

# The Billion Dollar Disgrace

# Time to lift veil of Ignorance over US land tenure

**T**HE MOST fundamental reason for needing more information about land tenure in the United States is the near absolute lack of such information. We need to know more because, quite simply, we know so little. Compared to what we know about the mating habits of turtles, we know nothing about the distribution of control over our land and natural resources. This is said not to denigrate the usefulness of knowledge about turtles but to emphasize the limited data on land ownership. And we surely have as much of a right – as much of a duty – to know something after a decade and a half in which the U.S. has experienced a widespread revolution in the public consciousness about, and governmental edict over, land use, as we have the right and duty to know how a turtle makes love.

We know enough to suggest that it has been a decade and a half of revolution in a vacuum. Fifteen years of land regulation proliferation without addressing the question of land-ownership. We should be enthused about seeking knowledge for its own sake. That alone should be sufficient reason to pursue the study. But in this case we already know enough about land, about natural resources, about progress, and about poverty to suggest that our ignorance about land tenure is a national disgrace. Our billion dollar land use laws exist in a data vacuum.

## PETER MEYER reports from New York

Someone once suggested that the modern environmental epoch really opened with the first satellite photograph of the earth. It was at that moment, the picture flashed instantaneously through space to the earthlings below, that man confronted for the first time in graphic detail the finitude of his globe, experienced an overwhelming sensation that his home was a mere dot floating in the abyss of space, a lonely, fragile, and temporal spaceship earth.

It is impossible, of course, to measure exactly the impact of that single image on the consciousness of Americans. But almost contemporaneously with that photo, almost overnight, concern about the preservation of our natural resources, our environment, changed from an aesthetic exercise of the idle elite to a nationwide crisis call to protect civilization itself, save our children and our children's children. Environmental groups sprouted like cherry blossoms in the spring. They began lobbying every legislative body in the country. They carried their briefs for salvation to Washington, D.C., the cherry blossom capital, the home of the Great Society, the headquarters for the war on poverty, home of the most powerful organization in the world – the U.S. government. Washington has been home to environmentalists and public interest groups ever since.

Whatever the complaints about the quality and substance of federal actions have been, there are no arguments about the incredible quantity of actions as Congress began passing law after law regulating the use of land. In 1978 someone counted more than 100 different federal periodicals that reported on the environment. Congressman Morris Udall said that almost 140 separate federal programmes were dipping into the land use bucket. By the time that Gerald Ford assumed the presidency, he could claim that there was a "consensus that the unrestrained private use of land is not consistent with the public good." But by that time Ford's claim was more a statement of history than an outline for future policy. Already an Interior Dept. study was reporting that more than 12% of the entire \$324 billion federal budget was being earmarked to affect private land. The federal government already owned outright one-third of America, but it now appeared to be galloping like a herd of wild mustangs over the one billion acres still left in private hands.

Though there have been, and continue to be, many serious problems with this bureaucratization of the land – including debates about the usurpation of local and private decision-making powers, the bureaucracy's inability to adjust to subtle – even major – changes in the terrain, and its time-consuming, money-draining penchant for self-perpetuation irrespective of real accomplishments – the most significant defect has been the near-total information vacuum within which the federal steamroller has worked. (And we can include any regulating body or public interest lobbying group in the vacuum.)

**Despite the thousands of laws and programmes and reports and regulations, which touch millions of land and natural resource owners and the million more who depend on them, governments have succeeded quite well in remaining ignorant of the names and interests of those owners, how their interests affect the use of land, the distribution of wealth, the social fabric and the political process itself.**

The country has somehow managed to leap from a *laissez-faire* land ethic to a proliferation of concern and control without once touching on the significant relationship between the ownership of land and the distribution of economic and political power. It has preferred ignorance to information and has been left with the slapdash and haphazard bandaid approach adopted by both government and conservationists.

**I**T WAS NOT idle romanticizing that prompted Henry George to call land "the storehouse upon which (man) must draw for all his needs." The Bolivian farmer understands this as much as the American shopping for groceries or waiting in gas lines.

But not only should we know more about ownership because we know nothing and be concerned about ownership because land is the storehouse of our needs, but because the way in which that storehouse is held and its goods distributed strikes at the heart of an American

political and economic tradition perhaps more broad and profound than either the simple quest for knowledge or the mere appreciation of the land's wealth. It was not a breach of logic for George to conclude that "the ownership of land is the great fundamental fact which ultimately determines the social, the political and consequently the intellectual and moral condition of a people." The power of the belief in private property and the tenaciousness with which Americans still hold to that belief is testament alone to George's claim.

No matter what kind of consensus President Ford thought he saw in 1975, it is more than apparent that regulation has not been enthusiastically or even passively accepted. Why? Because ownership for many people is precious.

Numerous times in the last several years far-ranging federal land use schemes, championed by big business, public interest groups and environmentalists, have gone down to defeat. In 1977 the federal government faced \$500 million worth of claims against it for allegedly "taking" private property. Last year the Justice Dept. was swamped with 900 different suits about the use and abuse of land. And earlier this year President Carter dropped his plans for a new Natural Resources Department, meant to "consolidate all public and private land and land-related resource functions in a single agency," because it was a political bombshell.

The proponents of these proposals have often blamed the so-called "conservative backlash" or apathy about the destruction of the land for their failures. But I think that they miss the point. I believe that their failure is due to their ignorance of the importance of land ownership, and their inability to appreciate the rugged durability of the private property ethic. They have written it off as simplistic and continued on their merry regulating way.

George didn't originate the idea of ownership as "the great fundamental fact," nor did the idea die with him. Ownership was almost written into the Declaration of Independence as a right when the Founding Fathers considered including private property as an inalienable prerogative. Just a few years ago, in a survey of small midwestern landowners, two Kent State professors discovered that while people were still very much concerned about the abuse of the land, to the surprise of some conservationists they were even more concerned about government regulatory intrusion on their rights as private property owners.

More recently Frank Popper, an urban planner and consultant to the Environmental Law Institute, drew the same conclusion when he wrote about some Pennsylvania planners who were shocked to have their environmentally sound and advantageous proposals for controlling development rejected by the people they were designed to help. Popper quoted one of the small farmers who resisted the land use regulations: "If a man's home is his castle," reasoned the farmer, "then his land is his fertility. To take away his rights in the land is nothing less than castration."

**T**HE BELIEF in the sacredness of private ownership is an important tradition, one which regulators, hell-bent on enforcing the elusive public interest, fail to appreciate or understand. And they will never understand unless they study and analyze the patterns and matrices of ownership. Beyond that, the regulators' insensitivity and ignorance also means that they will not understand the power and impact of that tradition when only a small minority actually enjoy its benefits. Even Senator Henry Jackson, one of the most outspoken advocates of public control over the land and

its resources, has said that rational land use planning is "impossible without knowledge of patterns of landownership." If the Senator is right, we must conclude that the last decade of billion-dollar land use planning schemes has been entirely irrational; not once has there been a survey of ownership patterns. If he had been speaking about the ownership of a few five-and-dime widgets, we could easily understand why nothing has been done. Unfortunately, he was not.

Senator Jackson was speaking about something which has made Exxon and Shell and Mobil the most powerful businesses in the world. He was talking about — excuse the term — a commodity which helps generate for the real estate sector of the economy some \$87 billion of income each year. He was talking about 15% of the nation's total wealth (in land alone); about the \$21 billion which just nineteen banks have out in real estate loans; and about hundreds of thousands of tillers of tradition who continue to toil over the nation's breadbasket.

The environmental movement, to take one example, may have helped open an era of consciousness about the ultimate importance of man's symbiotic relationship with his non-human surroundings; but unfortunately, it has not yet ushered in any new and enlightened rush to find out how control over the land and its resources affects our relationships with one another. If it had, we would surely know who owns the land.

In a way, Americans have come full circle. After a period of flagrant forgetfulness, they are now experiencing something of a bottom line sensation of their ultimate and fragile dependence on natural resources. Based on some of the doomsday calls, it would seem that the U.S. is headed precipitously toward the industrialized world's equivalent of crop failure and famine in Biafra. Yet despite the fact that the dependence is ultimately the same — on land and its riches — the U.S. has no World Bank, no Land Tenure Centre, and no international human rights group breathing down its neck, studying its land ownership concentration levels and pressuring it for land reforms. The assumption about the so-called developing countries is that reforms in the patterns of land ownership will mean changes in the distribution of wealth; that there is a direct relationship between the mechanisms of control over the land and how people live — or die — and how much money they earn, how their leaders are elected or their dictators installed, how much education they receive, how many times they see a doctor.

**The U.S. is in no position to press for reforms at home because it has not yet recognized the relationship between ownership and the social order. And it is a long way from formulating any policy about land use — or it should be — because it has yet to gather any data about the patterns of ownership which will, in effect determine — as they have already determined — what those policies are or will be.**

If the dearth of ownership data means anything, it means that the U.S. has yet to admit that land ownership — whether considered as a right or a privilege, whether partial or complete, however large or small the claim, be it a capitalist or socialist system — is a crucial factor in the social and economic organization of a nation.

**I**F, HOWEVER, man's ultimate dependence on the land, his consequent dependence on the way the resources of the land are distributed, and the power and wealth inherent in the control over those resources are not sufficient reasons for wanting to know who owns the land, how it is owned, and to what effect, then the social costs of ignorance must be mentioned — if only in the form of questions.

First: what have been the costs in misdirected resources? How many billions of dollars of public money



**ENVIRONMENT** Minister Michael Heseltine (left) is to order all of Britain's local authorities to compile registers of their vacant land.

In a pilot project, 32 registers were compiled which revealed details of over 20,000 acres of underused land.

Mr. Heseltine says that he personally used the Liverpool register - during his visit to Merseyside to investigate the summer

riots - "to get vacant sites moving."

Now he is ordering all local authorities to compile registers. "There is a treasure trove of opportunities to be exploited," he told the Countryside Commission conference in September.

"When details of a site have been included in a register I have power to direct owners to dispose of it. I hope it will not be necessary for me to use

my powers. Because the real value in registers lies in their exposure of public sector land holdings to effective scrutiny. They provide a focus for developers, local authorities and other public bodies to join together in a constructive debate about the real opportunities offered by this vast resource of unused land."

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has been spent leading and pushing the land use horse to water and failing to induce it to drink? We have only to look at the decade long, billion dollar war on poverty for an example of misguided resources. The government has spent billions of dollars humbling hundreds of thousands of lives by hand-outs instead of invigorating them with opportunities, with the result that more people are on the dole after the war than before. How many billions of dollars could the government have saved, how many acres of land spared from the bulldozer, how many lives enriched, if the government had bothered to discover the patterns of land tenure and measure their impact?

Secondly: what kinds of incentives, tax measures, could have been devised had politicians been forced to confront data on land ownership and admit to the political power of the landed interests? A Dept. of Agriculture official once showed me a letter that had been forwarded to him by the White House. It was a "dear-president-Carter" letter from a woman in the midwest who was madder than hell that the government was buying up valuable farmland in her area. The official then showed me his reply to the woman, a courteous note in which he explained that the government doesn't go around buying up valuable farmland and in fact owned no land in her region. When I looked up from the letters I saw the Ag. man smile. "You know something," he said, "that lady is really right. We are in effect buying her neighbour's land. But her letter shouldn't have been forwarded to me; it should have gone to Internal Revenue Service. They're the ones who are giving the wealthy non-farmer the tax breaks for investing in land." But politicians are under no compunction to write more equitable tax laws because the people who vote with ballots instead of money are kept in the dark about the power of land ownership.

A third cost of our ignorance is also related to money. The real estate industry spends \$8 billion a year just in transferring parcels of land from one party to the next. Many of those transfer costs arise in determining who owns the land, and that cost is added to the value of the property. What other kinds of costs are added to the market price of land because of the confused and ineffective manner in which title data is registered? And how is the price of land affecting the use of land? We don't know.

Finally, what do patterns of ownership take from the social fabric? In 1944 Walter Goldschmidt studied and compared two small farming towns in California's San Joaquin Valley, Dinuba and Arvin, to analyze the effects of large scale ownership concentration on the character of the social order. The two towns were similar in all respects except farm size, and in 1972 Goldschmidt summarized his findings in testimony before a senate committee:

"The small farm community, Dinuba, had more institutions for democratic decision-making and a much broader participation in such activities by its citizenry.

The small farms supported about 20% more people and at a measurably higher level of living. The majority of the small farm community population were independent entrepreneurs, as against less than 20% in the large farm community, where nearly two-thirds were agricultural wage labourers. The small farm community in all instances had better community facilities: more schools, more parks, more newspapers, more civic organizations, and more churches . . ."

"In the quarter century since the publication of that study, corporate farming has spread to other parts of the country . . . This development has . . . been assumed to be natural, inevitable and progressive, and little attention has been paid to the costs that have been incurred. I do not mean the costs in money, or in subventions inequitably distributed to large farmers. I mean the costs in the traditions of our society and its rural institutions. If the production of agricultural goods is to become increasingly large-scale and corporation-dominated, rural communities as we have known them will cease to exist . . ."

**V**ERY LITTLE, if any, empirical research similar to Goldschmidt's small but informative study has been conducted since 1944, more than 30 years ago, and nothing on a national scale. We can only wonder vainly whether it would have made any difference.

The more one explores the issue of land ownership the more one realizes that the reasons - or excuses - for not having data are really arguments in favour of having more information. Anyone who has ever dipped his toe into the pool of ownership research quickly realizes how murky and cold the waters are. The problems are practical, conceptual, political, and economic, and they all suggest that we need more information, not less.

Current data bases are practically useless. The only information of any value on any kind of national scale is scattered around more than 3,000 county courthouses across the country. And even if someone succeeded in scrabbling through the rubble, he wouldn't find much of any value for comparison since many of the records are incomplete, misleading, and contain outright deceptions. The records may not, for example, give the names of all the parties with interest in the land or won't show the proportion of interests pertaining to each party. The usefulness of the data is also jeopardized by the common practice of concealing the beneficial owners of property with strawmen, trusts, nominees, and corporate layering. Other problems arise because some localities will differentiate between different interests on the same parcel of land - e.g., mineral rights, water rights, air rights, even solar rights - while others do not.

But these inconsistencies are not simply a plague of



disparate reporting procedures but also signs of the basic problem of defining the nature of ownership. I quote from my *Harper's* magazine article: "Asking who owns American land . . . is not at all like asking the height of Mt. Shasta. *Owning* a parcel of land is laying claim to a bundle of rights to the land, and those rights may be divided up in a number of ways, given to (sold to, taken by) any number of individuals. One person may hold the title to a plot of land — strictly speaking, the owner — another may lease it, another may have the sole right to mine it, another to harvest its timber, another to graze cattle on it, another to use its water, another to build a highway or sewer line or waterway or utility line through it; another (government) to tax it or condemn it or zone it or annex it."

**Practical and conceptual problems aside, perhaps the major reason why nothing has been done to find out who owns the land and how it is owned is that those in a position to subsidize the investigation have vested interests in ignorance. It is Catch 22. The politicians and the privileged are the only ones with the means of financing or legislating such a survey, but because of the economic and political power which landownership has in some way already bestowed upon them, they have no desire to shake their castles by exposing the foundations which give it support.**

In conducting my own mini-survey of ownership in the U.S., I asked numerous corporations and institutions and individuals how much land they owned. The reactions were fairly similar. If the spokesman didn't immediately tell me to stick my head in a bucket, he usually found a way of not responding. An official at Yale University told me it was none of my business, good-bye. Harvard, America's prestigious disseminator of information and knowledge, claimed it *didn't know* how much land it owned. Exxon admitted knowing what its holdings were, but told me I'd have to find out on my own.

A real estate executive described to me the manner in which his former employer, a large New Jersey firm, once surreptitiously gained title to 17,000 contiguous acres of valuable development land by concealing his true identity. He never used the same name twice in purchasing hundreds of different parcels of farmland. The man also told me, however, that if I leaked his name as the source of this information, he would personally break my back. Secrecy is the name of the game in the land speculation business — in any business for that matter — and it is obvious that broadcasting the names of landowners would affect corporate profits.

And if the government bodies don't demand more data from landowners, it is because politicians' interests frequently coincide with the interests of other large landowners, at least in their reticence to study patterns of ownership.

Walter Goldschmidt's study 30 years ago stands as a lonely example of government's lack of enthusiasm for the undertaking.

**I**N 1974 CONGRESS passed the Real Estate and Procedures Act which mandated HUD to establish a uniform national system of land records. That part of the Act was considered a political hot potato, and no money was given for implementing it until 1978. Then in 1974 the Interior Department's three-year-old Office of Land Use and Water Planning conducted a study in which it attempted to quantify all federal money which affected the use of private land. The results, in the words of an Interior spokesman, "touched too many sensitive nerves," and the Senate Appropriations Committee simply eliminated the Office by cutting off its funds.

More recently the USDA has completed a survey of 568 large American corporations to determine what kinds

of landownership information could be gleaned from readily available public data sources. But, perhaps, more because the study reveals that those companies alone control 23% of all land in private hands — more than 300 million acres — than because of its conclusions about the appalling inadequacy of information bases, USDA has decided not to release the report.

There is just one last point I would like to make. It doesn't speak so much to the significance of knowing who owns the land, but to the rights to that knowledge. Perhaps I call it a right because of my journalistic prejudices against most forms of secrecy, but it seems important to point out that land ownership information must be public. In fact, it is public almost by definition.

Whether land itself should or should not be publicly owned may be debated endlessly; whether information about land ownership should or should not be public is not debatable. No land is *owned* in a vacuum unless there is an infinite supply or unless there are no other owners. My boundary ends where another person's begins. A man "stakes" his "claim" to a gold mine for one basic reason: to announce to the public his right to possession of the gold over and above anyone else's right. Unless he asserted his right, he would, in effect, have no more right than anyone else. He could not be recognized as the owner of the gold mine unless he declared in some way his intention of appropriating it for his own use, unless he made his claim public. To hold his claim in "secret," so to speak, is something like the man who jostles his way through a crowd of cocktail party goers wearing a sandwich board which reads "I'm invisible."

The same holds true, it seems, for nations. Their territorial claims can be considered no more secret than Hitler's blitzkrieg through western Europe can be called secret. Unannounced in advance, perhaps, but a bomb dropped on a city is hardly a secret claim to land.

We may have passed the point — in theory, at least — where such claims are settled with guns and bombs, but we have yet to reach the point — logically — of doublespeak where a *claim* to land can be considered a private affair.

In summary then, we may not realize what exactly is the significance of knowing who owns the land; but there are plenty of important reasons why we *must* know.

- The fact that we know nothing is ample reason to know more.
- The fact that billions of dollars of public money is spent affecting the use of land, and therefore the nature of ownership, should lead us to ask what exactly it is that we are changing.
- The fact that land is so valuable, that fortunes are founded on it, lives lost working over it, and much of our political and economic tradition based on our ability to expropriate it for private use and profit, is sufficient reason for trying to find out who are the winners, who the losers.
- The social costs of our ignorance are demonstrable, but only partially so, because we don't yet know how much power is vested in the knowledge of tenure patterns.
- A journalist's instinct is to pay attention to what our interviewee doesn't want to say, because what is trying to be hidden is more important than what is willingly revealed. In the case of land ownership I would say that this information is necessary because so many people try to cover it up.
- In the end, land ownership information is public information — whatever else is said, Americans have the right to know who owns America.