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## FREEDOM'S UGLY DUCKLING: A FRESH TAKE ON PROPERTY IN LAND

SPENCER H. MACCALLUM\*

PROPERTY IN LAND has long been a problem for classical liberals and libertarians if not, for some, a source of embarrassment. Since the time of Henry George more than a century ago, it has been charged all too often with being the one instance in economics where there is truly a free lunch—landowners 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 statutes? 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?<sup>1, 2</sup> To help

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\* Spencer H. MacCallum is a social anthropologist living in Casas Grandes, Chihuahua, Mexico.

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<sup>1</sup> Writing in 1957, Murray Rothbard was able to say that “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.

remedy this lack of attention and hopefully encourage scholars to take a fresh look at property in land, I shall review some historical reasons for its poor image and then consider some ways that I think property in land might be more fruitfully understood.

## I. How the Stage Was Set

Historically the stage was set for the confusion over property in land by the close association of landownership with political government. Before the eighteenth century in Europe, land and state were as one. Whatever political power existed was exercised by landlords. This was not the case worldwide, but it was true of Europe. The revolutions of the eighteenth and nineteenth centuries, however, brought about in Europe a distinct separation of land and state.<sup>3</sup> 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 landownership 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 problem was destined to further tarnish the image of land as property. Property in land was not reconcilable with Locke's labor theory of ownership. Due perhaps to the general classical liberal suspicion of and lack of interest in land, this theoretical issue was never addressed and solved.

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<sup>2</sup> Much of the discussion on land in the twentieth century is covered in Robert V. Andelson (ed.), *Critics of Henry George: An Appraisal of Their Strictures on Progress and Poverty*, Vol. 2. Oxford: Wiley-Blackwell, 2004.

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

Although it would become important later, in Locke's time it attracted little attention. Let us look back to that 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 for long escape the notice of the king and his tax collectors. In the resulting growing conflict with the king, who justified his rule by an impressive theory of divine right, the middle class needed a countering doctrine, and as it happened, an alternate doctrine of right 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. According to this theory, a person had property in his life, from which it followed that he must also have a right to own property in things needful to sustain his life. So far so good.

Influenced by Cicero, John Locke 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 the famed *Second Treatise of Government* (1690) even from his family.<sup>4</sup> Locke elaborated the natural-rights doctrine, giving the middle class a powerful argument essentially like the king's claim to divine right, but substituting nature for God. But then, building on this, he went a step further and propounded a special argument to justify private property of all kinds. This was his labor theory of ownership, which holds that property is made by "mixing one's labor" with something not previously owned. He said that if property is compounded of one's labor, it is an extension of one's personality, or self, and so comes under the same natural right as one's life.

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 landowners, whose principal wealth came from rents. Moreover, the doctrine served them well in their struggle with the king. No one was inclined, therefore, to look too deeply or critically into this appealing idea.

Here was the theoretical problem: since land and natural resources do not fit the labor theory of ownership, not being man-made, does that mean land is not property? Thinkers of the day were not really concerned with the answer. Because they chiefly represented the bourgeoisie rather than the

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

landed interests, they cared little about landowners and devoted little time to thinking about the matter. But others eventually would.

The logical inference was that if land is not property, yet is bought and sold as such, 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 the labor theory to its logical conclusion by demanding the “privilege” be abolished. The first plank of the *Communist Manifesto*<sup>5</sup> of 1848 called for the abolition of property in land, and this remains a prime tenet of Marxism. The greatest of all exponents of this view, however, was Henry George, whose plan, in effect, was to tax private property in land out of existence. “Justice the Object—Taxation the Means” was the title of one of his pamphlets.<sup>6</sup>

Henry George was a man of contradictions, in many respects a socialist, in other respects not. He was, without question, the most compelling writer and orator on behalf of free trade who ever lived. Yet at the same time, his position on land went far toward making Marxism credible.<sup>7</sup> <sup>8</sup> His forceful

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

<sup>6</sup> Henry George, “Justice the Object—Taxation the Means,” 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 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*, Vol. 2. Oxford: Wiley-Blackwell, 2004.

<sup>7</sup> 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).

<sup>8</sup> Murray Rothbard notes that, “according to E.R. Pease, socialist historian and long-time secretary of the Fabian Society, this volume [*Progress and Poverty*] ‘beyond all question had more to do with the socialist revival of that period in England than any other book.’”

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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, embroiled in a political campaign for the mayoralty of New York City that he seemed to be winning, Henry George suffered a fatal stroke. Nevertheless, his message was heard: private ownership of land is unjust.

The intense controversy aroused by George faded not many years 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 that public discussion of property in land was muted during much of the following 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 itself in such diverse ways as the popular game of Monopoly, designed by Georgists to teach the evils of landlordism,<sup>9</sup> and perhaps more recently in the adoption of the phrase "rent-seeking" as a technical term in economics for attempting to get without giving.<sup>10</sup>

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

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Cf. Murray N. Rothbard, "The Single Tax: Economic and Moral Implications," *Mises Daily*, December 6, 2011.

<sup>9</sup> The game of Monopoly, originally named "The Landlord's Game," was invented around the turn of the twentieth century by Georgists Elizabeth Magie Phillips and her sister. The Robert Schalkenbach Foundation, New York City, is currently supporting research on this history.

<sup>10</sup> Coined by Anne Krueger in 1974, the term "rent seeking" was rapidly adopted, especially by public choice economists, to denote the behavior of persons seeking government privilege. While I do not know Krueger's intent, my inference is that she chose the word "rent" because of the Georgists' long use of that term in a parallel way with reference to land—the landlord supposedly getting without giving any service. If indeed that was the reason for her choice of the word, it was a clever move to reinforce the Georgist dogma against private property in land. Fred Foldvary has proposed an alternative term, "transfer seeking" (personal communication, April 23, 1997).

and state achieved some two centuries ago. A gradual but relentless resumption of political control over land is taking 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’s World Heritage Sites and Biosphere Reserves, and the expanding confrontation with respect to ranch lands in the Western states. Federal agencies alone, such as the Forest Service and Bureau of Land Management, control one-third of the nation’s land.<sup>11</sup>

The stakes are high. Because every imaginable human activity involves some use of land, political control of the occupancy and use of land translates into control of people, the end result being totalitarianism. Resistance to the reunification of land and state is 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 and unable to mount a principled defense. Such inaction may yet be their undoing.

The failure to adequately address the nature of property in land on functional grounds has thus left an open avenue for ceding all control of land back to the state. But in this latter-day fight with the monarchy, as it were, Locke’s labor theory is worse than useless. Clearly we need some new perspectives, fresh ways of looking at the subject. Let us 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*

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.<sup>12</sup> It is found everywhere and cross-culturally, strongly suggesting that, like language, it is instinctual in humans. Within the cooperating group, it would seem to be as natural for humans to evolve

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<sup>11</sup> P.J. Hill, “Rerun: ‘The Not So Wild, Wild West.’” *PERC Reports*. 28 (2): 9, 2010.

<sup>12</sup> For extended discussion, cf. Spencer MacCallum, “The Social Nature of Ownership.” *Modern Age*. 9 (1): 1964–1965.

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 other, by voluntary exchange. It should 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 or her home for days at a time, knowing the neighbors will watch it much 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 Hell’s 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 some thing or its passing to another or others. And a disposition, never of the thing itself but always of the social authority over it, the *title* to it, is a service *only an owner* can perform. Such transfer of social authority is a social-psychological service, something that the materialist Henry George, focusing on physical labor as the source of all wealth, did not comprehend. He did not see how, as Manuel F. Ayau has so cogently shown, the purely psychological activity of voluntary exchange in and of itself creates wealth.<sup>13</sup>

But we have yet to answer the question: if the Lockean idea of ownership, crafted more than 300 years ago as the rallying cry of a special-interest group fighting an English king, fails to serve us today, can we improve upon it?

## II. Science and Observation

In 1956, F. A. “Baldy” Harper (1905–1973) was considering leaving his position at the Foundation for Economic Education (FEE) because, however good FEE was at teaching what was already known about freedom and the

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<sup>13</sup> Manuel F. Ayau, *Not a Zero-Sum Game: The Paradox of Exchange*. Guatemala City: Universidad Francisco Marroquín, 2007.

free-market process, it gave no encouragement for innovative, or “growing edge,” thinking. Harper 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 even offered his hundred-acre country home, Roadsend Gardens, in Elkridge, Maryland, as a campus.<sup>14</sup> The two looked forward to the emergence of an authentic science of human social behavior;<sup>15</sup> for if the mark of a 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. Harper wanted to create in the Institute for Humane Studies a unique environment of inquiry that would be conducive to discovery.<sup>16</sup>

What might breakthroughs in the social sciences entail? Well, for one, science is first and last based upon observation. Secondly, science is not an individual but a collective effort that depends upon peer review and replication of results by others. This requires, at the very least, communicating accurately one’s observations, for consensus in science is only possible when all parties know with reasonable certainty that they are

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<sup>14</sup> The writer was present when Harper and his family visited and inspected Roadsend Gardens on March 24–26, 1957 (Spencer Heath Archive, Items 2529, 2531, 2540). Harper ultimately declined the offer, thinking that the intellectual climate in California would be a more hospitable home.

<sup>15</sup> While, apart from Heath, there has been in recent times little interest in developing a natural science of human organization, a notable exception is the work of British social anthropologist A.R. Radcliffe-Brown. Cf. A.R. Radcliffe-Brown, *A Natural Science of Society*. Glencoe, Illinois: The Free Press & The Falcon’s Wing Press, 1957.

<sup>16</sup> Harper wanted to create a space with an atmosphere that would be conducive to breakthrough thinking, a special kind of scholarly community. He dreamed of inviting a dozen or more retired but intellectually active seniors from all fields to take up work space at the institute, perhaps using its tax-free status to help with their research. They would enjoy as much privacy as they wished, but would be 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 them as guests to freely enjoy the same facilities. He thought the opportunity to rub elbows with seasoned scholars would be a key part of the intellectual formula he strove to create. His was a unique vision for promoting new understanding that would lead to human freedom. His untimely death prevented it from being realized, however. Today, IHS mentors graduate students, assists them in obtaining grants and academic positions, and teaches through seminars and symposia.



observing the same thing. How do we describe what it is that we are observing in such terms that others can be reasonably confident that they are observing the same thing we are?

Nobelist Percy Bridgman addressed this question in *The Nature of Physical Theory*,<sup>17</sup> giving a lucid discussion of the need for operational definitions of the basic concepts of a science. Operational definitions are so constructed that anyone, by performing a certain number of specified procedures or operations, can communicate unambiguously the observation at hand despite differences of individual experience, expectations, and subtleties of translation between languages and cultures.

Spencer Heath operationalized the terms “property” and “capital,” which he considered fundamental for fruitful discussions 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.”<sup>18</sup> 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 light of only one individual at a time while ignoring any social context was clearly recognized as early as 1877 by T.E. Cliffe Leslie:

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.

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<sup>17</sup> Percy Bridgman, *The Nature of Physical Theory*. Princeton, NJ: Princeton University Press, 1936, pp. 5–15.

<sup>18</sup> John R. Commons, *Institutional Economics*. New York: MacMillan, 1934, p. 169.

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.<sup>19</sup>

Heath transcended the controversy by defining the term 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. Heath defined “property” as anything that could become the subject matter of contract:

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 relationships called contracts, between persons, with respect to its disposition or use.<sup>20</sup>

Implicit in that definition are all of the essential features of property enabling a person to enter with confidence into contracts with others. Mere possession does not qualify.

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 by 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 its

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<sup>19</sup> T.E. Cliffe Leslie, “Introduction to Émile de Laveleye, *Primitive Property*.” London: MacMillan, 1877.

<sup>20</sup> Spencer Heath, *Citadel, Market and Altar: Emerging Society*. Baltimore: Science of Society Foundation, 1957, p. 235.

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 simply describe spontaneous social behavior as he found it.

The convention of ownership is a social covenant that is largely tacit and therefore as 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,”<sup>21</sup> which is 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 its use; indeed, it is only by virtue of its secure possession having made 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. But if that ownership were atomistic, people would not come together as we observe that they do. We observe that people don’t fly apart but draw together into communities—communities transcending biological kin groups. There is an innate attraction. It is through the *psychological accord of ownership* that they attract rather than repel. For property is not so much an individual’s claim against others as it is a boon, the blessing of quiet possession one receives from all others and owes to all others in the covenantal community. Recapitulating briefly, it is this psychological accord that makes it possible to come together peaceably and cooperate by exchanging one with another, for only then does one have something durable—in the sense of something that can last—to offer. Mere possession

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<sup>21</sup> Alvin Lowi, “The Nature of Property in Society,” unpublished manuscript, 2001.

is physical and precarious. Ownership on the other hand gives us the ability 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.

Ownership, a social-psychological relationship among people, develops instinctively to make a covenantal community, which of itself alone might be called a proto-society. The beauty of this social-psychological accord is that it gives everyone not only security of possession, desirable in its own right, but a *transferable* security of possession, and with this the potential for voluntary—that is, peaceable—exchange. It is not political government, as Hobbes thought, but the instinctual, wholly psychological, verging on unconscious, practice of ownership that resolves Hobbes's 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 and without distinction as to the *kind* of resource, whether natural or artefactual. He found no human propensity to treat land and natural resources as a special case.

### *The Changing Perception of Land*

Of the expression “property in land,” I have discussed the first term, “property,” at length and now want to 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.<sup>22</sup>

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.

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<sup>22</sup> Spencer MacCallum, “A Short Perspective on Land and Social Evolution.” *Voluntaryist*. 139: 2008.

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 be described as *positioning rights*, and the buying and selling of land as the buying and selling of such rights with respect to significant others' activities and locations. 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 which each site offered access. Where a French 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 its 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 it 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.<sup>23</sup>

Now we are talking about "land" in two totally 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 persons according to their changing plans and subjective appreciations. Both have their place in our daily speech. But we

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<sup>23</sup> For an insightful discussion, cf. Peter St. Onge, "The Fallacy of 'Buy Land—They're Not Making any More.'" *Mises Daily*, September 16, 2015.

must not confuse them. For the rest of this paper, I will use the word in its newer sense.

### *Creating Land*

The obverse of location is *environment*, which is what gives a location such market value as it may have. Hence, land as economic location can be created, for better or worse, by manipulating the environment. 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 the 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 the 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 the lessor, but on its *environment*. That is what he can do—and it is *all* he can do.

A shopping mall is a clear illustration. The owner customizes the individual locations within the mall by a complex orchestration of the whole. He is alert to everything on the mall that has 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 precisely that role. He can provide effective leadership because the merchants recognize that he is not partisan, as each of them must be, but is interested in the success of the mall as such. The presence of someone vitally interested in the whole and at the same time impartial is itself a critical environmental feature, the catalyst helping all of this to happen. All this results from the owner creating an optimal environment for the sites he lets out.

Now, as the environment of his leased sites continues ever outward, blind to property lines, so also does the mall owner's environmental concern

extend out 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 recognizes 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.

This example, the shopping mall, has to do with an owner leasing to multiple tenants. A small landlord, leasing or renting 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 realtors 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 the word as *economic location*.

*Capital*

Spencer Heath's thinking about *capital* builds on that of property as described earlier. The 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 a society, which consists in people exchanging with one another, each serving many others and by many others being served. Society, as Heath used and operationalized the term, is more than a collection of people. It involves a characteristic *process* of people *behaving* in a certain way. Society is that fraction of a population that is engaged in voluntary exchange.<sup>24</sup> (And so, it is worth noting, 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, a drawing-together (Latin *contrahere*), or, in English common law parlance, a “meeting of minds,” where people transcend the merely static covenant of ownership, agreeing to how they shall *serve* one 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—ownership—over goods and services.

So, what does any of 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, as in the discussion of ownership, this idea by itself 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

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<sup>24</sup> Spencer Heath, *Citadel, Market and Altar: Emerging Society*. Baltimore: Science of Society Foundation, 1957, p. 231.



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 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 humidior. 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 that are worked upon.

Thus we have from Heath a somewhat new way of looking at both property and capital. It is new for 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 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 of 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 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 with respect to property in land. Land in the sense of space is fundamental to our existence; we all occupy space, and everything that we do has a spatial dimension. As we come together to live more productively in communities, we find that community living itself has

its peculiar spatial considerations. For example, questions arise as to how to provide infrastructure and services that must be enjoyed in common in that place, such as security, streets, and access ways, and how to augment or diminish neighborhood effects that come into play from differing land uses. These and other public, or community, services differ from private services in that they pertain to a *place* rather than to individuals. To benefit from them, one must go to the place where they are provided. Safety, for example, is a foremost community service. An individual is safe only when in a safe place.

A formula for meeting the needs of community living is probably as old as settled human society. By the consensus of custom, a leading elder exercises the allocative authority with respect to unused land, parceling out quiet possession to users in ways that optimize the productive use of the land and receiving value in exchange for this distributive function. The value received for this service comes out of the land users' resulting productivity on the site. That productivity would have been impossible but for the secure tenure, the "quiet"—that is, uncontested—possession that can only be realized through an allocation that is not arbitrary or by force but is carried out peaceably through the covenant and consensus of ownership.

This pattern obtains in many kinship societies, in which exchange takes place through the idiom of the gift. It obtains also in manorial societies, a further stage of evolution where kinship bonding gives way to incipient contractual arrangements. It obtains in a society more fully developed and characterized by a market system, wherever we have a multitenant 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, or combinations and permutations of these and other forms, the number, types, and kinds of which have soared in the past half-century. 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.<sup>25</sup>

Some years ago, I identified multitenant properties as a class and sketched their history in *The Art of Community*,<sup>26</sup> showing that in their modern form they are a recent phenomenon, the oldest member of the group, the modern hotel, dating only back to the Tremont House, which opened its

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<sup>25</sup> See Spencer MacCallum, "The Enterprise of Community: Social and Environmental Implications of Administering Land as Productive Capital." *Journal of Libertarian Studies*. 17 (4): 1-15, 2003.

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

doors 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 houses date also from the nineteenth century, but less far back; the first apartment building built as such (rather than a converted preexisting structure) is said to have been completed in 1888 near Union Square, New York City. Office buildings followed from about the turn of the century. But the dramatic growth and development of multitenant properties has come only in the last half-century. At the close of World War II, less than a dozen shopping centers existed in the United States, none larger than a small neighborhood convenience facility, and all experimental. Even the term had yet to be coined. But today they number more than 100,000 that range in size up to many millions of square feet of leasable space in addition to the areas enjoyed in common such as access ways, parking fields, and malls.<sup>27</sup> In the meantime, hotels have grown in size and complexity to the point that some are virtually self-contained cities in which, if they chose, guests could meet all their normal needs without leaving the hotel. Counting guests, staff, and visitors, on an average day hotels such as Las Vegas's MGM Grand or The Venetian dwarf in population size the largest cities in the United States at the time of independence—Philadelphia, New York, and Boston.

The growth in number, kind, size, and complexity of these specialized community forms that evolved in the last half of the 20<sup>th</sup> century is without precedent in human history. Yet it went largely unnoticed by scholars, and even today, the social sciences are virtually barren of literature in this area. For reasons noted earlier, property in land has not been a popular subject.

*Multitenant Properties: Harbingers of a Major Evolutionary Advance?*

The great social significance of multitenant properties lies, of course, in their resemblance to communities as we commonly think of them. A hotel has many similarities with what comes to mind for most people when thinking of a community. It has its private and common areas, its corridors are its streets and alleys, and the lobby, sometimes elaborately landscaped, is like the town square. It has a security system and distribution of utilities. Usually it has shopping and dining, often it has theater and other entertainment facilities, professional offices, and medical services, and occasionally it even has a chapel. It also has a transit system—one which happens to operate vertically rather than horizontally.

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<sup>27</sup> International Council of Shopping Centers (ICSC), "Shopping Center Facts and Stats," 2015. Available at: <http://www.icsc.org/research/shopping-center-facts-and-stats>.

Other multitenant properties such as the shopping center have many of the same general characteristics as a hotel along with unique features. Whereas the hotel serves a largely transient population, the shopping center's clientele are established merchants who make up a retailing team (shoppers are simply visitors, not community members). Merchants have a special need for leadership, which the manager is uniquely situated to provide, being vitally interested in the continued success of the mall as a whole and therefore nonpartisan—a fact that is not lost on the merchants.<sup>28</sup> Such leadership, entirely foreign to the experience of merchants on traditional “Main Street, USA,” has become an underlying premise of mall retailing. In varying degrees and in different ways, all multitenant properties benefit from the presence of such leadership.

What opens the mind to a world of possibilities is the fact that while all or most of the infrastructure and management needs of multitenant properties closely parallel those of communities as normally pictured, such needs are met through a wholly free-market process<sup>29</sup> and with increasing sophistication that already far exceeds that of traditional political communities. None of the Byzantine panoply of politics—voting, taxation, burdensome regulation and licensing requirements, unresponsive bureaucracies, politically correct ideologies, and inherent conflicts of interest on the part of the administrators—has any place in the operation of multitenant properties.<sup>30</sup>

Multitenant properties are expressions of a new field of business, namely, that of creating, developing, fostering, managing, marketing, and

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<sup>28</sup> Africanist anthropologist Paul Bohannan commented in personal conversation with the writer 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.

<sup>29</sup> Two early discussions of the private, contractual provision of public services are Raymond V. McNally, “Some Observations on the Nature of Public Enterprise,” *Libertarian Papers*. 6 (1): 57-66, [1942] 2014; Spencer Heath, “The Capitalist System,” *Libertarian Papers*. 7 (2): 125-133, [1934] 2015. A later discussion is Spencer Heath, *Citadel, Market and Altar*, Baltimore: Science of Society Foundation, 1957.

<sup>30</sup> To avoid a common confusion, note that this remarkable class of property does not include condominiums, planned unit developments, or other forms of land *subdivision*. These are consumer uses of land where owners come together collectively to serve themselves rather than customers, and as such are not part of the modern trend toward the administration of property of all kinds as productive capital. Multitenant properties have nothing in common with subdivision; for their owners to subdivide and sell off land—their productive capital—would be to put themselves out of business.

servicing optimal human habitat. Even as they proliferate, each finding its economic niche, the trend is for these specialized forms to combine, much as atoms of different kinds combine to form complex molecules, to meet the demand for less specialized, ever more *generalized* habitats.

At some point, might it occur to developers of these properties that it would be a small jump for the industry to develop and operate entire towns and ultimately even cities on a ground-lease basis rather than subdivision, thereby creating a concentrated and ongoing entrepreneurial interest in the attractiveness of the development? Possibly the next step in multitenant properties as prototypical communities of the future will be for the developers to learn to generate all their utilities on-site in a managed-energy system with zero discharge, enabling them to vastly increase their services to the residents while liberating themselves entirely from the political grid. Freedom from the bureaucratic umbilical would enable development to take place anywhere on land or sea and perhaps even in outer space. Alvin Lowi shows that technology is already developed to the level required to make this economically feasible anywhere on land or sea.<sup>31</sup>

## Conclusion

Locke's labor theory of ownership served the rising British middle class in its struggle against the monarch and his tax collectors, but did posterity an enormous disservice. Used by Karl Marx, Henry George, and others to discredit the institution of property in land, it has led to no end of tragedy and mischief in the world. Yet the formula of homesteading or mixing one's labor with land is still the basis of the normative, or moralizing, approach of libertarians and 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 reassert 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 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.

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<sup>31</sup> Alvin Lowi and Spencer MacCallum, "Community Technology: Liberating Community Development," in Stefano Moroni and David Andersson (eds.), *Cities and Private Planning*. London: Edward Elgar, 2014.

