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Who Owns Your Land?



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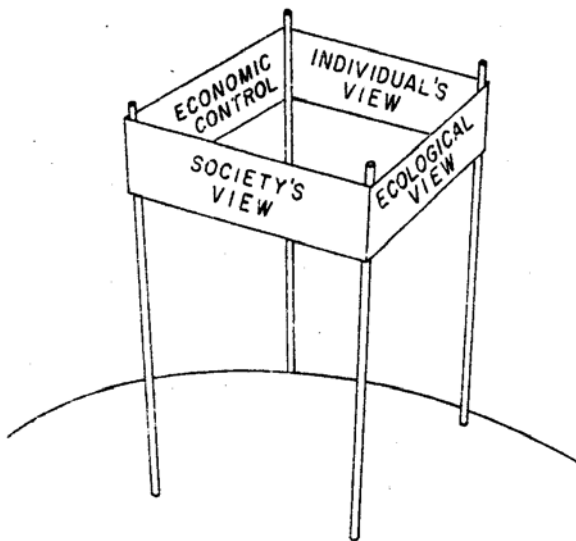
Who Owns Your Land?

By Raleigh Barlowe
Dept. of Resource Development

"This land is mine, mine to use and enjoy, mine to treat as I wish." This sentiment characterizes the feelings of many owners concerning their rights in land. It reflects a traditionally popular attitude about property ownership. It expresses what some have described as the "human territorial imperative."

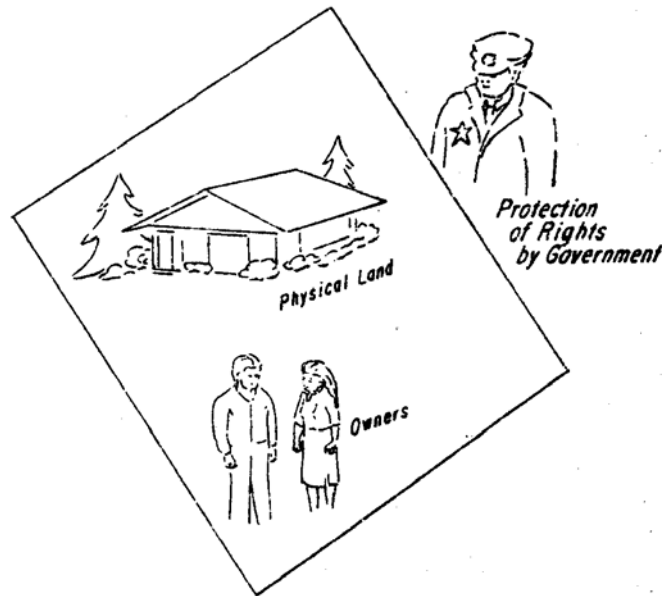
Landowners obviously possess many rights in the properties they hold. But do they really have all of the rights they claim? Various actions by governments and courts in recent years suggest that the property rights of private owners are shared with the public and that these rights can be limited, or taken for public use, without payment of compensation.

More than this, the rights one holds in land can vary with different points of view. From an individual owner's point of view, one's property rights may seem to be complete, sacred and inviolate. Yet from the overall standpoint of society, it can be argued that these rights are shared with the state and can be modified by governmental action.



FOUR VIEWS OF PROPERTY

CONDITIONS NECESSARY FOR EXISTENCE OF PROPERTY



In an economic sense, owners often possess and use properties in which mortgage lenders hold major financial interests. From an ecological and philosophical view, one can go even farther to assert that no living operator is more than a temporary tenant on this earth. That we are all part of the overall resource base, and that far from us owning the land, it is we who belong to the land.

Emphasis is focused here on the individual and social concepts of ownership. In addressing the question of "Who owns your land?", first attention is given to the meaning of our concept of property rights. Consideration is then turned to the changing nature of property and to the reasons why our views about property have changed in recent centuries. Final emphasis is centered on the significance of our changing concept of rights in land.

The Nature of Property Rights

Property involves the recognized and defensible rights of individuals and other "legal persons" to possess, enjoy, use, and dispose of economic goods

such as land and buildings. It constitutes rights that can be exercised with respect to material objects—not the objects themselves. The existence of property implies the presence of an owner or owners, property objects that can be appropriated to ownership, and a sovereign power (government) that will protect and defend the property right.

It is hard to conceive of property without an owner or an object that can be owned. But it is the presence of a protecting sovereign that makes the enjoyment of property possible. Rights in land exist because governments are willing to recognize and enforce them. In the absence of this protection, one would have to fight off trespassers and the rights of most owners would become meaningless.

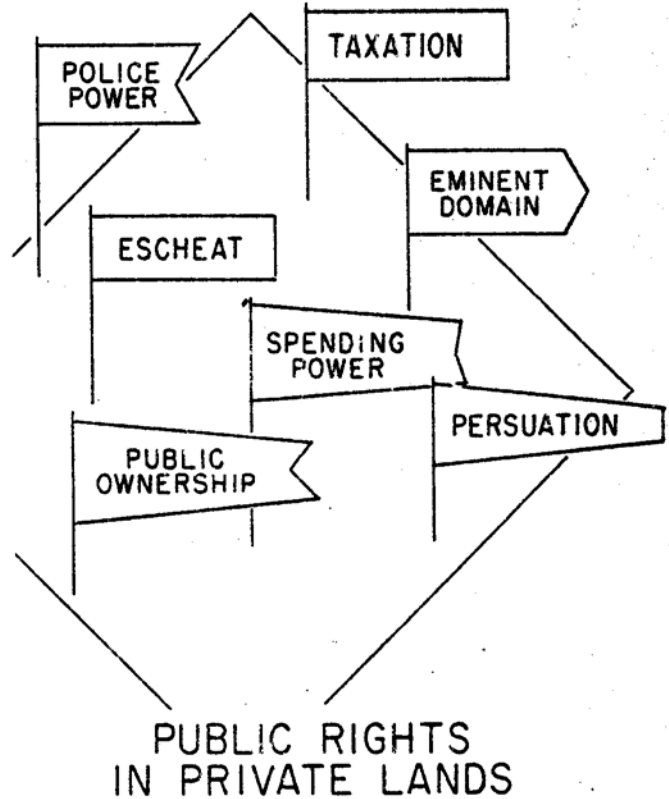
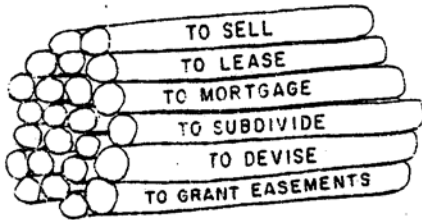
What we commonly call property really involves a number of separable rights. These rights can be likened to a bundle of sticks, with each stick representing a separate right. Some of the more important sticks represent the rights to sell, to lease, to grant a mortgage, to subdivide, to lease to an heir through a will (devise), and to grant easements. Other sticks in-

volve interests such as air, water, mineral and development rights. Each of the rights represented by sticks in the bundle can be separated from the others and exercised separately, as is commonly done when one leases property to a tenant or grants a mortgage or an easement to others.

When owners have all of the rights individuals are permitted to hold in property, they are called fee simple owners. As such, they possess most of the rights in property. They can exercise and enjoy their rights to the exclusion of others. But while owners in fee simple enjoy exclusive rights, their rights are not absolute. There are four property sticks that never get into the private owner's bundle of property rights. The powers represented by these sticks are reserved to society and are exercised by its agent, the state.

The four powers reserved to the public include (1) the right to tax, (2) the right to take for public use, (3) the right to regulate or control the use of, and (4) the right of escheat.

THE BUNDLE OF RIGHTS IN LAND



Governments, acting for society and the public, have long exercised the power to tax private properties. They have a time-honored right to take property under the eminent domain power (with the payment of just compensation in this country) for public use. They use their police powers in making and enforcing regulations which can affect people in their use of land. They also have a residual power of escheat which enables them to succeed to the ownership of land when owners with no known heirs die without a will.

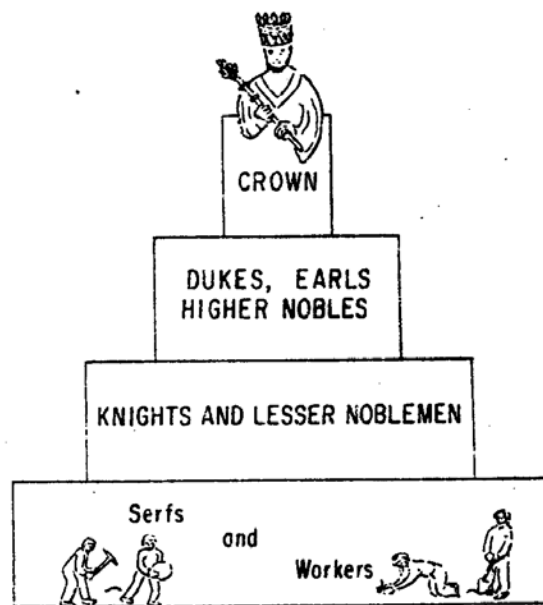
In addition to these formal rights in land, governments can utilize other auxiliary powers to influence operators in their use of land. Important among these are the public spending power, the proprietary or public ownership power, and the powers of example, persuasion, and public opinion.

Changing Views of Property Rights Over Time

History shows that the concepts of property accepted in the past have often changed with new conditions and the passing of time. Most primitive communities treated land as a resource to be held in common ownership. From this beginning, movements toward acceptance of concepts of private ownership and countermovements toward ownership by privileged classes or by the crown were common.

For our purposes, there is no need to push the long history of the changing concepts of rights in land back beyond the heyday of feudalism. Under the feudal system, which prevailed in western Europe from 1000 to 1500 A.D., every person's status in society was directly related to the rights he or she held in land. The distribution of these rights differed greatly from what we enjoy today. But they are important to us because they provide the base from which our present concept of property rights has evolved.

With the feudal system that operated in countries such as England, France, and Spain, it was accepted doctrine that kings ruled by divine right. As part of this divine right, they were viewed as the technical owners of all of the land of their several realms. Kings could and did make frequent grants of land to various favorites and followers. But they also retained claims to the revenues from many estates and they could reclaim rights to the crown.



FEUDAL CONCEPT OF PROPERTY RIGHTS

The feudal tenure system can be visualized as a pyramid of rights. A king or queen stood at the top of the pyramid and held rights that superseded those of all others. Much of the land was turned over to dukes, barons and other noblemen who supported the crown. On a lower level, properties were often administered by lesser noblemen—by knights and lords who owed allegiance to higher noblemen. At the bottom, the entire system was supported by serfs and workers who were often bound to the land and who had no possessory rights to the land.

At every level, the administrators and users of the land operated subject to allegiance, fealty, and knight or other military service to their superior lords. Noblemen and serfs did not always agree with their overlords. Obstinacy and resistance sometimes led to armed warfare which could lead to the rise of a new group of overlords but which more often resulted in the separation of the rebellious parties from their rights in land.

Five legal terms have come down to us from the feudal era. These terms—property, fee, estate, interest, and right—have similar meanings and can

EVOLUTION OF PRIVATE PROPERTY RIGHTS

100-1300
AD ROYAL PROPERTY (REAL ESTATE)
CENTERED IN THE CROWN



1750-1850
AD COMPLETE OR FEE SIMPLE
RIGHTS HELD BY
INDIVIDUAL OWNERS



1950-2000
AD INCREASING ASSERTION OF
PUBLIC RIGHTS IN LAND

usually be used as substitutes for each other. Fee simple ownership signifies that an owner enjoys full ownership of all the rights or fee one can hold in property. Real estate, another commonly used term in our society, originally meant "royal property".

Feudalism reached its height in England around 1200. Events such as the signing of the Magna Charta and the establishment and growing strength of Parliament in the next few centuries brought a gradual shift from feudalism to acceptance of fee simple ownership. Charles I was the last English king to seriously argue that he ruled by divine right. Following his execution in 1649, the stage was set for full scale acceptance of fee simple ownership.

Fee simple ownership reached its height in England at about the time of the American Revolution. After that date, the concept was narrowed by expanding interpretation of the powers reserved to the public. Con-

ditions in the United States favored an expanding view of private rights in land until around 1820. Since then, there has been a gradual increase here too in public assertion of rights in land.

Evolution of Private Property Rights

With the redistribution of rights that accompanied the decline of feudalism, many common citizens acquired opportunities to enjoy property rights not available to them before. But the extent of these rights has changed. Some major changes can be illustrated with a simple comparison of the rights held by heads of families in ancient Rome with those of present day owners.

Families in ancient Rome were headed by patriarchal figures who owned all the property that came with their wives together with the property they inherited and accumulated during their lives. They had the power of life and death over their families and slaves. They could choose wives or husbands for their children; order the death by exposure of newborn children; sell their wives, children, or even themselves into slavery; buy and sell slaves; and put slaves and members of their families to death.

Compare these rights with those of today's property owners. The earlier powers of execution and exposure have been outlawed. Slavery and the holding of rights in another person are now prohibited. Wives and daughters now enjoy equal rights with males; children select their own mates; and children can be protected against parental abuse and exploitation. Gone also are the earlier English rights of primogeniture and entailment of estates by which owners could provide that their estates would pass continuously to an oldest son of an oldest son.

Some of the most significant of these changes, such as the prohibition of slavery and the extension of equal rights to women, are products of the past century. Similar modifications of the scope of property rights are being accepted all over the world. This does not mean, however, that the people of all nations share the same or even similar views of property rights.

Our concept of property is a direct outgrowth of our English and Roman law heritage. Other backgrounds and legal heritages have affected the thinking of

people in other parts of the world. The idea of collective farms in the Soviet Union, for example, has a precedent in the Russian mir, an earlier practice which involved periodic redistributions of individual land allotments in agricultural communities.

Property rights in the Moslem nations are dependent in an ultimate sense on interpretations of the Koran. Some property rights concepts in the Far East can be traced back to a heritage of Confucianism. And common ownership of tribal lands is practiced on several American Indian reservations.

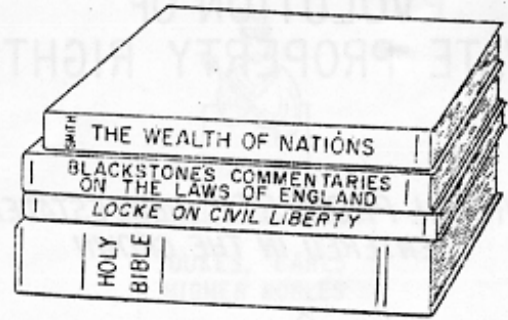
Changes in American Views About Property

Attitudes about rights in land also have changed in the United States. Most of the white settlers who came from Europe were motivated by opportunities for acquiring land. The first settlers had a whole continent before them with thousands of acres available for the taking. Yet, they ordinarily took the modest allotments assigned to them without questioning whether this was the best land for them. They bowed and scraped to authority and took what was offered to them because this was the accepted behavior in the European societies from which they came.

This subservient attitude gave way quite rapidly with the generations that followed. Youngsters raised on the American frontier had a different view of life. With the seemingly unlimited supply of land to the west, they were naturally impatient with the idea that they should check with officials in London or later in this country before moving to occupy new lands.

Frontier life bred new attitudes towards land as well as the spirit of independence that blossomed with the American Revolution. The leaders of that period were enthusiastic supporters of the concept of fee simple ownership. Several of them, however, were also men of intellect who sought religious, philosophical, legal, and economic justifications of their views. Biblical support came from the Old Testament which speaks approvingly of man dwelling beside his own vine and fig tree.

An additional philosophical basis for their views was provided by the writings of John Locke, an English political philosopher. In his now famous *Treatise on Civil Government* (1690), Locke argued that man has



INTELLECTUAL JUSTIFICATIONS FOR PRIVATE PROPERTY

a natural right to life, liberty, and property. As he saw it, the earth was given to mankind in common, and individuals by combining their labor with the land found in nature could convert it to private property. This natural right concept of property gained wide acceptance in America.

Legal support for a rugged individualistic view of rights in land was provided by Sir William Blackstone, a great British legal analyst, whose *Commentaries on the Laws of England* appeared in 1765. Blackstone defined property as "that sole and despotic dominion which one man claims and exercises over the external things of the world, in total exclusion of the right of any other individual in the universe". This much-quoted definition was accepted by many as the final word on property rights.

Adam Smith, a Scottish moral philosopher and economist, added an economic justification for a broad view of property rights with the arguments advanced in his book *The Wealth of Nations*, published in 1776. Smith argued for a *laissez faire* economic system. He felt that a minimum of governmental regulation would facilitate operation of an economic system under which the activities and decisions of thousands of independent operators, each attempting to maximize his personal returns, would be coordinated by "an unseen guiding hand" to provide a maximum in public benefit.

Public policy in the United States emphasized both complete private ownership rights and a *laissez faire*

economic philosophy until recent decades. These two concepts complemented each other and each tended to feed on the other. But, over time, demands have risen for more public direction of both the way in which private property rights are exercised and the manner in which the nation's economy operates.

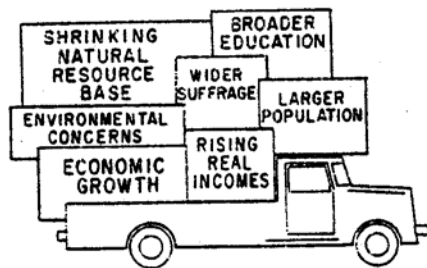
Many citizens still cherish the individualistic views that were popular on the American frontier. Review of the many programs adopted by the state and federal governments in recent decades, however, indicates that we have moved generally to acceptance of a larger role for government.

Acceptance of a Larger Role for Government

Why has the prevailing attitude concerning public and private rights in land changed so much in this country in the last 200 years? Some of the more important reasons involve:

1. Increasing population numbers. Two hundred years ago, the nation had a population of four million people. With 217 million people today, there is far more pressure against the available supply of land resources.

2. Rising incomes and levels of living. Increasing worker productivity has made it possible for the nation's citizens to enjoy steadily increasing real incomes. These incomes have been used to finance higher levels of living and have prompted greater individual demands for varied diets, better housing, modern transportation facilities, recreation opportunities, and the maintenance of a pleasant environment.



PRESSURES FOR A LARGER ROLE FOR GOVERNMENT

3. Increased competition for our available resources. Increasing population numbers and rising per capita demands have fueled expanding economic growth and have called for larger and larger supplies of raw materials. This has brought increasing competition for possession and ownership of the nation's relatively fixed resource base. Resources that once seemed unlimited have become scarce. Sharp competition for these resources has brought conflicts of interest that governments have been called upon to mediate.

4. Broader education. Much of our population of 200 years ago could hardly read or write. Students are now expected to go through high school, and about the same proportion of people in the 25-29 age bracket are college graduates as were high school graduates 50 years ago. This increase in educational training has affected the attitudes of most citizens. Among other things, it has caused many of them to demand more of government than earlier generations did.

5. Wider suffrage. During the late 1700s, the right to vote was limited to male property owners. Fifty years later during the Jacksonian era, this right was extended to qualified males over 21. Women secured the right to vote during the next three-quarters of a century, and suffrage for people between 18 and 21 has been accepted in recent years. Extension of the right to vote has made it possible for groups of citizens who lacked this right in the past to effectively demand new public services and new regulations that may affect the rights of property owners.

6. Conservation and environmental concerns. New-found affluence and growing awareness of the negative impacts that various activities can have on environmental quality have prompted demands for public and private self discipline in those uses of resources that affect the quality of the environment. Environmentalists also are demanding that public and private actions be taken to protect our limited resources so that we may extend opportunities to future generations to enjoy a standard of living comparable to that we now have.



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FUTURE TRENDS WITH PROPERTY RIGHTS ?

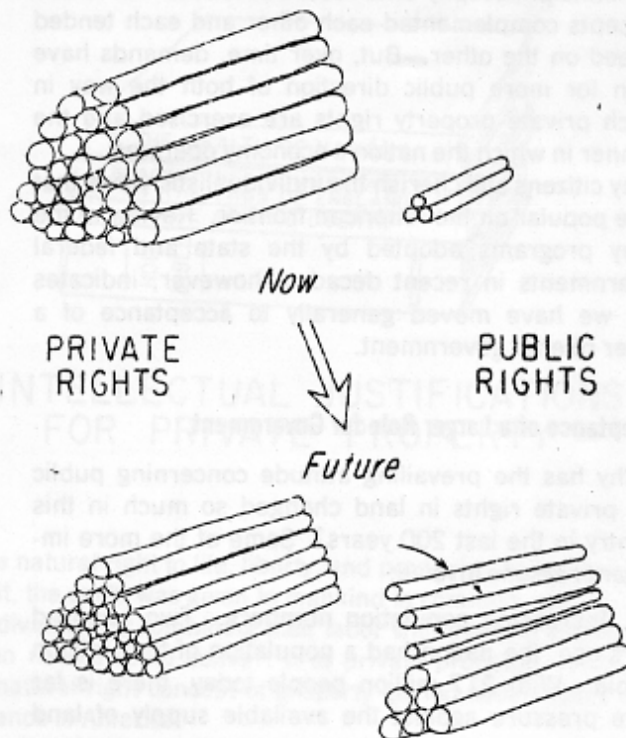
Significance of Our Changing Rights in Land

Several observations may be made concerning the present and future significance of our changing rights in land. From a realistic point of view, it appears that **the rights we hold in property spring from society**. Individuals may feel that their rights are sacred and inviolate, that they are God-given, or that they have been endowed by natural law. In practice, however, the nature of one's rights always depend upon the interpretations accepted by the societies in which we live. Rights are real only when the sovereign power, which acts as the agent of society, recognizes them and is willing to defend them.

It may also be noted that subtractions from fee simple ownership do not necessarily mean that property is less valuable or that it provides fewer satisfactions to its owners. Most residential owners grant easements to utility companies to service powerlines over or under their properties. These easements are a subtraction from fee simple ownership but they make properties more valuable because owners need access to power and other utilities. Similarly, zoning ordinances can limit ownership rights. But they can also expand an owner's rights by providing security of expectations concerning the permissible future uses of neighboring properties.

History shows that our present system of fee simple ownership evolved from the feudal concept of rights in land and that property is a dynamic and changing concept. No one knows what precise direction this concept will take in the future. Recent events suggest that we may be moving towards a broader interpretation of the public powers in property. They also indicate that some sticks from the individual's bundle of property rights may be moving to the pile of public rights. Private rights to burn buildings and to pollute air and water already have shifted, and other rights may follow.

Some owners may very well be distressed with the word that their rights in land are subject to change and that they are dependent upon the attitudes of the people who make up our society. These people may worry about the prospect of having their rights stripped away. But fears of this sort are unfounded. No responsible leader in the United States now recom-



mends such a policy. Quite the opposite, our national objectives still stress the desirability of private property. We can be confident that this institution will continue for long years into the future.

It should be recognized, however, that there is considerable sentiment for moving towards wider acceptance of a stewardship or public trust view of rights in land. Acceptance of this view will call for emphasis on the **responsibilities** as well as the rights of property ownership. It may also require more restrictions on the rights of individual owners to exploit their land resources or to develop them for uses not felt to be in the larger public's best interests.

Finally, it must be recognized that proposals for new public programs and regulations can lead to the loss of valuable private rights. Those who feel that their rights are infringed upon naturally will oppose these moves. Various considerations will affect the attitudes of the general public. In every case, however, proposals for adjustments in the rights we hold in land should be carefully analyzed so that our decisions respecting these proposals will reflect rational thought and concern about the present and future well-being of the American people.