

Editor's Introduction

Space Age Property Rights

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BRITAIN'S Lord Chief Justice, Lord Woolf, raised crucial issues for policy-makers in a lecture that surveyed the responsibilities of the law and science. He was most immediately concerned with the problem of environmental risk, but we need to make explicit his underlying theme if policy-makers are to improve their performance on behalf of the people who entrust them with power.

Lord Woolf implies the need for a radical discussion of property rights.

In the past, the law has failed to respond sensitively to people's needs. We need to understand why this was so, if today's legislators are to fulfil their duties.

Lord Woolf noted:

Both statute and common law failed to address the problems of science and the environment which (as in the law of nuisance) was too wedded to interests in land to develop a well rounded public response to the challenges of the 19th century.*

Parliament failed to evolve law in keeping with the social and economic needs of the age because the law-makers were landowners or their clients. Not until 1875 could the Victorian entrepreneurs push through the Public Health Act, which laid the foundations for local action in relation to sewers and slums. As Lord Woolf noted: "That Act was a response to a failure of the law".

The 20th century fared little better. True enough, Parliament enthusiastically churned out regulatory laws by the volume, but these were palliatives rather than root-and-branch reforms. The best evidence for this is the persistent failure of legislative action to deal with land-related issues, particularly in relation to the distribution of income. Westminster under Liberal influence began its attempts to revise the law of the land in 1909, and this continued under Socialist influence in the postwar years. But all of the Acts of Parliament up to the 1970s were failures, both in the way that they

* Lord Woolf, "Environmental risk: the responsibilities of the law and science", David Hall Lecture, May 24, 2001; London: Environmental Law Foundation, July, 2001, p.4.

were drafted and executed; they were removed from the Statute Book, and deservedly so. But that meant a century of reform was lost.

The need for laws relevant to the space age of the 21st century has now been dramatised by action in the United States. The intrusion into Earth's outer reaches has begun without the benefit of either a well-rounded political philosophy of property rights, or enforceable laws.

■ President Bush has decided to "weaponise" space by as early as 2005, through the application of space-based missile weapons systems. Does the US have the right to occupy a space that is not its property? Do other nations have a say in the way that space is used?

■ Los Angeles County wants to tax Hughes Electronics' satellites. The assessment is based on the capital value of the equipment that is orbiting 22,300 miles from Earth. The company is registered in Los Angeles. By what right does LA County claim to levy a tax on capital equipment that operates beyond its territorial jurisdiction? Whatever the earthly merits of that case, do the rest of us have a right to a share of the rental revenue that is generated by the use of orbital routes?

Such questions are barely raised today among philosophers, social scientists and policy-makers, and yet they are central to the future welfare of both Earth and humanity. The contributors to the present volume of *Geophilos* discuss aspects of the general theme of property rights, which need to be brought into sharper focus.

The social sciences are far from fulfilling expectations. Heather Remoff identifies some of the conceptual errors that continue to blight the way in which contemporary problems are viewed. Not surprisingly, therefore, government policy in the administration of public finance fails to empower people to earn the living that is legitimately theirs – as impoverished communities in the Appalachian mountains would testify (the subject of Professor Heath's essay).

Property rights as an issue of concern are not restricted to the claims of individuals or local governments, as Dr. Foldvary explains in his analysis of territorial conflicts between ethnic communities. Governments are obliged to review both their role in establishing harmonious relationships between themselves, and – through their administration of taxation – between citizens within their jurisdictions. Contributors to the Interrogation section of this issue argue that it is imperative to redesign public finance in the direction of greater ecological security and economic prosperity. Their views

are reinforced by a proposal from Professor Steiner, who explains how a miniscule charge on natural resource rents could fund the rescue of habitats that are rapidly disappearing.

Every statesman in the world who claims to base his actions on the democratic will has a responsibility to at least clarify the legal issues relating to property rights. Arguably, Tony Blair has a greater responsibility among them because he claims to want to alter the status quo in favour of progressive reforms. But he needs to treat with caution the fanciful phrases that are delivered to him as substitutes for concrete proposals by his advisors. It may be that the answers for which he is searching are to be found in the past rather than in the future.

In Australia, for example, as Bryan Kavanagh reports, the economy operates on a cyclical basis that appears to be driven, in part at least, by reckless speculative activity in the property market. If this is correct, the need is for fine-tuning of the property tax. And yet, the political leaders are complacent about the empirical evidence which Kavanagh is able to document by using the data supplied from official sources.

We have noted that property rights need to be examined as they are applied above earth and on land. Dr. Titova reminds us that there are equally compelling reasons to review the way in which we treat the resources of nature beneath the sea. The riches of the oceans are being disgracefully exploited without respect for life today or welfare tomorrow. This is pathological behaviour that warrants closer scrutiny if we are not to continue to damage our biosphere.

Environmental risk was a worthy topic for the reflections of Britain's Lord Chief Justice. It is now incumbent on the rest of us to continue the debate so that the law-makers may improve their performance on our behalf.