

## CHAPTER NINE

### CONCLUSION

WE BEGAN THIS study by pointing out the importance of property rights to society. They affect practically every aspect of the social, political, and economic orders. And yet we also observed that there is much confusion and misunderstanding in society as to the actual nature of property rights and the consequences that specific forms of property holdings generate. Too often various forms of property are lumped together when in fact and in importance they are quite distinct. It is not enough to think that possessing property makes one rich or independent. Some rights to property do that better than others, even when the actual monetary value of the holdings are rather modest. Owning land and owning diamonds does not give an individual the same possibilities for freedom. The diamond owner may well starve, while the small landowner can prosper considerably.

In order to appreciate why the distinctions among the forms of rights to property are so important, we must first have a clear understanding of the nature and value of rights themselves. Rights are essentially claims or interests which an individual or group may have regarding a particular realm of action. They can be viewed as spheres of influence within which one person may have certain recognized claims. But it is important to note, as we have

tried to do already, that these spheres of influence need not be exclusive or private. Others may be granted equal claims within the particular realm of action being considered. So, the right to freedom of speech is a realm of activity with many possible participants. Hence, it is often the case that conflict or competition occurs as to who is entitled to preference or priority when more than one person wishes to exercise their rights. In some cases, where the rights are fundamental—as in the instance of freedom of speech—, it is not possible to assign preference unless there is another overriding factor which demands clear recognition. The policeman has, in certain situations, priority over the citizen, for his duty gives him special status.

An essential feature of rights is their relationship to duties. As we have shown with the help of Hohfeld's classification scheme, rights are correlated with duties or obligations, and it is to them that we must look both for guidance and protection in the exercise of our rights. Violations of duty destroy the possibility for the free exercise of rights: and one may violate a duty by mere nonperformance. Failure to utilize, to exercise, a right does not, however, affect the status of the particular right in question. In other words, rights are frail creatures which need the protection of their big brother duties.

Now, strictly speaking, not all 'rights' are so protected. Some claims are 'liberties' and their exercise can be interfered with by others since all holders of a particular liberty may equally assert their will to act upon that liberty. So two people may be at liberty to run to pick up ten dollars lying on the ground, though neither has the right to hurt the other in order to get the money. What we need to see is that property rights may or may not be 'rights' but rather only 'liberties'. This has enormous consequences which society must come to appreciate.

Justice has been correctly termed the sovereign social virtue. It guides men in their dealings with one another and attempts to provide clear, rational solutions to conflicts which may then be properly labeled 'fair'. The formal principle of justice—that like cases be treated alike—gives some direction by which we must look in seeking justice among men. But other criteria are needed in order to discriminate among the possible choices that any situation calling for decision offers. Especially in matters of fundamental and universal concern, the criteria for justice must be carefully weighed. We have discussed a representative list: equality, merit, work, need, status, and contract. All have been shown to offer some measure of 'fairness' according to particular circumstances and issues.

But we are always brought back to an undeniable truth which overrides any other considerations. Namely, that men

have certain basic needs, and all men are equal in regard to them. The needs are at once physical and ethical. The most primary in relation to property rights is the need to work and support oneself. This is as much a matter of human dignity as it is a matter of mere physical survival. There is a desire to create, to contribute, to participate in society that all men feel. It is this desire that makes freedom so precious. Men wish to be responsible for their lives.

Being physical creatures, this desire is conditioned by certain unavoidable considerations. Above all is the need for space, for access to land wherein work may be done. Moreover, as illustrated at length, land is the source for all wealth, since it is upon the land that men work and live and from which they gather in the harvest or collect the raw material for fabrication. Hence, justice demands that all men be assured access to land as a matter of right. However, since land is scarce and since access is for the purposes of useful employment (which may be understood in a very wide sense), only those who are willing to put the land to good use should be protected with security of tenure.

Additionally, because the quality of land varies enormously from place to place, even within a small area, those who obtain better sites should carry a commensurate responsibility to justify their having an significant advantage over others in society. This requires some form

of taxation which recognizes the difference between property rights to one portion of land as opposed to another.

Ownership of land, according to the liberal conception of ownership, cannot be justified; for it would grant too many rights in rem to the individual without grounding them on corresponding duties. For instance, the right to possess land has no justifiable rationale, if there is no willingness to use the land oneself. Otherwise, it is merely a way of making an already scarce element even scarcer. In other words, it limits others in respect to the right to access to land by holding land out of use at whim or for some speculative purpose.

As we examined the various traditional justifications for ownership of land, we saw that none, nor even all together, were able to provide adequate grounds for recognizing the liberal conception of ownership of land. Whatever else may be said about other forms of property rights, property rights in land cannot be rationally justified. That is, the full, liberal conception of rights cannot be granted to an individual; but a limited, yet fully adequate, form of property rights can and should be extended to all men equally, so long as they are willing to fulfill the correlative obligations attendant upon tenure of land.

The more one looks at the rationale offered by various philosophers for entitlement to land, the more apparent it becomes that they fail to see that land has a importance

far beyond what is ordinarily imagined. Perhaps because it literally 'grounds' human life, we who profess to be searching the stars for some sign, forget whereupon we stand. Of course, a little reflection reveals many things. The whole course, and even the whole possibility, of the human race can be related to the earth and its resources. This is not merely a poetic thought but a sheer fact of life.

Broadly speaking, it seems that the five most prominent arguments for property rights in land can be understood as efforts to secure the means to fulfill one or another human aspiration. Certainly the argument from first occupancy illustrates well the need to have some right to the space in which we find ourselves. This is more than a psychological need, of course. But security is a great comfort, as anyone knows who has signed a lease or bought a house. The labor theory of property rights deserves the credit that it is usually given, though it only justifies access to and not complete possession of land. As we have noted several times, work is the duty as well as the joy of man. Idleness, especially enforced idleness, is hateful from our youth up. Creativity needs space, raw materials and beauty. Land offers all three. The argument from social and economic utility is likewise creditworthy when properly understood. Without the access to land the social and economic orders crumble. One need only look at the impoverished nations of the world to see the direct relationship

between land tenure and social and economic vitality. In addition, the argument from political liberty reminds us that without a buffer between man and the state, tyranny is inevitable. Property rights in land have historically acted as such a buffer, but unless these rights are available to all members of society, tyranny of the state will be replaced by the tyranny of the landlord. And that is, unfortunately, a very common occurrence. Finally, the argument from personality and moral development contains a kernel of truth, for man does inject himself into the world to objectify his existence. This is best illustrated by the artist. Did not Michelangelo put his will into that rough piece of marble and thereby bring out the luminosity of the Pieta? In the same light responsibility is part of moral development, and property rights correctly understood teach men a particular form of responsibility. Plato was right when he argued that personal, private property is not essential to all men, but Aristotle was also correct in insisting that for most it is a boon.

Nevertheless, the sum of all these reasons is not the liberal conception of property rights. It is something different: not something less. Interestingly, the very features that make land so unique also provide the means whereby just distribution of rights to land may be determined and protected. Some men have seen this with varying degrees of clarity. By putting together their insights, we can formulate some fundamental principles about property

in land. Fortunately, these principles are entirely practical and even rather simple.<sup>1</sup>

Land is stationary. It cannot be moved. We have to go to it in order to put it to use. Hence, the need for land tenure, and contrarily the absurdity of absentee landlords. If men are able to live elsewhere, why then do they need other sites. Of course, they lease them out to others in order to support themselves by collecting part of the wealth produced by tenants without other access. What possible justification can there be for such a practice? Historical precedence? Then why not re-establish the institution of slavery, for that has at least as much historical precedence. And after all, as Henry George

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<sup>1</sup>One surprising source is Winston Churchill. In his book The People's Rights (London, 1910; reprinted ed. New York: Taplinger, 1971) we find the following in Chapter 4 'The People's Land': "Land monopoly is not the only monopoly, but it is by far the greatest of monopolies-- it is a perpetual monopoly, and it is the mother of all other forms of monopoly. Unearned increments in land are not the only form of unearned or undeserved profit, but they are the principle form of unearned increment, and they are derived from processes which are not merely not beneficial, but positively detrimental to the general public. Land, which is a necessity of human existence, which is the original source of all wealth, which is strictly limited in extent, which is fixed in geographical position--land, I say, differs from all other forms of property, and the immemorial customs of nearly every modern state have placed the tenure, transfer, and the obligations of land in a wholly different category from other classes of property. Nothing is more amusing than to watch the efforts of the land monopolists to prove that other forms of property and increment are similar in all respects to land and the unearned increment on land. (p. 117)



puts it, slavery and exclusive ownership of land can amount to the same thing:

Place one hundred men on an island from which there is no escape, and whether you make one of these men the absolute owner of the other ninety-nine or the absolute owner of the soil of the island, will make no difference either to him or to them.<sup>2</sup>

The fact is, of course, that all men need access to land, and so only someone who has control over or access to more land than he needs for his own purposes can afford to lease land. Such practices should be limited, for they only make land which is already scarce even scarcer. As we have shown in the discussion of site value taxation, land is distinguishable from other factors in production in that ownership cannot stimulate an increase in the amount of land available. That is fixed by nature.

This does not mean that the whole real estate industry must cease. There will, undoubtedly, be a need for real estate brokers and agents in order to facilitate the transference of rights to use and manage from one party to another. Some premises will need to be managed, and much custodial work will probably be contracted out. However absentee landlords will disappear when men are offered an opportunity to enjoy security of tenure through payment of the economic rent. It is only by collecting the economic

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<sup>2</sup>We have used this quote already, but it illustrates an important point worth repeating. See, George, Progress and Poverty, p. 347.

rent for himself that the landlord is able to profit from his ownership, and if that is taken away, then his whole modus operandi is gone also.

As we have tried to make clear, the economic rent is the product of the distinct advantages some sites within a given area and industry enjoy over other sites. This is also traceable to the natural characteristic of land. Some land is more fertile or better located than other plots. And especially with the growth of communities and the development of the economy, these advantages take on greater importance and new forms. So city plots sell in square-footage, while country plots go in acres. If instead of allowing the speculator to reap the benefits of 'windfall' increases in land values, we see to it that the community benefits, justice is not only done, but access to land is made more flexible and equitable.

Property tax has become a shibboleth in society today. But not only is it an equitable way to raise revenue, it is even more important as a mechanism to insure that concentration of holdings in land do not occur. There is no benefit in holding more land than one can use, if speculative gain is abolished. It is something that the public must come to appreciate. Unhappily a good many people participate in the practice of buying land cheaply and selling dearly. Moreover, many a modest homeowner feels that he is entitled to the 'equity' that his house has

developed over the years.<sup>3</sup> (The word itself is dangerous, for it implies that the increased value of the land, not the value of the house or other improvements, is somehow due to their efforts. In actual fact, because of changes in the nature of the community and the plague of inflation, homes which cost a modest sum in the past are enormously expensive today. One must have deep sympathy, even complete support, for people whose lifetime savings are largely contained in the increased value of their homes. But that does not vitiate the essential point. Nor does it consider the younger person looking to buy that once modest home.) If we don't want a property tax which discourages speculation, encourages productive improvement of land, and distributes its burden in proportion to the advantages and ability to pay, then what kind of a tax do we want?

One of the greatest advantages of the site value tax is that it is relatively easy to apply and impossible to

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<sup>3</sup>Consider the following remark: "The case for ownership of land would be stronger where the personal freedom and independence of most Americans actually depend upon it. The present status of land ownership however, is beneficial chiefly to developers and speculators, as well as to exploiters of values attached to the land. While to the individual home owner mere ownership offers little more than the illusion of security, the advantages accrue to the indifferent despoiler of the land and landscape whose interest is with neither land nor environment but rather with the economic returns from his land transactions." Caldwell, "Rights of Ownership or Rights of Use? The Need for a New Conceptual Basis for Land use Policy," p. 767.

avoid so long as it is fairly administered. This is not the case with present taxes. Laura Nadler asked a pointed question at a recent conference on taxation and justice: "How has it happened that in this democratic society, we have developed a tax system that nobody understands, one that is taught nowhere in the school system?"<sup>4</sup> Distributive justice demands an economically fair and efficient tax system. The site value tax is one step in that direction. It does not especially matter how much revenue would be collected by such a method—though it is likely to be more than often suggested—, for the effects upon land ownership of the collection of the economic rent are just as important to the community as the actual tax monies.

Yet as important as the site value tax is, it is not the solution to all the issues involved in property rights. Environmental issues are becoming increasingly crucial. Land is the environment for all practical purposes, and the use of land directly affects the entire ecosystem. Here again the liberal conception of ownership grants too much freedom in the private use of land. Freedom of thought, word and deed are important, but social responsibility is also essential. There is a need to balance the one against the other. No one can legitimately use their tenure in a way

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<sup>4</sup>She is quoted from a symposium on 'Taxation and Human Values' held at the Center for the Study of Democratic Institutions. See, The Center Magazine, 11 (May/June 1978): 20-50 at 49. Laura Nadler is Professor of Anthropology at the University of California, Berkeley.

that disturbs others significantly. Moreover, property rights to land entail strict obligations to conserve, cultivate, and preserve the site as carefully as possible. While it is often necessary to transform the land for various purposes, and in many cases this transformation is practically permanent, unnecessary radical changes in the land should be discouraged, if not forbidden. To be sure, in certain areas subjective judgments will enter, and one person's esthetic sensibilities may not be another's. (One thinks of the formal French garden and the more naturalistic English garden. Both of which are highly artificial in their own ways.) Nevertheless, concern for beauty should be an obligation of a tenant. In the long run, beauty, especially in relation to land, is much more economically and ecologically sound than ugliness.

In an eloquent address Chief Seattle of the Duwamish Indian tribe responded to a government request in 1854 to buy the ancestral lands.<sup>5</sup> First he asked:

How can you buy or sell the sky, the warmth of the land? The idea is strange to us. If we do not own the freshness of the air or the sparkle of the water, how can you buy them from us? Every part of this earth is sacred to my people. Every shining pine needle, every sandy shore, every mist in the dark woods, every clearing and humming insect is holy in the memory and experience of my people.

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<sup>5</sup>See, Lewis P. Jones, ed., Aboriginal American Oratory (Los Angeles: Southwest Museum, 1965), pp. 98-101.

And then he observed:

We know that the white man does not understand our ways. One portion of the land is the same to him as the next, for he is a stranger who comes in the night and takes from the land whatever he needs. The earth is not his brother, but his enemy, and when he has conquered it, he moves on. His appetite will devour the earth and leave behind only a desert.

And finally he concluded with a plea:

If we agree, it will be to secure our reservation you have promised. There perhaps we may live out our brief lives as we wish . . . If we sell you our land, love it as we have loved it, care for it as we have cared for it, hold in your mind the memory of the land, as it is when you take it, and with all your strength, with all your might, and with all your heart, preserve it for your children, and love it as God loves us all. One thing we know—your God is the same God. The earth is precious to Him. Even the white man cannot be exempt from the common destiny.

Property holders of land must come to an appreciation of their responsibilities in the way that Chief Seattle pleads. It is hoped that this study has served to help that endeavor.