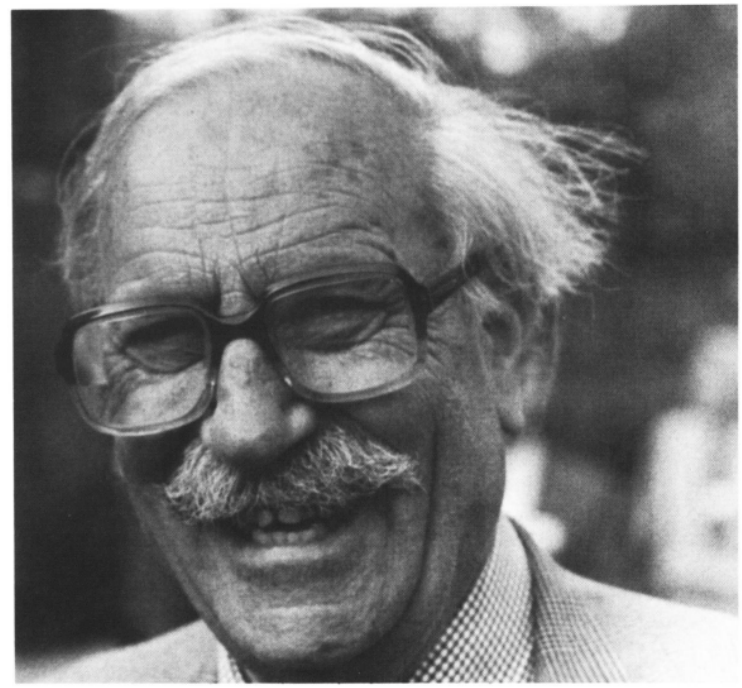
Land Value Taxation in Deep Water

HENRY GEORGE *(1839-1897) would have found more attentive ears if he had not been up against vested interests in developed land, the rigidity of the* jus perpetuam *of inherited property. Imagine him in an aboriginal world trying to persuade the denizens that what was looked upon by everybody as* res nullius *(nobody's things), should be regarded as* res communis *and taxed accordingly. His chances of success would have been far greater. Now it so happens that in this year of Orwellian Grace, 1984, a not dissimilar discourse is agitating the nations. Proposals are being made to switch* res nullius *to* res communis. *Progress is slow and may well be halted because the propounders of change are making the one mistake Henry George was wise enough never to make – of failing to recognise the right to improvements in resources as property vested in those who make them. Here, then, is a rare opportunity for the land value taxers to start again at the beginning.*

By Donald Denman



● DECEMBER 9 is the deadline for governments to sign the controversial 1982 Law of the Sea Convention. In this assessment, Donald Denman proposes eleventh hour changes to the way in which the natural resources of the seabed should be administered for the benefit of mankind.

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In the late 1960s and early 1970s the developing nations found a vocal group to represent them in the chambers of the UN, a group which the delegates have nick-named the Group of 77. The Group of 77 wanted to change the economic relationships between the nations of the world.

Hitherto, the industrialised side of the world, the so-called Western nations, had in various ways and at differing levels been helping and aiding the developing nations. The Haves had been giving to the Have Nots. But all was of grace and charity.

For the Group of 77 this was not good enough. The world should be seen as a whole, with each nation dependent upon the others. Scientific discoveries made by one country should be, as of right, made available to or be accessible by all. Capital invested in one nation by another should, as of right, at the instance of the other, be transferable to the other. Primary commodities should not be at the mercy of free international markets but be controlled, as to output and price, by the body of the primary producers of the world.

These sentiments and others of like vein commended themselves to the UN and a Working Group set up to draft a world charter of rules, regulations and principles to be embodied in international conventions. The upshot was the Charter of Economic Rights and Duties of States adopted by the General Assembly of the UN on 12 December 1974 and which, along with other declarations, has furnished the title deeds to what is known as the New International Economic Order (NIEO).

● New maritime sovereignties

In 1945, President Truman declared that the continental shelf adjacent to the shores of the US was from that time forth to appertain to the US. Other nations followed suit quickly and, in some cases, with greater audacity.

Chaos threatened. The UN called its members together to debate and to do something about agreeing upon a maritime cosmos. By 1958 three important international Conventions, including the Continental Shelf Convention[1] and the Territorial Sea Convention[2] were signed and in many cases duly ratified.[3] The pith of what was achieved was the international recognition of the right of maritime nations to appropriate the seabed in zones around their coasts. The limits of the zones were left more or less flexible.

As the nations laid claim to their respective new maritime sovereignties, the ancient freedom of the seas was challenged. The great trading nations and others expressed alarm. So once again, the countries of the world were called to put their heads together to find, if possible, a new range of principles to embody in international law as a new maritime regime.

Among the UN delegates vitally concerned with what was going on, was Ambassador Arvid Pardo of Malta. It was his voice which sounded a new note. What, he asked, should be done about the resources of those vast areas of seabed which lie beyond the new national jurisdictions?

He answered his own question by launching into the debate of the nations the notion of a 'common heritage of mankind'. The Group of 77 and others responded vigorously to the cue.

By 1970 the UN had solemnly declared the seabed and ocean floor, and its subsoil, beyond the limits of national jurisdiction to be the common heritage of mankind.

It was at this time that the Third World was pressing for a charter prescribing obligations within a New International Economic Order. Thinking came together. When therefore, in December 1974, the Charter of Economic Rights and Duties of States[4] was adopted, Article 29 declared 'the seabed and ocean floor and the subsoil thereof, beyond the limits of national jurisdiction, as well as the resources of the area, are the common heritage of mankind'.

It went on to demand that 'an international regime applying to the area and its resources and including appropriate international machinery to give effect to its provisions shall be established by an international treaty of a universal character, generally agreed upon'.

So, the Third Law of the Sea Conference was called into being. It was dually briefed, to address itself to the formation of a new regime for the seas and to heed, in its proposals for the resources of the deep seabed and its exploitation, the principles, obligations and duties now embodied in the NIEO.

● The parallel system

The concept of a common heritage of mankind is woolly. It lends itself to all manner of interpretations. A substantial proportion of mankind, the well-endowed, well-equipped and ablest members, were not happy with this gift on a plate.

To them, the old order of things was acceptable and potentially workable. The resources of the deep ocean, as with those of other unappropriated areas of the globe, were for them, what the lawyers had long called *res nullius* – nobody's things. This new idea was to make them everybody's things – *res communis*.

Victory for either side of the battle of ideas and words which followed looked a forlorn hope when Henry Kissinger came up with a proposal. His solution was a one-for-you-one-for-me affair. Those who had the ability, will and skill to go mining in the deep should only be allowed to do so if whatever they discovered and exploited was cut in half, so to speak, and one half made available to those nations who had the will but not the skill to take their share.

There was piety in the Kissinger idea, pleasing and plausible, but what of the practicality? The Law of the Sea Conference, eagerly pushed forward by the hands-up posture of the Group of 77, out-Kissingered Kissinger. Here was a way forward, wholly in accord with the common heritage of mankind ideal. So there was devised what became known and for many referred to lovingly as the 'parallel system'.

● Leviathan of the deep

The end result seen today, is far removed from what Arvid Pardo had in mind, and, doubtless even further from the intentions of Kissinger. The Group of 77, empty-handed but vocal, were not prepared to leave the one-for-one share-out to the doers, the risk-takers. After all, was not the seabed of the deeps the common heritage, the property of all mankind?

To all mankind therefore it should belong absolutely; the fact that mankind has no unity of voice to express itself and the certain clearly identifiable sectors of it were clearly opposed to the idea never seems to have crossed the minds of the collectivist idealists. The sad logic of this thinking moved relentlessly forward to culminate in the setting up of an all-world authority with absolute powers of disposition over the resources of the deep oceans. This Leviathan is to be called the International Seabed Authority (ISA).

The purpose and power of the International Seabed Authority are defined with unmitigated candour in Article 137 of the LOS Convention:[5]

1. No State shall claim or exercise sovereignty or sovereign rights over any part of the area of its resources, nor shall any State or natural or juridical person appropriate any part thereof. No such claim or exercise of sovereignty or sovereign rights, nor such appropriation shall be recognised.
2. All rights in the resources of the area are vested in mankind as a whole, on whose behalf the Authority shall act. These resources are not subject to alienation. The minerals recovered from the area, however, may only be alienated in accordance with the part and the rules, regulations and procedures of the Authority.
3. No State or natural person or juridical person shall claim, acquire or exercise rights with respect to the minerals recovered from the area except in accordance with this part. aim. Otherwise, no such claim, acquisition or exercise or such rights shall be recognised.

A major recipient of the 'one for you' contributions made by pioneer operators will be a special operator known as 'The Enterprise' and set up under the powers of the ISA. It is very important to bear the Enterprise in mind, as we go further to see how the terms of the Convention require the Authority to operate. At the present time, a Preparatory Commission is working in Jamaica to draw up a rule book for the global management of the seabed through the ISA. The Preparatory Commission, however, can only fashion its rules within the framework of constraints and requirements prescribed by the relevant Articles of the LOS Convention.

That framework will require, *inter alia*, States and companies permitted by the ISA to operate on the seabed to:

- become qualified by agreeing in advance to accept the surveillance of the ISA and its conditions for operation;[6]
- be subjected constantly to a production control limit imposed by the ISA so as to keep the output from ocean mining in a non-competitive position, as to prices and volume, with the output from land-based mines;[7]
- find for every mine site discovered and explored at the company's expense another to be handed *gratis* to the Enterprise or to a developing country;[8]
- contribute vast sums by way of levies, fees and taxes to finance the ISA and capitalise and maintain the Enterprise;[9]
- compete against the operations of the Enterprise which itself will be privileged and not have to meet the levies and taxes imposed on the State and company operators;
- provide interest-free loans to the Enterprise;[10]
- hand over technology and operational knowledge and training facilities to the Enterprise on terms to be determined by arbitrators in the event of disagreement;[11]
- submit to plans of work to be agreed with the ISA;[12]
- keep off 'reserved areas' of the seabed set aside for the Enterprise and the Third World countries equipped at the expense of the Western nations.[13]

Virtually, the LOS Convention has vested absolute sovereignty and dominium over the seabed resources of the deep oceans in the ISA. There could be some sense in doing this, if the prime and only purpose was to provide a means whereby the distribution of those resources among nations and peoples could be conducted in an orderly and just fashion according to virtues of natural justice; or, to put it another way, if I dare, according to the lights of Henry George!

I say this because we have in the deep oceans, as indeed in the new maritime provinces of the individual nations, the position and conditions of a new land frontier. The oceans and their resources and the wastes of Antartica and the Arctic are the last frontiers left on earth for the pioneers to cross.

Pioneers over a frontier risk their lives, means and energies to win from the virgin, unclaimed soil new wealth. When won, they look to their nationals to extend through sovereignty the recognition of dominium property and ownership, in the wealth so won. National sovereignty is necessary to grant individual dominium and ownership. Where this is denied, the pioneers lose their just deserts and what is sown returns to the wilderness.

If we are to accept in the deep ocean bed a common heritage of mankind (and I want to acknowledge the fact that this is not universally accepted) then, logically, an authority, a sovereignty is required to encourage and safeguard the pioneers who go over the frontiers to exploit and lay claim to those resources with which, in the terms of the old philosophers, 'they mix their labours'.

● Absolute monopoly

Regrettably, the ISA is to be endowed with the powers of an absolute monopoly over the virgin seabed resources and will be under a mandate to use those powers in such a way as to deter, not encourage, access to

The Property Tax: One

A TAX on the annual rental value of land would lead to the destruction of historic buildings, according to some critics of land value taxation.

The evidence does not support such opposition to fiscal reform, *writes Ian Barron.*

It is true that tax exemptions have helped to restore fine buildings, such as occurred in Pennsylvania Ave., Washington, D.C., where property owners can claim a 25% tax credit.

The value of the credit is estimated at $10m for the Willard Hotel alone.

But advocates of lower property tax rates concede that rehabilitation of historic buildings would have occurred, anyway.

Yet fine buildings, part of a nation's heritage, can be lost even if there is *no* property tax burden. Take the case of Ecton Hall, in Northamptonshire, England (pictured above).

It was built in 1755 around an Elizabethan core, and is a grade II listed building. It was built by the poet Ambrose, and occupied by his descendants until 100 years ago, when it passed into the hands of the related Sotheby family. It is now owned by the family trust.

For the last 32 years it has been unoccupied and allowed to decay at the mercy of the elements: and the owners have escaped the property tax, which is not levied because the building is empty.

If the owners had been obliged to pay the property tax on the rental income that could have been realised from the land, Ecton Hall would not now be a monument to fiscal folly.

Such a tax would fall on realisable value. So legal restrictions on an historic building's use would limit the market value of the land, a fact which would be reflected in the tax assessment.

Thus, the owners of historic buildings would not be pushed into abandoning or destroying historic properties.

Whereas, under the present property tax in Britain, fine buildings can be allowed to fall into dereliction because of the absence of a sensible property tax.

the seabed by those very entrepreneurs and States that can best exploit the resources for the benefit of all.

A company who wants a licence to survey, discover and exploit the seabed resources from the ISA, would have to be prepared to surrender its inventions and technology, its training facilities and operations to the Enterprise under the ISA on terms which, in the last analysis would be beyond its control.

And it would be subject to imposts, levies and charges of an arbitrary nature and from which the main competitor, the Enterprise, largely equipped and staffed at the expense of the company, would be free. To submit, also, to trading and production controls imposed by the ISA in the interests of a world commodity production and pricing scheme.

● An urgent challenge

Furthermore, having expended its resources on finding a mine site to hand over to the Enterprise, the company would be excluded from operating in areas which the ISA had reserved, as potentially profitable places for the exclusive operations of the Enterprise, when the licensed operators, by their own endeavours, had equipped the Enterprise with plant and staff.

And all the while, the granting of licences and the imposition of their terms would be under the ultimate sanction of the Council of the ISA whose constitution and membership would be biased strongly in favour of the less-endowed nations who have the least to offer.

In short, there is nothing in the purpose and intended operations of the ISA to guarantee a right of property and secure title in the investments and works which the pioneers will have to make, at a cost of billions of pounds.

How very far is this outlook, inspired by the principles of the NIEO, from the outlook of the man who wrote:

> **'As a man belongs to himself, so his labour when put in a concrete form belongs to him. And for this reason, that which a man makes or produces is his own, as against all the world. No one else can rightfully claim it, and his exclusive right to it involves no wrong to any one else. Thus there is to everything produced by human exertion a clear and indisputable title to exclusive possession and enjoyment, which is perfectly consistent with justice, as it descends from the original producer, in which it vested by natural law.'[14]**

The man who drew the distinction between wealth, as a factor of man's wellbeing created by man's own endeavours, and land, as a given resource, whose value is no more than the measurement of its scarcity on the market, would surely have interpreted the meaning of a common heritage of mankind in the deep seabed in a way which could have made far better sense to the modern business world and the popular, innate sense of fair dealing and natural justice.

To those who stand in the shoes of this worthy prophet (using that word in its spiritual sense) the seabed comes as an urgent challenge. The Preparatory Commission has been struggling for over a year in

Jamaica, trying to find a common mind, even among those who have signed the Convention, to guide them in the framing of rules to govern the administration of the responsibilities of the ISA.

The Convention is not universally accepted, signed or ratified. It is to date non-est. It could founder altogether.

In talking to the devotees of the common heritage of mankind objective, point out that you advocate the common title to land and other natural resources; and that a natural, physical resource is one thing, the labour expended upon it to create true wealth is another. Without that distinction, States through land nationalisation and international seabed authorities through the internationalisation of resources could be guilty of expropriating the owners of property in improvements and capital equipment which is justly their own.

Slip in, at this juncture, the classical observation:[15] it will be obvious to whoever will look around him that what is required for the improvement of land is not absolute ownership of the land, but security for the improvements.

And then go on to paraphrase: it is not necessary to say to a company "this seabed resource is yours" in order to induce the company to mine and exploit it. It is only necessary to say to the company "whatever your labour or capital produces on this seabed shall be yours!"[16] And to add with emphasis that likewise the capital and labour so used in this process of production should not be confiscated or in part taken from the owners of it.

Having got that far, go on to the fascinating fact of the new scarcity in the seabed resource and its production of rent. Because operators on the seabed need security of title to safeguard the employment of capital and labour, they need also the exclusiveness within a ring-fence which establishes private property and the phenomenon of rent.

Where land has been developed, especially over generations of time, it is very often most difficult to distinguish, in practical valuations, the value of the capitalisation of true rent from the capitalisation of gross profit generated from the improvements made to the land and from the fixed equipment used to exploit it.

With a virgin resource like the seabed, these practical difficulties do not exist. There are other problems, but not these. Hence the real opportunity to pursue a 100% rent tax policy without upsetting entrenched interests.

● A living demonstration

The present proposals for a common heritage of the resources of the seabed purport to make a common heritage of the assets and facilities of the individual states and private operators who, by whatever means, might be permitted to work the resources.

Because, as we shall see, the very injustice and impracticality surrounding these intentions are likely to be their eventual undoing, nobody, in the end, is going to benefit.

> **If the common heritage ideal were interpreted to pertain to the rental element generated in the resource, it would be to the best advantage of those with least to give, and, hence, with most to receive by way of net gain (i.e. the Third World), to do their utmost to see that the western nations and their nationals are encouraged to operate and compete for the deep seabed, thereby generating maximum rent.**

The only way of determining the rent to be appropriated by the common heritage, would be to encourage the highest competitive demand for interests – secure interests – in the seabed. Providing the operating companies are allowed to generate and keep the full rewards for supplying their capital, expertise and staff, they should then be made to bid in competition with each other for proprietary interests in the seabed.

The interests could be granted by the ISA, as supreme allocating agency, and the titles to the seabed duly registered by the ISA in an international resource register. All this service and security would be granted in exchange for a rent-charge, commensurate with the consideration offered by the highest bidder in the free market. The rent-charges could be made adjustable to the changing economy of the seabed regime.

Proceeds from the rent-charges, in the aggregate, could be put to financing, equipping and staffing an international operator, if that were desired. It would, to my mind, however, make far better sense if the proceeds were available for distribution to those Third World countries who were wanting to compete in the exploitation of the common heritage.

Under some such regime, the ISA could be an effectual agent in helping to arrange and finance joint ventures between developed countries and under-developed ones. *And, above all, the world would have a living practical demonstration of how taxation of land values really works.*

● Is it too late?

We come now to ask whether or not it is too late to influence, along the suggested lines or in any other way, the terms of a Convention which it has taken ten years of international conference to draw up.

There are a number of reasons why, in my opinion, we should take hope that the hour has not passed when effectual voices could make telling changes, not necessarily in the provisions of the Treaty itself, but in organised international arrangements for the administration and allocation of the resources of the deep ocean beds.

Grandfather rights. This rider is important, because among the reasons for hope was a move made at the Conference and at the instigation of the Group of 77 that the basic principles of justice which we have been concerned with were not altogether alien to the minds of those who helped to push the slant of the Convention in a different direction.

I am referring to what have become known as the 'grandfather rights' accepted into the provisions of the Convention at a very late stage and largely to try and alter the minds of the USA and other Western nations towards the Treaty. Over the past ten years, while the LOS Conference was sitting, certain countries of the industrial West, notably USA, W. Germany, France, Japan and USSR, had set about exploring the resources of the deep oceans and had, in a few cases, invested substantial sums in surveying and identifying mining sites. Of even greater significance, they spent millions on technological research and invention.

Because of the very principles of natural justice which we have pointed to, to make our case and which underlie the foundations of the thinking of Henry George – namely, that the products of a man's work or that of a company should be secured as his or its own – the LOS Convention[17] has offered to guarantee first options on sites, for those pioneer companies and consortia, the grandfathers, who have already committed resources so lavishly.

In doing so, they have accepted the very principles on which Henry George's idealism rests and, from the abandonment of which, the Convention has run into difficulty.

A weakened monopoly. When the nations rallied, at the call of the UN in 1973, to set up the Third Conference, all expectations and interests were directed to the passage of ships and use of the high seas for navigation, military purposes and trade and with the demarkation of national zones and control of pollution. No one took very serious note of the future exploitation of the deep seabed.

This was why, in the beginning, the USA went along happily enough with the work of the Conference and under Kissinger made such questionable proposals for the seabed resources. It was thought at the time that the only mineral resources commercially harvestable were polymetallic nodules. Because of this mono-supply, the Third World had its dream of creating a commanding world monopoly in an institution like the ISA.

Today the picture is richer and more varigated. The deep seabeds are giving evidence that the wealth lying in them is made up of polymetallic sulphides, colbalt crusts and, in all probability, mineral-rich muds. Mineral wealth in these forms is also found, and is often more accessible, within the new exclusive economic zones under the national jurisdictions of the coastal nations. So the picture alters and the aboslute monopoly of the ISA over the mineral wealth of the deep ocean beds weakens.

If, in the future, the ISA and Enterprise are to operate, they will do so in competition with operators mining the seabeds of the exclusive economic zones. It will be no good for the ISA to demand transfers of technology, levies and other unacceptable terms. *The Authority will have to seek more balanced and reasonable interpretations of its obligations for administering the common heritage of mankind.*

Commercial reassessment. The other change is a revision of the assessments of the commercial propsects of deep seabed mining, especially of polymetallic nodules. The world supply of minerals and hence world prices gives little hope, in the foreseeable future, that the provision of the capital input necessary for the deep seabed operations will ever, within the period, be commercially sound.

If on top of this, the ISA is going to demand – as it must under the Treaty – very heavy charges, levies and the like, no independent consortium or company would look at the venture without substantial subsidy and direct support from the national governments concerned. Demand will be politically coloured and will not have the commercial thrust which the first thinkers of the LOS provisions had imagined. The bargaining power of the ISA will on this account be weakened also.

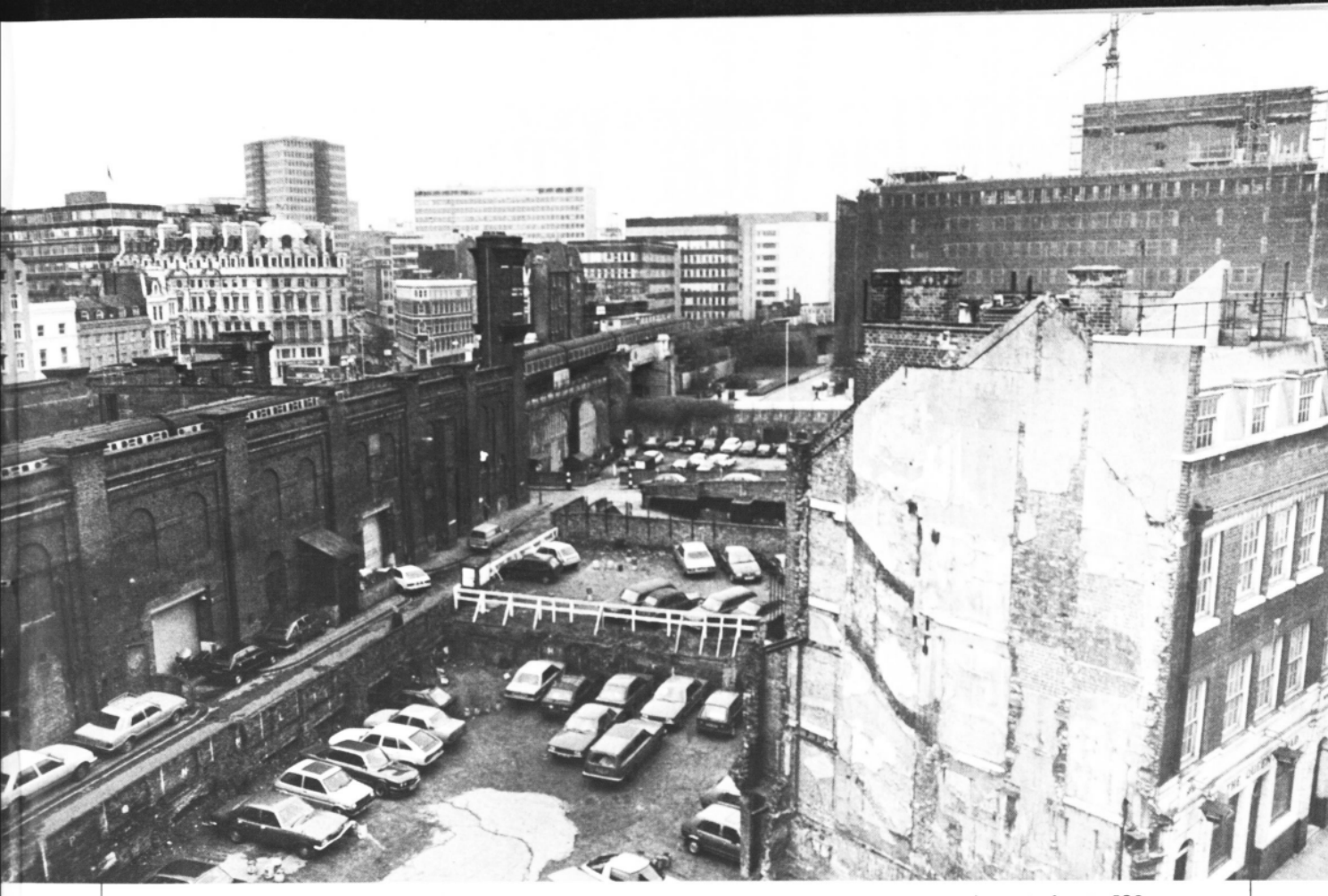
● A patron changes his mind

A change of an entirely different order and one more personal and poignant has been the loss of support which the Group of 77 and those who framed the deep sea mining provisions of the LOS have suffered by the straight-flung criticisms of their Patron, Ambassador Arvid Pardo.

He has publicly stated that he considers the Law of the Sea Convention to be flawed.[18] It is likely, he recently wrote, that the common heritage system as implemented in the Convention will prove to be an enduring economic burden on the international community.

> **Indeed, there could be a danger that the future Authority's inability to administer seabed mineral resources effectively and efficiently might bring the principle of common heritage itself into disrepute and thus prejudice the future of equitable and cooperative development of resources in other areas beyond national jurisdiction, such as the moon and perhaps Antartica.**

Mankind, he goes on, has lost a truly historic opportunity to mould the legal framework governing activities in the marine environment in a



The Property Tax: Two

WHY reform the property tax in favour of a system that shifted the burden on to site values alone?

According to the Layfield Commission, which investigated the topic for the British Government in 1976, site value taxation would not enhance democratic accountability.*

That's one vacuous argument which is still used by the opponents of land value taxation, *writes Paul Knight.*

Critics conveniently ignore the fact that the present property tax – with its heavy exemption clauses (and in Britain a vacant site is subject to no tax at all) – encourages owners to keep sites unemployed.

Even public sector owners are not required to declare – as a book-keeping exercise, for the benefit of the electorate to whom they are supposed to be accountable – the income that they lose by holding sites vacant for many years.

Take the historic site at the east end of Fleet Street, near to St. Paul's Cathedral, in London.

Fourty-four years ago, Hitler's bombers demolished some historic buildings there. Under the wartime Purchase Notices Procedure, the Corporation of London acquired the land and paid off the owners of the valuable site adjoining Ludgate Circus (pictured above).

Today, the site is worth at least £20m., and proposals for an office block reveal that the site would command a rent of up to £20 a square foot.

Millions have been lost to public coffers because the owners have not had to account to the community for their asset through the tax system.

The planners have vascillated with a number of schemes. Meanwhile, the tax burden on the people living and working in the City of London has been greater than would otherwise have been the case.

The only efficient way to encourage owners to use their land properly is to require them to pay its rental value into the community chest.

Then, they could develop the site free of further charges. There is no better way of increasing employment and income, and generating the renewal of the urban environment.

**Local Government Finance,* Cmnd. 6453, London: HMSO.

way that contributes effectively to a just and equitable international order in the seas, responsive to the vital need for harmonisation of marine uses and management of marine resources for the benefit of all.

He laments that, in his opinion, the LOS lost its way and deviated from the original idea of a common heritage. In the original concept, the common heritage of mankind was not *owned* by mankind (or by the international community, however defined) but was held in trust for mankind. Mankind through the international community had the *jus utendi* but not the *jus abutendi* or right of disposal.

Arvis Pardo had not lost his vision nor his original passion. He deplores the misunderstanding of it. He is looking for allies. Discourse could lead to the most promising venture for the future of the seabed of the deep oceans and, who knows, for mankind.

Finally, in contending that it is not too late for Henry George's ideas to be brought to bear on the thinking of nations in respect of the future administration of the deep seabed as the common heritage of mankind, I would remind you that the LOS Convention is no more than an expression of opinions until it comes into force.

This cannot be until it is signed and ratified by at least 60 nations in the first place. Nations of stature, notably the USA, have refused to sign and have voted against the Treaty. Britain has declined to sign along with West Germany and others. Mankind is not unaminously behind the Convention.

There is, however, every sign that a consensus of international and world opinion does support the idea of the need to harmonise the law of the sea; an aspiration which, sooner or later, must turn attention to what shall happen to the riches on the deep seabed beyond national jurisdictions.

Some cynics contend that ultimately, if the present trend continues and expands, there will be no unallotted, unclaimed deep ocean and High Seas as we have hitherto known them. All ocean space will have been carved up by the expansion of coastal zones pertaining to the coastal nations.

Personally, in my view, there is too much good intent behind what has been accomplished, for the generalities of the pattern of national jurisdictions and the area between them to be abandoned altogether. The Treaty would have been signed satisfactorily and probably ratified by now but for the sad attempts in Part XI to set up a monster to dominate absolutely over the deep seabed.

The present Convention is likely to fall apart, if Part XI is not modified by finding a more just formula for administering the seabed resources of the deep oceans.

Turn to P.115