants and almost exclusively deals with situations related to farming, of which two thirds have to do with land. A fair share of the problems we address are related to rural leases. In addition, there are urban planning and building permit decisions, roads, obligations, facility oversight, SAFERs' operations.



"Watch out: I think they speak our language..."
/ Drawing credit: Samson

When someone contacts our organization, a volunteer is assigned to organise a first meeting with all or some of the team members. Having a first contact with other rural inhabitants makes the legal support more human, with a greater social and geographical proximity, from the outset. After this first meeting, additional elements are looked into to perfect our knowledge of the situation: documents, field observations, vicinity enquiries, interviews with the other party in the case of a conflict. CAJ decides to support the person if his/her demand is deemed legitimate and the plaintiff and the team agree on a desirable outcome. The person then becomes a member of the organisation. In the event of conflicts or litigation, CAJ systematically tries to reach an out-of-court settlement.

Our volunteers' basic training and experience help them set forth legal solutions. If necessary, they turn to the regional CAJ staff legal experts for guidance. If an appointment with a legal expert is made, several CAJ volunteers participate. The meeting is a three-way and balanced dialogue between the person being given support, the volunteers and the legal expert. So the person is not passing on his/her problem to the legal expert but rather actively participating in finding a solution.

This ownership over the legal process does not cease at the courtroom doors. Though the legal strategy is drafted with the legal expert, and, in the event of a legal proceeding, the legal expert drafts the legal documents (seizure of jurisdiction, conclusions, etc.), the presentation in court is not delegated to the CAJ legal expert nor to a lawyer. If the jurisdiction allows for it, a member of CAJ assists the plaintiff, who acts as his/her own lawyer. If a lawyer is required by the court, CAJ requests one who is willing to accept CAJ's methods and to follow the strategy defined with the plaintiff. In situations of land conflicts, CAJ assists people before the Agricultural Rent Tribunal and the Appeals Court. It provides guidance without being able to assist people before the Administrative Tribunal and less often, before the Court of First Instance or the Regional or District Court.

From Individual to Collective Demands, from Legal to Political Considerations

After an appointment with the Isère CAJ, a farmer came to know his rights and felt that he was not alone: he was then able to get his landlord to review the price of his farm rent on his own, without

having to go to court. In the Drôme region, a peasant was forced to seize the tribunal because of a pre-emption with pricing review on her rental farm. She became aware of her rights and convinced the landowner not to sell; she then got involved with CAJ. These two examples illustrate how, beyond solving individual problems, a popular engagement with the law can have a broader impact. People recover their self-confidence and their ability to take action and organize collectively. Going beyond individual situations helps identify underlying political causes. People's ownership of the law can help them contribute to its evolution, by shaping case law, setting forth legal amendments and by having a say in the law's enforcement and interpretation. This can bring about changes in social relationships. The law is not neutral, it is political. It can uphold or strengthen dominations, but it can also be used as a driver for change.

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