

RUSSIAN LAND LAW & PRIVATISATION

*A poverty-stricken nation is rich in natural resources.
All it needs is a rational system of public finance,
writes Sir Kenneth Jupp*

WHAT A CHALLENGE! To put the land, now owned entirely by the State, into the hands of private persons or legal entities!

What a land! Vast and mysterious; 95 times bigger in area than Great Britain, two and a half times that of the United States.

What variety! Stretching from within 800 miles of the Arctic Circle in the North, to 800 miles from the Tropic in the South. From east to west, covering eleven time zones: a huge range of climate!

When privatising land, its immense diversity is the first important point to deal with. The land varies:-

- In fertility, from the fertile "Black Earth" region of European Russia to the desert regions in some other parts, and there is every shade of difference in between those extremes.
- In mineral deposits: The Urals are rich in mineral deposits of all kinds: elsewhere there is only soil and in some places just desert.
- In Siberia there is coal enough to supply the whole world's needs for many years to come, and three million square miles of timber forest. But these resources are only in certain places. However rich the land, the resources are scattered all over the place.
- There are mighty rivers for navigation, harnessed in some places for hydro-electric power; elsewhere land is arid, or seriously lacking water.

And what about the people into whose hands the land is to go? Again the great diversity between individuals is the important point. The Russian people have all the necessary skills - intellectual (who can beat them at chess?) - artistic (ballet and literature) - and physical (circuses and gymnasts). The people are every bit as variegated as the land: ranging from the sluggish to the brilliant in all three respects.

IN PRIVATISING land the whole object is to ensure that the right people are put in possession of the right land. The differences between land and the differences between people have to be matched so as to bring about a happy conjunction of people with resources: Mother Russia happily married to her people!

The Communist system and the capitalist system (both) have failed to achieve this object. A command economy rigidly forces people and land into an ill-fitting alliance, so that the wealth produced is insufficient to provide for the people's needs. The so-called 'free' economies of Western Europe produce more than the people need, but many of the people are too poor to buy it. So it stands in mountains of food and lakes of wine while governments out of public funds support millions of unemployed, and pay producers to keep land out of use - it's called 'set-aside'. This leads to higher and higher taxation. The millions of unemployed, who would gladly work so as to be able to buy things, simply degenerate into dependence on the State. To keep this

system going the people are taxed so heavily they remain poor unless they happen to have control of land. Government help to the needy puts taxes up and up.

Command economies don't have unemployment to that extent, but they too tax their people into abject poverty.

The trouble in both types of economy is that the revenue naturally due to the State is not properly collected. If it were, that revenue would lighten taxes, and poverty would to that extent be relieved.

RUSSIA is in a position of advantage over all the Western economies in one respect: at present the State owns the land.

In privatising it Russia can give possession of parcels of land to individuals or companies as they require them, whilst the government retains at all times the rent yielded by the land, and that means the State must retain ownership of the land in the way that Britain does at the present time. Private possession of land but public ownership of land.

Land is by natural law the common property of the community. By letting anyone into possession of a piece of land, and protecting him in that possession, the community assures him of undisturbed use of the land together with the exclusive use of:-

1. The resources not made by man - the natural resources available to that particular piece of land.

2. The infrastructure built by the community at public expense - roads, railways, etc.

3. The availability of the surrounding population to act as suppliers to his undertaking, as customers of it, or workers in it, and as companions in social intercourse.

All lands differ over an immense range of climate, fertility, minerals, density of population, and access to roads, railways, airfields, etc. Justice demands that the holder of the land should pay for these things. Rent is the measure of their value to him.

In Western countries the rent is paid to a landlord; or if the landholder is himself lord of the land, then he keeps the rent, and is to that extent enriched beyond his less fortunate competitors. This is why there can never be the 'level playing-field' Westerners are so fond of talking about, unless every holder of land pays rent - and it must be rent at the current market level.

Because of the immense difference in productivity of different parcels of land, the payment of rent is the only leveller. It acts like a handicap in sport. All people holding land must pay rent, so that all have an equal opportunity in competition with others. But if they pay rent to a landlord every improvement of the infrastructure simply gives the landlord more rent. The rent must go to the governments, local and central, to pay for the infrastructure, and used on behalf of the community.

The second important point is that all this is forever changing so that rent must be kept up to date. Advancing science and technology can make yesterday's arid desert into today's region of rich oil wells. Public works financed by local or central government - roads, bridges, railways, airports (the 'infrastructure') - make production cheaper and easier: so the relative advantage of one piece of land over another is constantly changing.

This is immensely important, and has to be provided for when privatis-

ing the land. Diversity is the first point to watch, constant change is the second.

RUSSIA'S existing land law has two advantages over most Western systems. The first is the clear distinction it makes between buildings and the land underlying them. Thus Soviet legislation of 1922 allowed ownership of buildings, but not of land.

The new legislation by the Federation seems to have preserved this distinction, by taxing land and buildings separately, and at different rates. Thus the distinction between buildings and the land on which they stand is better understood in Russia than in the West, where taxes are usually levied on land and building together as one entity.

Secondly, the Russian land taxes have some regard to differences between different types of land. Thus the twelve Economic Regions have been differently rated according to the quality of agricultural land and the size of the cities. Resorts and cities with 'developed social or cultural potential' pay multiples of the basic rate. This, however, does not go anything like far enough to differentiate the subtle variations between one parcel of land and another. Only the market can do that: and only the market can find the true value of land. That is why rent auctions are necessary. Once these auctions have established a sufficiently connected picture of the different values in a particular locality, then valuers can form a reasonably accurate opinion as to the value of other lands which have not been the subject of auction.

Taxation in Russia is extremely complicated. A recent paper counts 43 taxes: 16 federal, 4 at the oblast (regional) level, and 23 at local level. In the Moscow oblast three taxes account for 97.33 of total revenue. But these are the very taxes which strangle trade and enterprise: namely, VAT, Profits Tax and Personal Income Tax. It is obvious that VAT raises the price of anything which has to bear it. Profits Tax discourages all businesses, and may make it impossible for some to

continue. This reduces competition so that those who are better placed are able to inflate their profit. Income Tax is always unfair because it takes no account of the difficulty or ease with which a person's income is gained.

The new property taxes of 1992 on land, on buildings individually owned, and on buildings corporately owned, are said to have contributed less than 1% of the budgets of government at all levels. The buildings are assessed sometimes on depreciated cost, sometimes at compulsory insurance valuation, and only very rarely at market value. They have produced so little revenue that some local authorities have found the cost of collection higher than the yield, and have ceased collecting them. The rates of tax on land are grotesquely inadequate to collect any significant portion of the true rent. There is little registration of land. Documents of title are unusual. There are reports of scandals in dealing with land.

WHAT is to be done?

Registration

All land should be registered with large-scale land maps showing each parcel of land, its area, and its identification number.

Certificates of title should be issued to every land-holder, defining the land and setting out any legal interests others have over the land, such as rights of way, or passage for drains, water pipes, telegraph or electricity cables etc. All registers should be open to public inspection.

Titles and covenants

Only two kinds of title should be registrable: Perpetual Tenure and Leasehold Tenure. Both these tenures should contain a covenant to pay the rent as from time to time revised by government: also a covenant to observe the planning restrictions imposed by local government. Any change in the planning restrictions needs to be accompanied by a revision of the rent: usually upwards if the

restrictions are enlarged, and downwards if they are reduced.

Security of possession

This is vital. There must be no fear of anyone lawfully in possession of land being disturbed, dispossessed or in any way interfered with, especially not by government agents. As in English law, the possessor of land should be entitled to obtain damages against anyone who unlawfully enters upon his land. If no damage was done, he should have nominal damages and an injunction to prevent further unlawful entry. If he proves actual damage, he should be compensated. If the entry is by soldiers, policemen or other servants of local or national government, he should be entitled to punitive damages for any oppressive, arbitrary, or unconstitutional conduct on their part.

Rent Auctions

To ensure that the most suitable people get the land best suited to them, the land should in the first instance be allotted to the bidder of the highest rent at a rent auction. There will need to be a Valuation Office in each locality, where these rents are recorded. This will gradually build up a picture from which the comparable values of parcels of land which have not been auctioned can be ascertained.

It should take only a few years before a complete and sufficiently accurate land map showing rental values is available. Once this is achieved, yearly revaluations of rent should be instituted, as happens in Denmark. The covenants to pay rent must therefore be drafted to cover rent as revised. Failure to pay rent or failure to observe planning restrictions should entail forfeiture of the land. Relief from forfeiture should be within the discretionary power of the courts.

IF LEGISLATION of this kind had been enacted immediately after communism ended, everything would have been easy. But since that time, unfortunately, some land has already been

privatised, either in the black market, or by legal means under the direction of local or national government.

If it is impossible to recover this land from its private owners, then it will be necessary to recover the rent of it by a system of taxation based on the imputed rent of the land. The Valuation Office will have to be entrusted with the duty of making sure these lands are included in the land maps, and that the estimated rent of each parcel of these lands is duly recorded as soon as it can be ascertained by comparison with known rents elsewhere. These rents too should be displayed for general public inspection.

Clearly as large a proportion of the estimated rent as possible should be collected from the holders of these already privatised lands. But whether this is feasible depends on (1) whether the particular piece of land was acquired legally; (2) how much the present possessor paid for it; and (3) what length of tenure he or she obtained. If the number of cases in question is not too large, it is possible the best way of dealing with them is by setting up a special appeals court to adjudicate on each case separately. Otherwise a taxation programme to work out a suitable land tax will have to be devised. In any event all land held in this way must be brought into the general system of allocation by local authorities as soon as the period of occupancy expires.

RUSSIA is particularly fortunate because the land is owned by the people, through their government. The government can therefore privatise the land whilst retaining the rent of land as public revenue.

The same situation exists in England, but only in theory. All land in England is owned by the Crown. A small part is in the Crown's actual occupation. The rest is occupied by tenants holding either directly or indirectly from the Crown. However, the head tenants now holding directly from the Crown pay no rent to the Crown. In feudal times the services and payments made by these tenants

financed most of the functions of central government. But by the middle of the thirteenth century, in the struggle between the barons and the King, the old feudal dues were shrugged off, and the Crown was compelled to take its revenue directly from the whole population; first by levies on the personal property of all save the very poor, and ultimately by taxes on every conceivable commodity or service, and ultimately, in the 19th century, on incomes. No trace of the feudal dues now remains, and the head tenants are, for practical purposes, although not (this is important) not in law, absolute owners.

The important point is that Russia should be very careful not to go all the way down the same road as the Western world. Russia, in putting the land into private hands, should at all cost retain the rent of land on behalf of the people, who have, after all, created it. It belongs to them. Nevertheless the English land law has the merit of retaining the correct theory, and could easily be adopted by the local governments in Russia without the faults that have distorted it in the course of English history.

For 'the Crown' read 'the State', and you have the head tenants with either a Perpetual or a Leasehold tenure in respect of which they owe dues to the state in the form of rent. Sub-, and sub-sub-tenants, and so on, pay their dues, which are passed up the line, and so to the state in the head-rent. Under that system there will be very little need for taxation to meet government expenditure. The government will be collecting the whole rent of the land of Russia.

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