

Freedom's Ugly Duckling: A Fresh Take on Private Property in Land

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Abstract: The writer offers historic reasons for the paucity of public and academic discussion of private property in land. He emphasizes the importance of the separation of land and state that took place in the 18th and 19th centuries, a separation that, without better understanding of the social function of property in land, is in danger of being lost. He attributes Henry George's and Karl Marx's destructive attacks on property in land to lack of such understanding and uncritical acceptance of Locke's labor theory of ownership. F. A. Harper urged the importance of new social insights and founded the Institute for Humane Studies expressly to create an intellectual environment conducive to breakthroughs in scientific thinking about society. Spencer Heath's operationalizing two basic concepts of social science, "property" and "capital," was such a breakthrough. The one avoids the Lockean problem, and the other helps make sense of a little remarked but massive sea change over the past century in the United States from the administration of land by owners for their own exclusive use to administration of land for the benefit of others as productive capital in multi-tenant properties. This trend has implications for further social evolution in which we may very likely see public services provided contractually in the free market instead of by taxation.

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PROPERTY IN LAND has long been a problem for classical liberals and libertarians if not, for many, a downright embarrassment. Since the time of Henry George more than a century ago, it has been charged with being the one instance in economics where there is truly a free lunch – land owners enjoying a free ride by collecting rents for doing nothing. This, if true, smacks more of a political than a free-market phenomenon – of privilege rather than property. Yet we do call land “property,” and we freely buy and sell it. What is it, then? Is it an artificial creature of the state, a form of state-imposed privilege like taxi licenses in New York City? Or is it authentic property, a social institution prior to and independent of all legislation? Classical liberals traditionally oppose privilege and defend property. Yet given this ambiguity, is it any wonder that, with a few notable exceptions, they have had little to say about property in land, either pro or con?² To help remedy this lack of attention and hopefully encourage scholars to take a fresh look at property in land, I shall do three things: trace some historical reasons for its poor image; explain the essential social function a land owner performs; and offer some empirical reasons why private property in land is arguably freedom’s ugly duckling that in time may become its white swan.

I How the stage was set

Historically the stage was set by the close association of land ownership with political government. In most of Europe before the eighteenth century, land and state were as one. Whatever political power there was, land owners exercised it. While not the case worldwide, this was true of most of Europe. The

² Murray Rothbard in 1957 wrote, “most present-day economists ignore the land question and Henry George altogether... Yet there is a land question, and ignoring it does not lay the matter to rest.” Cf. Murray N. Rothbard, “The Single Tax: Economic and Moral Implications,” *Mises Daily*, December 6, 2011. Much of the discussion of land in the 20th century is covered in Robert V. Andelson (ed.), *Critics of Henry George: An Appraisal of their Strictures on Progress and Poverty*, Vd.2. Oxford: Wiley-Blackwell, 2004.

revolutions of the eighteenth and nineteenth centuries, however, brought about a distinct separation of land and state.³ Due to whatever happy circumstances, the nobility found themselves stripped of political authority without being dispossessed of their lands. Political power was taken from them, but land titles were left largely intact. The law courts then struck down the many feudal restraints on the buying and selling of land, restraints such as primogeniture and entail, leaving land as freely exchangeable in the market as anything else.

But the stigma of land ownership from its association with political power survived long after the revolutions that overthrew the old order. No doubt it was this stigma that made John Stuart Mill and many other classical liberals distrustful of the institution. But also, they had less reason to study land than they once might have, since in their day commerce and industry, born of the industrial revolution, were surpassing agriculture in productivity and taking center stage as the significant producers of wealth and public revenue.

Locke's labor theory

A theoretical issue would further confuse the question of land as property. Private property in land was not reconcilable with Locke's labor theory of ownership. This attracted little if any attention at the time, but it became apparent later. Had it not been for the general classical-liberal suspicion of and lack of interest in land, the theoretical issue might have been addressed and solved. But, as it happened, it was ignored. Let's look back to Locke's time for perspective.

With the first significant growth of commerce and industry in England, a fledgling middle class had begun to emerge, and this fact did not long escape the notice of the king and his tax

³ Spencer Heath, *Citadel, Market and Altar: Emerging Society*. Baltimore: Science of Society Foundation, 1957, pp. 95, 106, 238.

collectors. In the resulting growing conflict with the monarch, who justified his rule by an impressive theory of divine right, the middle class needed a countering doctrine. They found it in an alternate doctrine of right that had been lying about, not much used, since the time of Cicero and, before him, the Greek Stoics. This was a theory not of divine right, but of "natural" rights, or rights according to reason. Natural rights theory said a person has a property in his life, from which it follows that he must also have a right to own property in things needful to sustain his life. So far so good.

John Locke, influenced by Cicero, became the principal theoretician of the middle class in their confrontation with the monarchy. Out of a proper regard for his own life, he kept this role secret, hiding for a time his authorship of his famed *Second Treatise on Government* (1691) even from his family.⁴ He elaborated the natural rights doctrine, giving the middle class a powerful argument very much like the king's own claim to divine right, but substituting nature for God. But then, building on this, Locke went a step further and propounded a special argument to justify private property of all kinds. This was his labor theory of ownership, which held that property is made by "mixing one's labor" with something not previously owned. Thus property, he said, being compounded of one's labor and thereby being an extension of one's personality, or self, comes under protection of the same natural right as life itself.

Bear in mind that the middle class was chiefly made up of people to whom the notion of "mixing labor" had direct appeal; they were laboring people, manufacturers and traders, rather than land owners whose principal wealth came from rents. Moreover, the doctrine served them well in their struggle with

⁴ John Locke, *Second Treatise of Government: An Essay Concerning the True Original, Extent and End of Civil Government*. Enhanced Media, [1690] 2014.

the king. No one was inclined, therefore, to look too deeply or critically into this appealing idea.

The theoretical problem was this: since land and natural resources, not being man-made, do not fit the labor theory of ownership, does that mean that land is not property? Thinkers of the day were not really concerned; because they chiefly represented the bourgeoisie rather than the landed interest, they cared little for land owners and devoted little time to thinking about the matter. But others eventually would.

The logical inference from the labor theory of ownership was that if land is not property, yet is bought and sold as such, then it must be something else masquerading as property. That something else could only be monopoly privilege enforced by the state. Remove that enforcement and presumably, unlike authentic property, which is social and customary, property in land would not stand but would atrophy and fall away.

Karl Marx and Henry George were two who accepted the idea of land not being property and took Locke's labor theory to its logical conclusion by demanding that the "privilege" be abolished. The first plank of the Communist Manifesto of 1848⁵ called for the abolition of property in land, and this remains a prime tenet of Marxism. The greatest exponent of this view, however, was Henry George, whose plan in effect was to tax ownership of land out of existence. "Justice the Object – Taxation the Means" was how he titled one of his pamphlets.⁶

⁵ Karl Marx and Frederick Engels, *Manifesto of the Communist Party*. Marxist Internet Archive, [1848] 2010.

⁶ An address given in Metropolitan Hall, San Francisco, February 4, 1890, available from the Robert Schalkenbach Foundation, New York City. Harold Kyriazi notes that while George stopped short of advocating complete abolition of private property in land, proposing instead that landowners keep title and a very small, nominal fraction of the rent, it was not because he thought landowners provided a modicum of service but unequivocally because he believed his reform "could be enacted more smoothly if it maintained the

Henry George was a man of contradictions, in many respects socialist, in other respects not. He was without question the most compelling writer and orator on behalf of free trade who ever lived. At the same time, his position on land went far toward making Marxism credible.⁷ His forceful crusade against property in land caught the attention of the world like a meteor, entraining vast numbers to the cause, including such luminaries of the day as Leo Tolstoy, Winston Churchill, Sun Yat-sen, Theodore Roosevelt, Louis Brandeis, John Dewey, Herbert Spencer (for a time), Albert Einstein, Helen Keller, and Woodrow Wilson. But in 1897, at the height of his crusade, Henry George suffered a fatal stroke and died, embroiled in the heat of a political campaign, which he seemed to be winning, to become mayor of New York City. Nevertheless, his message was clear: land ownership is unjust.

The intense controversy aroused by George faded not long after his death. Not understanding the functional role of private property in land and therefore able to pose only normative points of view and questions of practicality, both sides finally exhausted their arguments without any closure. So public discussion of property in land was muted during much of

appearance of continued full private ownership of land." Cf Harold Kyriazi, "Reckoning with Rothbard," in Robert V. Andelson (ed.), *Critics of Henry George: An appraisal of their strictures on Progress and Poverty*, Chapter 31, Vol. 2, *The American Journal of Economics and Sociology*, Annual Supplement, Vol.63 No.2, April 2004.

⁷ Although he felt he had not researched the question enough to write about it, F.A. Harper was of the opinion that, but for Henry George, Marxism might never have enjoyed much influence. Harper believed that Marx had given up his cause at the time of George's European speaking tours. The overwhelming success of those tours, however, brought a flood of new interest in and support for Marxism. (Personal communication) Murray Rothbard notes that according to E.R. Pease, socialist historian and long-time secretary of the Fabian Society, *Progress and Poverty* "beyond all question had more to do with the socialist revival of that period in England than any other book." Cf. Murray N. Rothbard, "The Single Tax: Economic and Moral Implications," *Mises Daily*, December 6, 2011.

the twentieth century. But the message of Henry George, always implicit in American mistrust of Europe's landed gentry and fueled by stories of tenement landlords, Western land grabs, and the Irish Question, now became explicit in American culture as never before. It manifested in such diverse ways as the popular game of Monopoly, designed by Georgists to teach the evils of landlordism, and perhaps more recently in the adoption of the phrase "rent-seeking" as a technical term in economics for attempting to get without giving.⁸

If Henry George's campaign, by undermining the legitimacy of property in land in the popular and academic mind, did not actually pave the way for a growing new pattern in United States politics, it did nothing to counteract it. The new pattern has been that of *undoing* the separation of land and state that was achieved some two centuries ago. This turn in American politics has been an integral part of the increase of governmental power throughout the twentieth and into the twenty-first century. A gradual but relentless resumption of political control over land has taken many forms such as zoning, urban planning and urban renewal, the broadening of eminent domain, national parks, wilderness areas, the worldwide promotion of "land reform," the environmental movement, the United Nations World Heritage Sites and Biosphere Reserves, and the expanding confrontations with respect to ranch lands in the Western states. Federal agencies, alone, control a third of the nation's dry land.⁹ Ronald Reagan

⁸ The game of Monopoly, originally named "The Landlord's Game," was invented around the turn of the 20th century by Georgists Elizabeth Magee Phillips and her sister (the Robert Schalkenbach Foundation, New York City, is currently supporting research on this history). The term "rent seeking" was originated by Anne Krueger in 1974. It was rapidly adopted, especially by the Public Choice school of economics, to denote the behavior of persons seeking government privilege. While I do not know Krueger's intent, my inference is that she considers the behavior of land owners to be more political than free-market. Economist Fred Foldvary has proposed an alternative term, "transfer seeking" (personal communication April 23, 1997).

⁹ P.J. Hill, "Rerun: 'The Not So Wild West.'" *PERC Reports* 28 (2): 9, 2010.

in 1983 proclaimed sovereign rights over 3.9 *billion* acres of "submerged lands" in the US Exclusive Economic Zone, the sea and sea beds out to 200 nautical miles offshore, including much of the Gulf of Mexico and immense amounts of the Pacific Ocean due to the military use of small islands during World War II – the "biggest land grab in US government history."¹⁰

The stakes are high. Because every imaginable human activity involves some land use, political control of the occupancy and use of land translates into control of people, and hence totalitarianism, not to mention foreclosing the possibility of making any rational economic allocation of natural resources. Resistance to the reunification of land and state has been weakened by hesitation on the part of proponents of freedom to close ranks on the issue. They seem to sense a need to defend private property in land, but given its ill repute and not understanding its social role, they are paralyzed, unable to mount a principled defense. Such inaction may be their undoing.

The failure to adequately address the nature of property in land on functional grounds has left an open avenue for ceding all control of land back to the state. In this latter-day fight with a monarchy, as it were, Locke's labor theory of ownership is worse than useless. Clearly what is needed is a new perspective, a fresh way of looking at the matter. Let's begin by reviewing the social function of ownership, which applies not just to land but to every form of property.

The social function of ownership

¹⁰ Mark Brandly, "Including the Ocean floor, the Feds Own Much More Land than You Think," *Mises Daily*, March 17, 2016. Areas affected are mapped. Due to research difficulties, however, not all government controlled land, such as municipal, is counted.

In all the heated debates over the land question originating in Locke's labor theory of ownership, the social function of property in land was seldom if ever addressed. Yet the convention of ownership operates the same with land as with anything else.

Ownership is a largely tacit social consensus having little or nothing to do with legislated law, as evidenced by the elaborate development of systems of property in stateless societies.¹¹ It is found everywhere and cross-culturally, strongly suggesting that, like language, it is instinctual. Within the cooperating group, it seems to be as natural for humans to evolve systems of ownership as for birds to build nests. Not only does it enable resources to be used productively, the owners being secure in their use, it also and thereby enables resources to be gifted and traded – bought and sold – and hence markets to develop, moving resources into the hands of those who can pay the most and are thereby likely to be the most productive users, to the enrichment of society.

The practice of ownership allows the peaceable distribution and redistribution of secure access to scarce resources, land or any others, by voluntary exchange. It must never be confused with possession; for ownership is a social phenomenon, as mere possession is not. A chicken with something in its beak runs from the other chickens. A person, on the other hand, can leave his home for days at a time, knowing that neighbors will watch it as if it were their own. I once lived for a short time in a mobile-home park in Nevada, and when about to leave for a weekend, my newly befriended Hells' Angels-type neighbor volunteered, "Anybody mess with your rig, I'll save you the scalp."

Nor is ownership a relation between a person and a thing, as is possession. It is a relation between a person and all others in the cooperating group *with respect to* the thing. It is the largely tacit social authority granted a person to determine the use of something or to pass that authority to another or

¹¹ For extended discussion, cf. Spencer MacCallum, "The Social Nature of Ownership." *Modern Age* 9 (1): 1964-1965.

others. And that passing, not of the thing itself but of the social authority over it, the title to it, is a service that only an owner can perform. Such transfer of social authority is a social-psychological service, something the materialist Henry George, focusing on physical labor as the source of all wealth, did not comprehend. He failed to see how, as Manuel F. Ayau has so cogently shown, the purely psychological activity of voluntary exchange in and of itself creates wealth.¹²

But we have yet to answer the question: if the Lockean idea of ownership, crafted more than three centuries ago as the rallying cry of a special-interest group fighting the English crown fails to serve us today, can we improve upon it?

II Science and observation

In 1956, F.A. "Baldy" Harper (1905-1973) was considering giving up his position at the Foundation for Economic Education (FEE) because, however good FEE was at teaching what was already known about freedom and the free-market process, it gave no encouragement for innovative, or "growing edge" thinking. Baldy confided in his friend Spencer Heath (1876-1963) his dream of founding an organization — the Institute for Humane Studies — that might prepare the way for significant breakthroughs in the study of men and their social relations. Heath encouraged Baldy's dream, assisted him in planning and offered his hundred-acre country home, Roadsend Gardens, in Elkridge, Maryland as a campus.¹³ The two looked forward to the emergence of an authentic science of human social behavior.¹⁴ For if the mark of a

¹² Manuel F. Ayau, *Not a Zero-Sum Game: The Paradox of Exchange*. Guatemala City: Universidad Francisco Marroquín, 2007.

¹³ The writer was present when Harper and his family visited and inspected Roadsend Gardens March 24-26, 1957 (Spencer Heath Archive, Items 2529, 2531, 2540). Harper ultimately declined the offer, thinking that the intellectual climate in California at that time would be more hospitable for what he wanted to create.

¹⁴ Apart from Harper and Heath there has been in recent times little interest in developing a natural science of human organization. A notable exception

successful science is its ability to generate dependable technology, then the world's worsening state of politics and war was prima facie evidence of something seriously lacking in the social sciences as practiced. Anticipating the development of an authentic social science, Baldy hoped to create in the Institute for Humane Studies a unique environment of inquiry that would be conducive to discovery.¹⁵

What might breakthroughs in the social sciences entail? Well, for one, science is first and last based upon observation. Secondly, science depends upon peer review and replication of results by others. This requires, at the least, communicating accurately one's observations, for consensus in science is only possible when all parties know with reasonable certainty that they are observing the same thing. How do we describe what it is that we are observing in such terms that others can be confident that they are observing the same thing we are?

Nobelist Percy Bridgman addresses exactly this question in physics. In *The Nature of Physical Theory*, he gives a lucid discussion of the need for operational definitions of the basic concepts of a science.¹⁶ Operational definitions are such that

was British social anthropologist A.R. Radcliffe-Brown, author of *A Natural Science of Society*, Glencoe, Illinois: The Free Press & The Falcon's Wing Press, 1957.

¹⁵ Harper wanted to create a space with an atmosphere that would be conducive to breakthrough thinking, a special kind of community of scholars. He dreamed of inviting a dozen or more retired but intellectually active seniors from all fields to take up work space at the Institute, using its tax-free status to help with their work and enjoying as much privacy as they wished but free to mingle with others especially at lunch time, as had been the practice at FEE. Realizing that breakthroughs more often come from young people, he would invite young people as guests to freely enjoy the same facilities, thinking the opportunity of their rubbing elbows with seasoned older scholars would be the key part of the formula he strove for. This was his unique vision for promoting new understanding that would lead to human freedom. His untimely death prevented it from being realized. IHS today mentors graduate students, assists them in obtaining grants and academic positions and teaches through seminars and symposia.

¹⁶ Percy W. Bridgman, *The Nature of Physical Theory*. Princeton University

anyone, by performing a certain number of specified procedures or operations, can communicate unambiguously the observation at hand despite differences of individual experience and expectations and subtleties of translation between languages and cultures.

Spencer Heath operationalized the terms "property" and "capital, which he considered fundamental for fruitful discussion of human social organization. Let us first consider "property," followed by a discussion of "capital."

Property

The word "property" has long been problematic in the lexicon of the social sciences. The utilitarian position of Hobbes, Montesquieu, and Bentham, that property ultimately is a creation of the state, conveys the atomistic, individualist, and even antisocial implications expressed by John R. Commons when he wrote that the price one pays for "food, clothing, shelter, or land... is the price paid for the right... to have the government exclude everybody else from the said food, clothing, shelter, or land."¹⁷ But as we have seen, ownership consists of more than simply a person's claim, regardless of what she or he might invoke for justification. It has a social component. It is worlds apart from mere possession, which is physical and must be defended by the possessor. Far from holding things away from others, it is the means of bringing resources into secure use accessible to all on equal terms.

The fallacy of seeing ownership in the light of one individual while ignoring the social context was recognized as early as 1877 by T.E. Cliffe Leslie:

Press, 1936, Chapter 2, "Operations," pp. 5-15.

¹⁷ John R. Commons, *Institutional Economics*. New York: MacMillan, 1934, p. 169.

No mere psychological explanation of the origin of property is, I venture to affirm, admissible, though writers of great authority have attempted to discover its germs by that process in the lower animals. A dog, it has been said, shows an elementary proprietary sentiment when he hides a bone, or keeps watch over his master's goods. But property has not its root in the love of possession. All living beings like and desire certain things, and if nature has armed them with any weapons are prone to use them in order to get and keep what they want. What requires explanation is not the want or desire of certain things on the part of individuals, but the fact that other individuals, with similar wants and desires, should leave them in undisturbed possession, or allot to them a share, of such things. It is the conduct of the community, not the inclination of individuals, that needs investigation. The mere desire for particular articles, so far from accounting for settled and peaceful ownership, tends in the opposite direction, namely, to conflict and the right of the strongest. No small amount of error in several departments of social philosophy, and especially in political economy, has arisen from reasoning from the desires of the individual, instead of from the history of the community.¹⁸

Spencer Heath transcended the controversy by defining "property" in a way that clearly communicated his observation and made consensus possible among any number of people with respect to what it was they were looking at. He defined "property" as anything that can become the subject matter of contract:

¹⁸ T.E. Cliffe Leslie, Introduction to Laveleye, Émile de. *Primitive property*. London: MacMillan, 1877.

Property may be anything that by the custom of society becomes the subject matter of ownership and thereby of the social, non-violent processes and relations called contract, between persons, with respect to its disposition or use.¹⁹

Implicit in this definition are all of the essential features of property enabling a person to enter with confidence into contracts with others.

We now have an operational definition based on specific behavior that can be observed. The difference in outlook is significant. The idea of property as an extension of one's life, to which one has a "right" somehow vouchsafed by nature, or reason, if not by God, and that one is thereby morally "entitled" to defend, is a good line to take when fighting with a monarch. Heath, on the other hand, observed the social behavior we call property as a naturalist might – first describing it, and then examining it in its context to understand how it contributes to maintaining the organization, or process, in which it occurs. Unlike Henry George, who crusaded for "justice" and looked to legislation to bring it about by force, Heath sought to understand and describe spontaneous social behavior as he found it.

So let us recapitulate for a moment. Ownership is worlds apart from mere animal possession, or territory, which an individual alone must defend. It also consists of more than merely a person's claim, regardless of what the claimant might invoke for justification. It has a social component.

The practice of ownership and thereby of property is a social covenant that is largely tacit, and consequently as

¹⁹ Spencer Heath, *Citadel, Market and Altar: Emerging Society*. Baltimore: Science of Society Foundation, 1957, p. 235.

little noted as the healthy functioning of our bodies tends to be. But curiously, some sense of it can be understood in terms of the several permutations of the English verb "to own" – which in the eighteenth century was the same word as "to owe." The parties to the covenant are *owners* not only because they as individuals claim a sole jurisdiction, to be observed by all, over certain specified resources, but because they *own*, or confess, or acknowledge – in the sense of "owning up" – that they owe the same courtesy to other owners with respect to their claims similarly made and socially acknowledged. They then stand as witness to similar claims of others and are prepared to defend those claims as if they were their own. The result is what Alvin Lowi felicitously calls a "covenantal community,"²⁰ prerequisite to human social living. The security of "quiet," or unchallenged, possession granted by the covenantal community makes it possible for a person to put aside his weapons and use productively a given resource for himself or to contract with others respecting it. Indeed, it is only by virtue of its secure possession making it accessible and usable that anything can become a resource. Only such can become the subject matter of contract. It is the covenantal, or social, authority over the resource that commands value in exchange. That, and not the resource itself, is the actual subject matter of the contract.

So, ownership is far from atomistic, as if individuals were negatively charged particles repelling one another or colliding and flying apart, each a threat to every other. If it were otherwise, people would not come together as we observe that they do. We observe that people don't fly apart but draw together into communities transcending even biologic kin groups. There is an innate attraction. It is through the psychological accord of ownership that they attract rather than repel. More than being an individual's claim against others, ownership is a

²⁰ Alvin Lowi, "The Nature of Property in Society," unpublished manuscript, 2001.

boon, the blessing of quiet possession one receives from all others and owes to all others in the covenantal community.

To recapitulate, it is this psychological accord that makes it possible to come together peaceably and cooperate by exchanging; for only then does one have something durable – in the sense of something that can last – to offer. Mere possession is physical and precarious. Ownership on the other hand enables us to peaceably give and receive quiet possession of scarce goods or services by transferring social jurisdiction over them and thereby to enter into voluntary exchange, which is the beginning of society.

The beauty of this social-psychological accord is that it gives everyone not only security of possession, but a *transferable* security of possession. Thus it is not political government, as Hobbes thought, but the instinctual, wholly psychological, verging on unconscious, practice of ownership that resolves Hobbes' fearful dream of "war of all against all." Heath observed that this uniquely human means of securing and reconciling the uses of scarce resources is everywhere practiced in human society without distinction as to the kind of resource, whether natural or artifact. He found no human propensity to treat land and natural resources as a special case.

Changing perception of land

Having discussed at length the first term, "property," in the expression "property in land," I'll now give some attention to the second term, "land." Is land truly physical, finite, and not amenable to being created, as traditional Georgists hold, or is it in fact something intangible, unlimited, and capable of being produced and marketed? We can gain some needed perspective by recognizing how profoundly the evolving market economy since

the time of Locke and, more recently, of Marx and Henry George has affected the perception of land itself.²¹

In the eighteenth century, most people were subsistence farmers, met most of their needs by their own effort, and had little traffic with the then still-rudimentary market process. They thought of land as a tillable field, a woodlot, or possibly a site for mining various natural resources. It gained value as they built up or imported richer soil or discovered minerals in it, and lost value as they exhausted the soil or the minerals. The French Physiocrats held that land was the source of all wealth. It was perceived as physical, the solid part of the earth's surface, and necessarily fixed in amount.

The market process then began rapidly evolving, to an extent unprecedented in human experience. By specializing their activities and exchanging their products and services, people found their wealth exponentially increasing. But with specialization, land uses were no longer uniform. Instead of each family using the soil much as their neighbors did, land uses became increasingly diverse. Now it became important how people located their activities relative to other land uses. All wanted proximity to their particular suppliers and markets, and so there was a booming growth of cities as people crowded in and jockeyed for the most strategic position vis-à-vis significant others. The development of a market in land enabled them to move about, positioning their specialized activities to best advantage relative to those of other people. Property rights in land can thus be described as positioning rights, and the buying and selling of land as the buying and selling of such rights. As fertility of soil ceased to be a major consideration for most, what mattered more was access to surrounding land uses and natural features, which is to say, the unique environment to

²¹ Spencer MacCallum, "A Short Perspective on Land and Social Evolution," *Voluntaryist*. 139:2008.

which each site offered access. Where the Physiocrat might have quipped that "three things give land its value: fertility, fertility, and fertility," today's real estate broker says, "location, location, and location."

In this newer sense, land is altogether intangible, simply any location in the cosmos, identifiable by a three-dimensional address in space. But to be useful, and hence to have market value, it must for any given purpose be located strategically with respect to significant activities, present or prospective. Its value now depends on its economic location – not simply any location in the cosmos, but a location relative to present or prospective human activities. Such value is independent of any resource or activity on the parcel itself, except as that might influence change in surrounding activities and these then react back upon and affect the original value. Economic location, and with it land value, is ever changing, continually being destroyed and created, and constantly in flux as human activities change.²²

Now we are talking about "land" in two different senses, the one older and quite physical, some part of the solid surface of the earth, and the other, as economic location, intangible and always changing, differing from person to person and within each according to their changing plans and subjective appreciations. Both terms have their place in our daily speech. But we must not confuse them. For the rest of this article, I'll use the word in its newer sense.

Creating land

The obverse of location is *environment*, which is what gives any location such market value as it may have. Hence, land as economic location can be created, for better or for worse, by altering its environment.

²² For an insightful discussion, cf. Peter St. Onge, "The Fallacy of 'Buy Land – They're not making any More.'" *Mises Daily*, September 16, 2015.

Now, an owner who lets or sells anything at all to another naturally wants it to be serviceable for his customer so that his customer will be able to serve and continue serving him in exchange. More than that, if the owner is entrepreneurial, he looks for ways to improve whatever it is he has to offer. But if he has given his use to another, how can he do that? In the case of a site that he has let out to another, he can improve its location by tailoring its environment to his customer's needs. Thus a landowner who wants to improve the worth of a site he has leased out puts his attention not on the site itself, which is now under the control of another, but on its environment.

The shopping mall is a clear illustration. The owner customizes individual locations within the mall by a complex orchestration of the whole. He is alert to whatever on the mall might have environmental significance for the individually-leased sites. Beyond providing obvious environmental amenities such as adequate parking and attractive building and landscaping, he studies the placement of stores and common areas or facilities and their effect on each merchant's location. He strives for an optimal selection of types of merchants to create maximum draw from the market area collectively served by them. He wants, moreover, for every storekeeper to find himself a part of a vibrant community of merchants who together make an effective retailing team, each ready to cooperate in a hundred different ways such as participating in joint promotions, referring customers, maintaining a good appearance, keeping regular hours, or alerting one another promptly in security matters. Every team needs a coach, and the owner or mall manager is positioned to fill that role. He can provide effective leadership because the merchants recognize that he is not partisan, as each of them must be, but is concerned for the success of the mall as such. The presence of someone vitally interested in the whole and at once impartial is in itself a critical environmental feature, the catalyst helping all of this to happen – the owner striving to create optimal environment for each and every site within the mall.

Now, as the environment of each leased site continues ever outward, blind to property lines, so also does the mall owner's environmental concern extend beyond the bounds of the mall. He

wants to promote those obvious things in the surrounding community that affect the merchants collectively, such as convenient freeways and other transportation to and from the market area they serve, making their sites more accessible. But more than that, he wants the surrounding host community itself to be affluent – since that means a prosperous customer base for his merchants. He realizes that the level of affluence in the host community is determined by many of the same things that give leased sites within the mall their utility, such as provision and maintenance of parks and well placed streets, water and power and other utilities, sewerage, security, and justice services, and many others. Consequently, he is concerned with the quality of management in the surrounding community just as within the mall itself, which is to say that he is interested in the quality of local government. He is concerned that municipal services be performed well and with the least tax burden on the residents, whether that means monitoring, informally supervising, subsidizing, or actually providing the services, alone or in collaboration with other landowners who might be similarly motivated. His nonpartisan interest in sound public administration extends, even though attenuated with increasing distance, beyond the host community to the county, state, nation, and even, in theory at least, the world.

Our example of the shopping mall has to do with an owner leasing to multiple tenants. A small landlord, renting or leasing to perhaps one tenant, has little hope of improving or rearranging the environment of that small parcel to make it more valuable to the tenant. He is almost as helpless as an individual owner who uses the land directly. He lets it for whatever use and level of use the existing surroundings permit and has little control over how community infrastructure is provided. If he looks for any improvement at all, it is for municipal government to intervene on his behalf. But as he enlarges his holding or combines with others to achieve a holding of more practical size, and acquires multiple tenants, perhaps cooperating with similarly motivated others in a realty association, he gains leverage over the environment. He finds first of all that in the very act of leasing to multiple tenants, each becomes a factor in the environment of every other, with excellent opportunity for synergy. By tenant

selection, therefore, he strives to optimize his tenant mix. As his customer base increases, it becomes economically attractive for him to make still other and more substantial investments of an environmental nature. In so doing, he is creating land in the sense of that word as economic location.

Capital

Spencer Heath's thinking about capital builds on that of property as described above. The convention or covenant of ownership provides the static, *structural* precondition for human society – the mutually covenanted fences, the limits, the socially acknowledged jurisdictions or domains wherein each can make decisions and take action with full confidence that he will not be challenged. But such a covenant only provides social structure which, in itself, is static. It is the precondition of but does not constitute the dynamic *functioning* of human society, which consists in people voluntarily exchanging with one another, each serving many others and by many others being served, materially and spiritually. Society, as Heath used and operationalized the term, is more than a collection of people. It has to do with people behaving in a characteristic way. Society is that fraction of a population engaged in voluntary exchange²³ – and it is worthy of note that, as such, its boundaries are permeable.

Hence we often speak not of property alone, but bracket property and *contract*, ownership and exchange, structure and function. The covenant of ownership, or quiet possession, while useful by itself at the earliest levels of society where there is little exchange, makes *contract* possible, the drawing together (Latin *contrahere*), or, in English common-law parlance, a "meeting of minds," where people transcend the merely static covenant of ownership, agreeing on how they shall serve one

²³ Spencer Heath, *Citadel, Market and Altar: Emerging Society*. Baltimore: Science of Society Foundation, 1957, p. 231.

another in the specific ways each wants to be served. It is a creative relationship in which wealth is produced simply through the purely psychological, the spiritual, act of first agreeing to exchange and then exchanging, not goods and services, but social authority, title, or *ownership* over goods and services.

So what does this have to do with capital? Exchange – serving others – is the tie-in. Capital is commonly thought of as tools – anything used to create wealth, including other tools. But this idea alone lacks social context; by this definition, Crusoe on his island employed capital. Spencer Heath, on the other hand, asks how, in a social context, wealth is created and concludes that it is by individuals specializing and serving others in ways that induce a voluntary return. As a concept appropriate to the social sciences, therefore, *capital*, as contrasted with consumer goods, consists of property that is being administered in a certain way; it is property that is being employed not directly for one's own benefit, but in serving others. He gives an example. A tobacconist has a selection of cigars in glass humidors displayed for sale. They are capital because they are being offered to others. He decides to have one himself, selects one and puts it in his vest pocket to smoke on his lunch break. That cigar which he selected is no longer capital; now it is a consumer good. Before the tobacconist goes to lunch, however, he decides he won't have a cigar after all. He takes it from his vest pocket, puts it back into the humidor. Now it is capital again. Like Heath's treatment of "property," this is an operational definition. It is easy to apply a simple observational test. Capital may be administered in the service of others directly, as in the case of a retail inventory, or indirectly as in the case of a factory, the machine tools it houses, and the raw materials worked upon.

Thus we have from Spencer Heath a somewhat new way of looking at both *property* and *capital*. It is new in the sense of being descriptive of observed behavior rather than speculative about normative rights, and it is new also in taking explicitly into account the social context of the behavior and its functioning therein. Now, what does such a vantage prepare us to learn about the progress of civilization as a whole and, almost incidentally, the role that property in land may yet play in the ongoing drama of societal evolution?

III The progression of civilization

The progress of civilization may be gauged by the degree to which property is administered as capital – the extent to which it is administered in the service of others and only indirectly for the benefit of the owner. Where exchange is little developed, people have few options but to fend for themselves, providing for themselves and their nearest kin and hoping to have enough. Not only is property scarce under such conditions, but very little of what exists is capital. As exchange becomes general, however, and people specialize and are more and more occupied in serving others and being served in turn, property not only becomes more abundant, it increasingly takes the form of capital. Out of the growing abundance of wealth that ensues, technology and aesthetic arts flourish and people exercise more choice over their lives, enhancing alike the quality of their individual lives and of their physical and social environment. The enriched social environment in turn affords still broader scope for the creative exercise of choice, and there is no apparent end to the process.

Land as productive capital

Now trace this progression in the case of a particular kind of property, namely, land. Along with every other kind of

property, land also is increasingly being administered for the use of others. Whenever it is leased to others or is the site of any productive business enterprise, it is being administered as productive capital.²⁴ But one evolving use of land stands out from others, unique in its importance and promise. When it is let to more than one tenant, so that we have a multi-tenant property, it begins to take on the character of a community and, as such, has special needs. Questions arise how to provide and apportion the cost of amenities that must be enjoyed in common, such as protection, streets and other access ways, and how to augment or diminish neighborhood effects that come into play from differing land uses.

We must have services to accommodate these collective needs. Such services will differ from private goods and services

²⁴ This statement would have been unacceptable to Henry George, for whom land was not and could not be capital as he used the term. His argument was that the land owner merely as such performs no service because he has expended no labor in making land. Therefore, when he rents or sells it, the benefit is all one way. No value is created, but rather value is drained from the land user, who thereby becomes the victim of legal monopoly, or privilege.

The hidden error lies in thinking that it is the accumulated labor expended in making something that induces a voluntary recompense in exchange. In fact, what induces a voluntary recompense is an owner's transfer of ownership to another. His ownership is his title – which is to say his *entitlement* – to the thing in question, and it is this intangible that he conveys. Conveyance of the thing itself would only give a precarious possession; it would not give "quiet possession," where "quiet" means at old English Common Law "unchallenged." Quiet possession is obtainable only by a transfer of ownership.

This service of transferring ownership, *which none but an owner can perform*, is not physical. It arises only at the point of conveyance by rental, sale, or gift, and is entirely social and psychological in its nature. The owner of land performs this service in the market exactly as does the owner of any other kind of property. It makes no difference whether the thing owned is tangible or intangible, natural or artifact.

Thus the service an owner uniquely performs is his act of transferring ownership, his social authority, which is his and his alone to do. At other times he might be said to perform a standby service, but for this he receives no recompense; for value arises only at the point of exchange. When such value does arise, it, too, is intangible, consisting of a conveyance of ownership in return. All process of exchange in society, strictly speaking, is not physical, but social and psychological.

in the market that pertain to individuals and can be enjoyed wherever individuals may be. These common or community services, sometimes called public services, pertain not to individuals but to a *place*. To enjoy them an individual must go to the place where they are provided.

A formula for serving the collective needs of community living is probably as old as settled human society. An individual by the consensus of custom provides leadership and, among other things, parcels out unused land and receives value in exchange for his distributive function, the value received for this service coming out of the resulting productivity on the site. That productivity would have been impossible but for the secure tenure, the "quiet" – i.e. uncontested – possession that can only be realized through an allocation that is not arbitrary or by force but is carried out peaceably through the consensus of ownership.

This pattern obtains in many kinship societies, in which exchange occurs through the idiom of the gift and in which the elder is not an owner but a trustee, with the community members being beneficiary owners. The pattern obtains also in manorial societies, where kinship bonding gives way to incipient contractual arrangements. It obtains in modern urban society wherever we have a multiple-tenant property such as an inn or a hotel, an apartment building, an office building, a medical clinic, a science research center, a marina, a theme park, a shopping mall, a restaurant, a theater, a plane, a train, a ship at sea. With combinations of these and still other forms, the kinds and possibilities soar. In each, land is being owned and administered not for private consumption, to the exclusion of others, but as productive capital in the service of others as customers.²⁵

²⁵ See especially Spencer MacCallum, "The Enterprise of Community: Social and Environmental Implications of Administering Land as Productive Capital."

Multi-tenant properties have had their greatest development since the end of World War II. Inspired by the insights of Spencer Heath some years ago, I identified multi-tenant properties as a class and sketched their history.²⁶ In their contemporary form in the United States they are a recent phenomenon, the oldest member of the group, the hotel, only dating back to the Tremont House which opened in Boston in 1829. The Tremont House was a dramatic departure from its country cousin, the old medieval inn, and is universally regarded as marking the beginning of the modern hotel industry. Apartment buildings also date from the nineteenth century, but less far back; the first to be built as such rather than being converted from a preexisting structure is said to have been completed in 1888 near Union Square, New York City. Office buildings, which caught the public imagination as "skyscrapers," date from about the same time.

But the dramatic growth and development of multi-tenant properties has come in the last fifty years. Many new forms have appeared since the second world war, including marinas, manufactured-home (ground lease) communities, motels, medical clinics, shopping centers and malls, office and research parks, and complex mixed-use developments. At the close of World War II, less than a dozen shopping centers existed in the United States, none more than a small neighborhood convenience facility and all experimental. Even the name had yet to be coined. Today, in the United States alone, they number more than a hundred-thousand and range in size up to many millions of square feet of *leasable* space, not counting the extensive areas enjoyed in common such as access ways, parking fields and malls.²⁷ Much the

Journal of Libertarian Studies 17 (4): 1-15, 2003. Revised by the author.

²⁶ Spencer MacCallum, *The Art of Community*. Menlo Park, CA: Institute for Humane Studies, 1970.

²⁷ International Council of Shopping Centers (ICSC). "Shopping Center Facts and Stats," 2015.

same has occurred with hotels, some of which have grown in size and complexity to the point of being virtually self-contained cities. In terms of population, counting registered guests, service staff and daily visitors, these surpass in size the largest cities of the United States at the time of Independence – Philadelphia, New York, and Boston.

The dramatic growth in number, kind, size and complexity of these specialized community forms from the last decades of the twentieth century is without precedent in human history. Yet even today, the social sciences are virtually barren of literature in this area. For many of the reasons mentioned earlier, property in land tends to be ignored.

Are multi-tenant properties harbingers of a key evolutionary advance?

The great significance of multi-tenant properties lies, of course, in their resemblance to communities as we know them. A hotel, for example, has many similarities to what comes to mind for most people when they think of a community. It has its private and common areas. Its corridors are its streets and alleys, while the lobby, sometimes elaborately landscaped, is the town square. It operates a security system and distributes utilities. Generally it has shopping, dining, theater and other entertainment facilities, and often professional offices, medical services, and perhaps even a chapel. It has a transit system which, as it happens, operates not horizontally but vertically.

For another illustration, consider the shopping mall. It has the same general characteristics as the hotel, but with features uniquely its own. Rather than catering to a predominantly transient population, its clientele are established merchants comprising a retailing team. As noted earlier, the manager, being vitally interested in the success of

the whole enterprise on which his revenue from the land depends, and therefore non-partisan, finds himself uniquely positioned to provide leadership.²⁸ This new, entrepreneurial leadership, entirely foreign to the experience of merchants on traditional "Main Street USA," has become an underlying premise of mall retailing.

Thus the infrastructure and management needs of multi-tenant properties closely parallel those of communities as we are accustomed to think of them. What opens the mind to a world of possibilities is the fact that all of these community needs are met, and with increasing sophistication, through wholly free-market processes.²⁹ None of the Byzantine panoply of politics – voting, taxation, burdensome regulation and licensing requirements, unresponsive bureaucracies, politically correct ideologies, inherent conflicts of interest on the part of the administrators, has any place in the operation of multi-tenant properties.³⁰

²⁸ Africanist anthropologist Paul Bohannon observed in private conversation with me that the role of the manager of a shopping center "is more than similar to...[in fact] it is precisely like that of the headman of an African village."

²⁹ Two important early discussions of private, contractual provision of public community services are economist Raymond V. McNally, 1942, "Some Observations on the Nature of Public Enterprise," *Libertarian Papers* 6 (1) (2014), and Spencer Heath, "The Capitalist System," 1934, *Libertarian Papers* 7 (2) (2015). A later discussion is in Heath, *Citadel, Market and Altar*. Baltimore: Science of Society Foundation, 1957.

³⁰ To avoid a common confusion, I must inject parenthetically that this remarkable class of property does not include condominiums, planned unit developments or other forms of land *subdivision*. These represent consumer uses of land – owners getting together collectively to serve themselves rather than customers – and as such are not part of the trend toward land being administered as productive capital. They lack a concentrated entrepreneurial interest in the success of the development. Indeed, for a multi-tenant venture to subdivide and sell off its land – its productive capital – would be to put itself out of business.

Such properties are expressions of a new kind of competitive *business*, namely that of creating, developing, fostering, managing, marketing, maintaining and enhancing optimal human habitat. Not only have many new and specialized forms evolved, serving new economic niches, but the trend has been for these specialized forms to combine, much as atoms of different kinds combine to form complex molecules. By so doing, they are fulfilling a demand for less specialized, ever more *generalized* habitats.

Here is a tantalizing question. At some point, might it not occur to developers of these properties that it would be but a small jump for their industry to develop and operate entire towns and cities on a leasehold basis?

One major step has yet to be achieved in the prototypical developments described here. That step is to generate their utilities on-site – ideally as an environmentally-friendly, managed-energy system with zero discharge. This will enable them not only to vastly increase their services to their residents, but at the same time to escape the political grid. Freedom from the bureaucratic umbilical will enable community development to take place anywhere in the world, on land or sea. Alvin Lowi shows how technology already developed makes this economically feasible.³¹ Should such wholly contractual towns and cities come into being, they will offer conventional bureaucratic, taxation dependent communities the first competition the world has known.

Conclusion

Locke's labor theory of ownership served the rising middle class in its struggle against the monarch and his tax collectors, but did posterity an enormous disservice. Adopted uncritically by

³¹ Lowi, Alvin and Spencer MacCallum, "Community Technology: Liberating Community Development," Chapter 6 in Moroni, Stefano and David Andersson (eds.), *Cities and private planning*. London: Edward Elgar, 2014.

Karl Marx, Henry George and others and used to attack and discredit the institution of property in land, it has led to no end of tragedy and mischief in the world. If, for lack of understanding, property in land continues undefended from government encroachment, far worse could lie ahead.

The formula of homesteading or mixing one's labor with land is still the basis of the normative, or moralizing, approach of classical liberals in thinking about property. A more scientific, descriptive manner of inquiry could lead to a reassessment of property in land as the creative social institution it is, enabling us to see and strongly assert the importance of the historic separation of land and state. Let us recognize the service that owners of land, like the owners of any other kind of property, perform in distributing "quiet possession." For if it were not for owners, access to sites and resources would be precarious or nonexistent. Let us acknowledge then the creativity and vast potential of property in land administered as capital in the service of others. Already the ugly duckling, private property in land, is showing white feathers – on its way, perhaps, to becoming freedom's white swan.

