

4

The Descent into Chaos

The law governing the use and disposition of land in England today bears indelible traces of its rich history spanning more than ten centuries. These traces are the relics of a system of landholding which provided for government, and the revenue to support it, at every level from villager to King. During those centuries, decrees of Kings, statutes of parliament, decisions of judges, and the work of administrators, acting under political, social, and economic pressures, have gradually and inexorably changed landholding into a system for personal enrichment of those able to take advantage of the unique value of property in land. It is proposed here to state the law as it is today, to show how it came to be as it is, and to consider what we may learn from its history, in dealing with contemporary problems.

Professor Sir William Holdsworth, the pre-eminent historian of the law, pointed out in relation to land:

The rules which regulate the manner in which land can be owned, and used, and disposed of, must always be of the very greatest importance to the state. The stability of the state and the wellbeing of its citizens at all times depend,

to no small extent, on its land law. This is as true today as it was in the earlier period of our history.¹

The earliest cultures were in no doubt as to the truth of this - the food gatherers, the keepers of sheep, the hunters, and the tillers of the soil. In passing through these stages of development, Man never lost sight of his utter dependence on land and the resources of nature to which land gave access. One of the chief features of the unfolding story of land is war; and it is worth remembering that war began when, of the sons of Adam, "Abel was a keeper of sheep, but Cain was a tiller of the ground". Cain, one may suppose, having laboured to improve the land, would have been zealous to protect what he considered to be 'his'. Otherwise he could not reap what he had sown. Agriculture made it imperative to hold land, so as not to lose the fruits of his labour.

All aboriginal peoples felt their closeness to the land, often looking upon it as their Mother. The highly civilized ancient Athenians boasted that they were *autochthonous* (sprung from the soil), and Socrates made use of the legend of Cadmus in Plato's *Republic*.² In Plato's *Laws* (740) land was to be distributed so that each man receiving his portion should regard it as the common property of the whole City, and tend it more carefully than children would tend their mother.

It was only as mankind advanced beyond a subsistence economy, first to trading in market towns, then to commerce in provincial centres, and so on to national and then international financing in cities, that the most valuable land disappeared beneath buildings to be lost sight of except by land speculators, who

reaped a richer harvest from it in money than any agriculturist ever did in crops. Unfortunately, when people spoke of land they usually meant country land, and overlooked the vital importance of land in towns and cities. This was particularly unfortunate because the land on which buildings stood was, and has always remained, by far the most valuable. It is measured in square feet rather than in broad acres.

Our Anglo-Saxon ancestors when they first occupied England more than a thousand years ago paid little attention to the highly civilized towns left behind by the Romans. Later on they found them useful as forts against the incursions of subsequent invaders, especially the Danes. They also established *byrig* (forts) of their own which, in later times when they were not under threat, developed into trading posts, as did the landing places which they fortified. The latter became 'ports', and the Saxon *bihr* grew into the medieval 'borough' - while the wealth of both increased mightily.

In the overwhelmingly agricultural society of the Saxons the status of every individual was determined by his landholding; and custom, backed up where necessary by law, imposed upon him the duty to render (Lat. *reddere*, give back) service or wealth in return for the land he held. Thus public revenue normally came from the productivity of land, in the form of food-rent, rent service, or rent in money or kind. Taxation was theoretically, and perhaps in practice, only raised to meet emergencies, although invasions, particularly by Danes, made taxation a pretty regular event. It too was assessed on land, not simply by area, but with due regard to fertility and situation so as to

STEALING OUR LAND

ensure that good land rendered more in tax than poor land. Our fiscal history over the millennium since then will show that:

- (1) The productivity of land gradually ceased to be the measure of the contribution due from the individual to cover the expenses of government.
- (2) The consequent impoverishment of the Crown drove kings and parliaments to raise money by arbitrary taxation levied upon anything other than land that would 'bear the tax'; and this they did in times of peace as well as of war.
- (3) Finding it impossible to raise sufficient revenue by these means, especially to pay for war, the Crown very soon had to resort to borrowing to make up the deficiency.
- (4) The Jews, who commanded the realm of finance and especially international finance, lent money to the Crown at very high rates of interest. After their expulsion in 1290, English merchants, who were becoming increasingly wealthy, continued the practice.
- (5) This was because those who retained land, free of any duty to contribute to the public purse, were now in a position to lend their surplus wealth to the state in return for interest. They lent what they had hitherto been duty-bound to render to the King - the interest they received always adding further to public expenditure, and so increasing taxation.
- (6) The taxation not being assessed on land was paid by rich and poor alike, the burden falling more heavily on the poor, some of whom, particularly in times of

plague or dearth, were driven from the little land they held. 'Rogues' and 'Vagabonds' became statutory expressions to describe them in Vagrancy Acts after 1572.

- (7) Inevitably charitable opinion began to insist that the landless poor should be supported out of public funds, and this in the sixteenth century gave rise to the Poor Law, given final statutory expression in 1601. The burden of poor relief increased when the parliamentary enclosures of the eighteenth and early nineteenth centuries swelled the number of landless, and that burden has continued to increase until the present time under the euphemistic titles 'Welfare' and 'Social Security'.

Political power right up until the nineteenth century rested quite naturally with the landed: not only with the kings who were great landowners, but also with their head tenants, the 'barons', until the Wars of the Roses weakened the barons both politically and financially. After the civil war in the 17th century Parliament became the supreme fount of law, and two classes fought to control it: the 'squirearchy', whose power was based largely on country land; and the 'mercantile class', whose wealth came from the towns, where some had a freehold, but many were leaseholders. Representation in parliament was based on a property qualification. Fear of revolution such as had occurred in France at the end of the 18th century was averted in the 19th century by the Reform Acts. The first of these Acts retained a property qualification for voting, but later Acts gave the landless voting power for the first

STEALING OUR LAND

time without their having any interest in land. They had power without responsibility. Inevitably in the twentieth century that power has been used to widen immensely the scope of poor relief and other public expenditure to such an extent that in our own day the burden of its cost is becoming almost impossible to bear, and the moral deterioration of those who cannot (and some who will not) support themselves is now becoming apparent. The conclusion of this process was neatly summed up by Goldsmith in *The Deserted Village*:

Ill fares the land to hastening ills a prey,
Where wealth accumulates and men decay.