Site Revenue and The Commons

By David Spain

It is sometimes said that economic rent (Site Revenue – "SR") should not be collected from users of the open commons, meaning land which people are free to use upon equal terms, but rather only from those who hold grants of enclosed land. This statement is a helpful reminder of our freedoms, since the very openness of commons is necessary or desirable for civilised society to function without tyranny, but it should not cloud our analysis and perspective.

The entirety of Creation was given to humanity; we made none of it. Yet we, via our local jurisdictions, are empowered to make enclosure decisions. Thus the entire material universe is open commons, but is subject to the power of local jurisdictions to privatise defined portions of it by granting exclusivity. Such exclusivity is often necessary to enable privacy, stability, productivity and long-term planning.

The type and scope of enclosure granted exists across a wide and deep spectrum. There is no simple black-and-white divide between what is enclosed and what is open commons. Some enclosures may be deep, indefinite and devisable (as with freehold), or for a fixed term (as with Crown leases), or limited in usage (as with pastoral leases where nomadic peoples share with homesteaders but can still camp and hunt). In many cases, environmental and town planning controls will also constrain absolute freedom. Even all of these forms of tenure remain subject to resumption by the Crown and may be reverted to open commons again. However, other grants may be more limited and personal and made by license rather than by grant of freehold or lease. The SR philosophical problem arises more strongly where temporary exclusivity is granted over what is usually open commons.

No land is perpetually open commons due to some inherent divine right - land holds or retains that character only by permit of local jurisdictions. Just what specific land actually comprises open commons, from time to time, is subject to constant change and regulation by local authorities. Land that is open commons today may be a closed sewerage works or suburban housing estate tomorrow. Main roads may be shut or resumed (to investigate a fatal accident or to enable reconstruction), beaches may be closed or regulated (for safety or defence reasons or for a carnival). Nor is this a one-way process; land which is privately enclosed may be resumed for public purposes, or closed Crown land may be released, and this happened in the 1970's when extensive Crown defence land around Sydney harbour was liberated as National Park

If we look at land which, from time to time, appears to be freely open to all to use on equal terms, then there is plenty of it: roads, parks, beaches, national parks, state forest, unused Crown land. People can access and use this land freely, although subject to a range of standard behavioural and environmental constraints, and they have a natural right - arising from their very existence - to do so upon equal terms. Usually politeness and co-operation can prevail to guide behaviour, even in crowded situations.

However, sometimes conflict arises amongst these equal users, even of open commons, such that equal rights clash. This is especially so where the land is valuable in an economic or social sense and subject to crowding or enhanced demand and hence to greed, desperation and sly profiteering. In that situation, there is a danger that the strong, the aggressive, those with sharp elbows or those with poor morality will prevail and effectively exclude the meek, mild and humble. In this situation, Henry George says (in Chapter IV of *A Perplexed Philosopher*) that "the function of society begins" and "adjustment by society" becomes necessary, since "this value ... [must] be turned over to the community".

What constitutes conflict? Must there be gun battles, range wars, murders or fisticuffs? No, no physical manifestation of conflict is necessary. It is enough if there is aroused, in individuals or the public, a sufficient rational sense of resentment or disquiet at perceived unfairness, unjust enrichment or imposed inconvenience.

Thus, to control conflict between those exercising equal rights, sometimes exclusivity may only be granted over

otherwise open commons for brief periods (as with parking meters), or on an intermittent basis (footpath dining during business hours) or on an occasional basis (Fort Denison on New Year's Eve). The exclusivity may be in respect of a wavelength, or a volume within a greater common volume (such as emission of CO_2 into atmosphere or right to extract fish, timber or minerals within an estimated available supply), or of a moving volume in a continuum (such as a vehicle at peak hour or on a toll road, or board surfers on crowded waves). It is also the case that citizens may covertly exploit or damage the commons to their own advantage but the detriment of others – by atmospheric pollution for example.

There is no basis for saying that only freehold, or heavily privatized land, is valuable, nor does Henry George say this. Freehold is just one form, albeit a strong one, along a very wide spectrum of forms for enclosing the commons. Advocates of limiting SR to extreme forms of enclosure meet the unanswerable problem of where to impose the tipping point. Many sites on what is generally open commons may be valuable, even if only from time to time or on occasion. If conflict arises among users, it may be necessary for society to grant degrees of exclusivity to secure equality between these clashing rights of individuals, to adjust and avoid conflict, to facilitate the utility of the usage and to maintain the equality of those who are (directly or generally) ousted from the site. Where there is conflict between users of common land, when exercising their pre-existing right of equal access, then government not only has the right but indeed the duty to license use of the contentious land, thereby creating rights (even if only temporary or intermittent) of private monopoly and enclosure.

SR must be collected from all users of land who are accorded sufficient exclusivity, and then applied as public revenue. Sufficient exclusivity exists whenever grants are made in a way which is capable of legal enforcement by specific performance (rather than by lawsuit under contract for mere dollar damages), and this is legally possible even for rights held under license. This collection of SR is a duty, not an option. Any default in that duty allows the monopoly to accrue a market price above the value of fixed improvements, and that price is effectively theft from the community. Land price is the core sin from which springs a multitude of evils such as inequality, unemployment, criminality, parasitism, greed and economic instability. The entire global culture of dividing and privatising land and using the resulting value as security is based on theft and sin; it cannot but collapse.

The quantum of SR in respect of any enclosure must be set by the free market (not by politicians) as ascertained at auction, or by trained valuers with appeal to a specialized Court. This quantum represents the annual (or occasional, if need be) value of the grant in light of its duration, location, size, vista, aspect, fertility, mineralization, utility constraints and other informing variables. Effectively, SR imposes upon the monopoly such a burden that it reduces the sale price of the grant, at hands of the grantee, to nil and so maintains the equality of all persons in benefitting from the subject site and use of all creation. Of course, the grant still has value to the grantee as it enables earning of a livelihood from the site, commensurate with effort and market demand, but there is no unearned increment on top.. SR is the only proper source of public monies and must replace all taxes and imposts. Debates regarding speed of implementation and how to deal with existing security-holders are separate issues.

Any grant of private exclusivity will necessarily constrain, or even destroy, the pre-existing, equal right of all living individuals to the subject site. That equal right is the primary position. Everything possible should be done to perpetuate and enhance the exercise of equal right to open commons, but if conflict occurs between equal users then degrees of exclusivity may be granted or imposed by society to manage the situation. This is a secondary step. The SR must then be collected and applied to public purposes. This is a tertiary step. The fact that a specific grant is made as a secondary step and is held by a number of individuals jointly does not mean that the general prior, primary human right to access all land is itself held jointly rather than equally.

Despite the public power to do so, enclosure of open commons should generally be avoided, but must be done where conflict, loss of utility or unfairness would otherwise result. Often the existence of open commons fosters the value of such enclosed sites as benefit. Commons should never be enclosed just to raise finance or to engineerand manipulate policy outcomes. Democratic backlash would tend to constrain enclosure. It is neither necessary nor feasible that SR from a specific site be divided up equally amongst all specific persons who claim or establish being ousted from that site. Such enquiries would be endless, contentious and futile. Taken in the aggregate for each jurisdiction, it suffices that total SR is applied (at the least, in ways set by fair democratic vote) as public finance. Individuals unwilling to work with hand or brain, or lacking the skill and utility to do so effectively, will still be able to flourish at the margins (where there is less, or no, need to enclose open commons) in their own chosen ways.

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