THE EVOLUTION OF THE CONCEPTS OF LAND OWNERSHIP

BY

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More than a century ago, de Tocqueville saw the North American Continent as the basic source of America's strength. Since then, American immigrant people have generally treated land as a commodity of limitless supply for private exploitation.

Origins of the Commodity Concept of Land

The Anglo-American title system is descended from William the Conqueror who introduced continental feudalism to Saxon England in 1066. In concept, all land belonged to the sovereign; and he was in no way beholden to anyone else for his rights.

Over many centuries, the whole system disintegrated as the rights of individual holders progressively encroached on the rights of the crown and of the great barons. Magna Carta was a step along the way. Eventually, most of the land in Britain and virtually all of it in the United States was converted to "fee simple" title or some variant of it. Fee simple is often described as a "bundle of rights." As time went on the bundle got bigger until it crested about the end of the nineteenth century.

Should land be property? In the seventeenth century, John Locke argued that it should. God commanded man to labor the earth and so entitled him to appropriate whatever land he mixed with his labor, and "there was still enough and as good (land) left, for others."

Fundamentally, he argued that man had a natural right to own property. Indeed, "life, liberty, and property" almost got into the Declaration of Independence in 1776; Jefferson substituted "pursuit of happiness" only, as it were, at the last moment.

Land in Classical Economics

Both the Physiocratic philosophers and the economists who developed classical economics saw land as a source of surplus value over and above costs of production. All the emphasis was on the extent and the bounty of the land. No thought was given to the possibility of depletion or destruction of its value. No thought was given to the role of land in the life cycle because nothing was known of the later scientific discovery of the interrelatedness of all life to its terrestrial environment.

In Chapter II of his Principles, David Ricardo referred four times in the first two pages to the "original and indestructible" powers of the soil and once to the "inexhaustible" quantities of air and water. Thomas Malthus too referred to rent as a surplus that we owed to "the bounty of nature." And Alfred Marshall wrote:

> We may call to mind that the land has an inherent income of heat and air and rain, which man cannot greatly affect and advantages of situation, many of which are wholly beyond his control ... These are the chief of its properties, the supply of which is not dependent on human effort.

The English economists' view of land's valuation and the distribution of its product was useful for their time. Marshall argues that the theoretical division between rent and the tenant's share made captial funds available and spurred development. But we must keep in mind that all their concern was focused on rural lands and land's agricultural possibilities.

In Marshall's time, the notion of land as a source of surplus value was abandoned in economic thought and land came to be viewed as simply another factor of production used in complementary fashion with labor and capital to produce goods of value to consumers. Land took on a real, market value because of its combination with the other factors of production, and the focus shifted to its marginal productivity in combination with other factors. This marginal productivity gave it a capital value and clarified the intellectual perception of any given piece of land as real, private property. A German economist and landowner, J.H.V. von Thunen, began to develop the latter view of the valuation of a piece of real property as early as 1830. Others, working independently, later added to the theory of land valuation in neoclassical economics.

Not only was it necessary to relate the value of land to the product derived from it as the neoclassical economists did; it was also necessary to recognize that the product of land was a flow of goods and services that gave land its value in the market. The result was the modern basis for many of the ideas in business finance.

Land as Capital in the U.S.

The commodity view of land as an engine of economic growth has served us well. However, it has not been an unmixed blessing. When America was first colonized in the early seventeenth century land was abundant. Economic and social pressures emanating from the abundance of land in the New World quickened colonization and dictated land-use policies for two or more centuries.

The British scholar C.K. Meek has told us how in "primitive" parts of Africa, land originally had no value or a vaguely conceived communal value. The land took on some characteristics of property when an individual cultivated a piece of it and it became "his" land in the eyes of his neighbors. At least it was his land for the time that he kept it tilled and cleared, after which -- in an early escheat policy -- it reverted to tribal ownership or simply lay fallow awaiting the next proprietor. But, as markets for the produce developed in Africa, cleared plots took on a greater economic worth. Boundaries became more important and better defined.

The view that land was like any other form of private capital shaped most land-use policy in the United States up through the middle of the twentieth century. Homesteading has been one of our most durable land-use policies. Much of the original colonial lands were distributed to ordinary people. In 1664 New Jersey began giving 150 acres of land to each freeman who could find transportation to the colony. The Dutch West India Company followed the same practice in New York. Similarly, the Virginia Company distributed its Middle Atlantic lands by headrights for each member of an immigrant's family. In many of the colonies the land was sold off in small holdings by the original companies. But the effect on land tenure was the same, and the pattern was set. Individual ownership and use of land was the rule. And exploitation of the land was the rule as well, since land was so abundant in those times.

The American Indian Concept of Land

The Indian was close to the land but not in the sense that one is tied by property rights. The Indian's attachment was a deep, emotional tie. He intuitively saw himself and the land as integral parts of a larger whole. Contrary to the large scale raising of cash crops by itinerant farmers who moved from farm to farm seeking more fertile soil, the Indians were often rooted to their land and had an early appreciation for the sources of plant nutrients to restore the productive powers of the soil.

When approached to negotiate for the transfer of their lands to the state, the Indians were dumbfounded. In the words of Chief Sealth of the Duwamish Tribe in the state of Washington, as he wrote to President Pierce in 1855:

How can you buy or sell the sky - the warmth of the land?
The idea is strange to us.

Yet the Indians were forced to negotiate and accept the Anglo-American concept of land use.

In 1838 the reserved lands were ceded to the Indians "... to have and to hold the same, together with all the rights, privileges and appropriations thereto belonging to the Cherokee Nation forever." Later, for some Indians, the transition to the property concept was completed when their Oklahoma lands were allotted among the residents and ownership was vested in the individual. Others, like the Navahos, have clung to their concept of communal ownership, and land-use policy is determined in tribal councils. The Navaho's view has always been that natural resources are common property - the coal in the ground, the timber of the mountains. In the eyes of some observers the Indians had a land ethic. We had none. But then came the conservation movement.

Pioneer Conservationists

Other early challenges to the commodity concept of land came from two schools of thought. There were the first American conservationists with Gifford Pinchot, Theodore Roosevelt, and Major John Wesley Powell outstanding among them. And then there was Henry George, an economic reformer.

George elevated the perception of land from that of a mere factor of production to the central resource of the universe. "On the land," he said, "we are born, from it we live, to it we return again, children of the soil as truly as is the blade of grass or the flower of the field. Take away from man all that belongs to the land, and he is but a disembodied spirit."

Land is a free gift of nature, George said, and releases her wealth by man's labor. Individual property in land denies to labor its own product.

Landowners had a right neither to the land itself, he said, nor to the value which social integration adds to the land, nor to the improvements which are inseparable from the land. The user of land was seen to be entitled to the product of his capital and labor on the land but not to the rent. That was to be taxed away. The value of the land was derived from the community and should be returned to the community. In this way, Henry George made a big contribution to ideas about land taxation. He pointed out the sense in which land value derives from two sources; (1) location value, and (2) the value of improvements.

A tax on the location value of land would not destroy incentive as George saw it, but would stimulate production by bringing land held for speculation into use. Population would be dispersed from areas of high density to those where it was sparse. Redistribution of this social income would reduce inequality at the same time that the land tax increased economic growth.

George wrote that "the appropriation of the waters of the lakes, rivers and streams, by individuals or corporations, as against the rights of the community, must be prohibited, and their reservation to public use and benefit must be made by appropriate legislation in behalf of all the people."

Along with Henry George's effort to express a new view of land as a community resource, there was a growing concern with the lack of planning in urban land use. Men of vision recognized that the overcrowding, ugliness, and disorder of the city could be ameliorated by a proper concern for conservation. Frederick Law Olmsted conceived of a central park in the heart of Manhattan. Unlike the economic man who weighed costs against revenues in the calculus of private investment, Olmsted was a visionary who valued the potential benefits that future generations would inherit. In the mid-nineteenth century he conceived of public gardens, open spaces, and playgrounds to improve the quality of city life. But in city after city the economic imperative overcame the emergence of an urban land ethic.

The urban crisis - mainly a problem of class, race, unemployment, poverty, education, and crime - is also a problem of land use. Our lack of appropriate land-use policies is in part responsible for the present state of affairs. We have brought both suburban sprawl and inner city blight upon ourselves by our lack of vision and our absolutist view of ownership and use of the land.

The Need for Land-Use Planning

Optimists about urban planning, however, ought not to confuse comforting words like rational, or balanced, or orderly with reality itself. Government at all levels is now stuffed full of narrowly defined units or special-purpose units engaged in "planning" land use. What is more, longstanding governmental policy has set land-use planning goals almost inadvertently, through the depression-born farm policy, the suburb-spawning FHA, and the Interstate Highway system. Indeed, for years the farm programs took land out of agricultural use while federal reclamation created more. In government, "rational is as rational does" appears to be the rule.

The Status of U.S. Land-Use Laws

In the early 1960's Hawaii was the only state in the Union with land-use controls; by 1975, no state was without them. The state land-use programs of Colorado, Maryland, Nevada, North Carolina, and Oregon authorize information gathering, policy studies, and the identification of land areas of more than local concern. Florida, Hawaii, Vermont and Wyoming go further and mandate state management of these areas. Three fifths of the states now have power plant siting and surface mining regulations, and as many participate in the federal Coastal Zone Management Program. In Oregon every county and city must prepare a land use and planning program that is acceptable to a state commission.

In Washington, D.C. national officials have been reassessing federal land-use policy in the wake of the defeat of Senator Jackson's (D-Wash) "National Land Use Policy Bill" in 1975. No one thought the Jackson bill was going to solve the nation's land-use problems. It really would have just gotten us on a start toward required statewide planning. One criticism of the bill as drafted at hearing time was its lack of balance. One way to get balance is through the principle of compatible multiple uses of land. This principle, employed early in the history of federal land management, could have been effected by setting performance standards for lands. This approach, quite important for example in tidal lands, simply pushes off onto land users the costs of meeting the desired standards, thus internalizaing these costs in the price established in the market.

The ideal federal role in land-use policy is seen by many to be that of an "agenda-setter" for the states. This hands-off approach seems to conflict with the findings of Congress set forth in the Jackson bill. These findings acknowledged a national interest in more efficient land-use planning; a lack of recognition of land-use impact of public and private programs; a lack of land-use planning; a lack of consultation with property owners, users, and the public in land-use decisions; a lack of federal agency attention to land-use effects of agency programs; a hindering of significant land development resulting from failure to plan; and a failure of states and local governments to exercise adequately the primary constitutional authority and responsibility they have for land-use planning and management of non-federal lands.

Conclusion

By 1977 land-use legislative and study proposals were slowly moving the United States further toward a national land-use policy that tries to balance environmental protection and economic development. They signified a new public understanding that land is, at least in some respects, an irreplaceable natural and community resource,and not merely a commodity to be bought and sold. Based on exquisitely patient scientific study, this realization of the "connectedness of life," far from a passing fancy, generates public conviction of great energy and force, not likely to be denied, but if anything to gather momentum, in coming years.

Now, however, the nation wants something better than mile upon mile of monotonous brick and asphalt, acre on acre of barren suburban landscape, and the substitution of manmade artifact for the plant and animal life that keeps the natural air and water processes in balance. Businessmen are caught in the middle of a great shift in national values that will require new standards of business competence and complex trade-offs that create new definitions of wealth in natural surroundings.

The worst solution would be to recoil from the hitherto unpaid costs of growth to adopt rigid and out-dated physical planning controls. They would lock into the concrete of legalistic haggling all the dynamism of which the enterprise system has been and can continue to be so capable.

Not much better an approach, however, is a response from business itself that would see government drag industry, kicking and screaming, face to face with the realization that our common interest and that of our children's children in survival on earth with decent air to breathe and water to drink does have precedence over the fate of particular methods of energy and mineral development, house-building financing, and property transfer.

Equally bad would be to throw out the baby of private ownership and private competitive enterprise in a burst of intellectual arrogance that attributes the general ignorance of the past, shared by business, government and consumer, to business itself as the creator of the artifacts of the past. In a society that swims in a sea of new knowledge, what can be more arrogant than to blame the ignorance of the past for leaving undone the tasks of the future?