Limitations to Private Property Rights in Land in the United States

By W. C. Plummer
Assistant Professor of Economics, University of Pennsylvania, Philadelphia, Pennsylvania

PROPERTY means ownership. It is the legal right to the services of wealth or to the services of free human beings, that is, to income, as the word is commonly used by economists. Wealth, as the term is here used, refers to all those things such as food, clothing, automobiles, buildings, and land—things which are necessary for existence and for the enjoyment of life. As regards wealth in general or land in particular, property means the right to acquire, to use, to control, and to dispose of it. Mere possession of an object does not constitute property right in it. There must be some sort of social recognition; the laws and customs of the community in which the wealth is located or in which the owner lives must protect him in the exclusive use and control of the thing owned.

Concept of Property a Changing One

While the right of property denotes in every state of society the largest powers of exclusive control over wealth which the law accords, yet, as was observed by a distinguished economist writing fifty years ago, these powers of exclusive use and control are various and differ greatly in different times and places. A historical treatment of the institution of property, or a comparative study of the institution as it exists among the various countries of the world at the present time, shows clearly that the word property does not always stand for exactly the same idea. While the concept of property may be explained very satisfactorily in a general way, in spite of the fact that it is a changing concept, it always means something more definite when explained in connection with a given group of people at a given time. Private property in general is one of the fundamental institutions of our present economic system; private property in land has always occupied a strong position in the United States, and continues to do so at the present time.

It is scarcely necessary to mention that absolute property hardly exists, that is to say, the right of use, control, and disposal is almost always limited or restricted by law. It is the purpose of this article to call attention to the limitations to private property in land in the United States at the present time, with some regard also to the immediate past.

Taxation

Taxes upon land are a distinct limitation of private property rights. Land possesses certain characteristics not found in other classes of wealth, and for this reason it has often been regarded as a subject for special taxes. These taxes in amount may range all the way from a small fraction to the entire income of land. The purpose of such taxes, if they are comparatively small, is to raise revenue for the support of the Government; but if they are very large, the predominating purpose is usually to bring about reforms in the social system. Taxes on land in this country date from the earliest colonial times and have always been one of the important forms of taxation.

Since the publication of *Progress and Poverty* in 1879 by Henry George, in which he advocated what is known as the single tax, there have been numerous individuals and groups who would like to bring about radical changes in the social-economic order by further limiting private property rights through heavier taxes on land. The advocates of the single tax contend that the Government should take in taxes the entire economic rent of land, and that this should be the only form of taxation. The use of the single tax would mean practically the abolition of private property in land and the substitution of community ownership. There would probably still remain the right of private possession, of alienation, and of use for productive purposes, but the user of the land would be compelled to pay to society, in the form of taxes, the full economic rent. By economic rent is meant the income of land itself, exclusive of any improvements on it. Since the market value of land depends upon its present and anticipated future income, the introduction of the single tax would take from the present owners the equivalent of the entire value of their land.

ATTEMPTS TO INTRODUCE THE SINGLE TAX

Frequent attempts have been made locally to introduce the single tax. Mr. George ran for mayor of New York City in 1886 on a single tax platform, and though defeated he made a surprisingly good showing. The State of Oregon was a battleground of those for and against the single tax from the years 1908 to 1918, during which time a single tax movement to amend the Constitution was strongly supported, but finally defeated. There has been agitation for the single tax in other states, principally in California, Colorado, and Missouri.

In 1913, the legislature of the State of Pennsylvania provided for a gradual decrease of building assessments for cities of the second class—Pittsburgh and Scranton—until by 1925 the rate was to be fifty per cent of that on land. This is far from being a single tax law, but it does discriminate against land and in favor of improvements thereon for taxation purposes. While both Pittsburgh and Scranton are thus privileged to make land bear a relatively greater burden of taxation than the buildings on it, Pittsburgh is the only one actually doing it.

In 1922, the legislature of New York authorized the various local government units to exempt from local taxes all new buildings planned for dwelling purposes exclusively. Such exemption was not to extend beyond January 1, 1932. The purpose of the act was to relieve an acute housing problem.

Taxes on land will undoubtedly continue to be one of the principal forms of taxation. There will probably continue to be agitation for the single tax, but, judging by the past, there does not seem to be much likelihood that such an extreme measure would be adopted even locally. Private property rights in land are too firmly established. One of the desirable effects of the single tax movement, however, has been to call attention to the "unearned increment" as a subject of taxation. Many fiscal authorities who condemn the single tax see nothing unjust about taking at least a large part of future increases in land values which are socially created, providing the Government announces its intentions beforehand. The Federal income tax law recognizes increases in land values as a subject for taxation by providing that increment and decrement from purchases and sales are to be included in making the return of income for tax purposes.

EMINENT DOMAIN

Eminent domain, or the right to take private wealth for public or quasi-public purposes by paying just compensation, is a power of the Federal and state governments. This power is also commonly delegated by state legislatures to municipal corporations. City governments generally have power to appropriate private property, under the condition that the wealth be for public use and that the owner be compensated for it in the manner prescribed by law.

At the present time municipal governments have need of a great deal of land, and usually acquire it by "condemnation," as the proceedings are called, when private land is taken for public use under the power of eminent domain. Land is needed for public schools, public libraries, museums, parks, and for other public purposes too numerous to mention. Sometimes the city governments buy their land in the open market, just as a private person would do, but the opportunities for graft are so great that some cities are prohibited by their charters from buying land in this manner. With the growth of cities and the broadening functions of government more land is needed by municipalities, and this is being transferred from private to public ownership under the right of eminent domain.

PUBLIC OWNERSHIP

To the degree that there is ownership of land by the Federal, state, or local governments, there is an extensive limitation of private property rights in land. The Federal Government is the largest single land owner in the United States. It has been estimated that the Federal, state, and municipal governments own a total of 870,000,000 acres of land in the United States and Alaska. This is about thirty-eight per cent of the total land area of the United States and Alaska. The remaining sixty-two per cent is privately owned.

On account of the great public domain, the proportion of land owned by the Federal Government at one time was much greater than now. It was the policy of our Federal Government during the last century to transfer this land to private ownership as rapidly as possible in order to populate and develop the country. With all the advantages of this policy of encouraging home ownership and owner-operation of land, particularly agricultural land, there were some distinct disadvantages of alienating so rapidly the forest and mineral lands.

Private interests own four-fifths of the timber in the United States at the present time. These timber lands were at one time part of the great public domain, and were transferred from public to private ownership in very much the same way as the agricultural lands. As satisfactory as this policy may have been in regard to agricultural lands, it resulted in wasteful and otherwise unsatisfactory utilization of forest lands.

The necessity for conservation of our forests was recognized by some persons during the period of homestead laws and the period of land grants to railroads and to the states, but little was done about the matter before the time of President Roosevelt. The President, with the aid of Gifford Pinchot, "the father of conservation," and others, was responsible for a public conservation movement which resulted in a change of the policy of alienating the forest and mineral lands. The Government decided to retain certain of the forest lands under public ownership and mineral rights in other lands.

Of the five hundred million acres of forest land in the United States, four

hundred million acres are privately owned and one hundred million acres are publicly owned. Most of the publicly owned timber is in the national forests. The timber owned by the Government is of poor average quality and is hard to reach. Eighty per cent of our standing merchantable timber is privately owned. Ninety-seven per cent of our annual cut comes from privately owned forests. By reason of their extent, quality, and location, the forest lands now in private ownership have always furnished, and must always furnish, the great bulk of the nation's timber supply.

BUILDING RESTRICTIONS AND ZONING

Building restrictions, which are a limitation of the right of the owner to use his land as he sees fit, have been imposed by state and city governments in this country for more than a century. The purpose of these restrictions in the earlier times was to reduce fire risk. Later, safeguarding of health became one of the objects of such restrictions. Laws prohibiting the erection of wooden buildings in congested districts had been in force since early days. Slaughter houses, pigsties, and livery stables were many years ago subjected to restrictions concerning location. In 1885, New York City limited the height of dwellings to eighty feet. Chicago and Boston shortly thereafter also established height limits for buildings. In 1909, Los Angeles was divided into residential and industrial districts, and industry was excluded from the residential sections of the city.

Zoning is the name which has been given to the recent practice of dividing a city into districts for the purpose of applying regulations governing the use to which the land in the various districts and the buildings thereon may be put. New York City is generally credited with being the first American city to pass a comprehensive zoning ordinance. This was done in 1916. It was followed in quick succession by numerous other cities which passed ordinances providing in great detail for dividing the city into districts classified as residential, business, and industrial, and limiting the use and height of the buildings in the various districts.

These various restrictions have been contested in the courts on the ground that they have been unwarranted or unreasonable infringements of the right of private property, but on the whole the courts have declared the restrictions to be constitutional. In 1908, the Supreme Court of the United States declared an ordinance regarding height limits to be constitutional. In 1927, the Supreme Court of the United States in one of its decisions declared in favor of the right of a city to regulate building lines, that is, to prohibit buildings from being constructed within a certain number of feet of the street or of other buildings. While, on the whole, the Supreme Court has declared in favor of building restrictions, it has not approved every zoning ordinance that has been passed and contested in the courts. Some of them have been declared unconstitutional for various reasons, particularly because they are not definitely justified by public welfare.

Several of the states have adopted laws discriminating against aliens in regard to land ownership. California and Washington refuse to permit aliens ineligible to citizenship to own land or to lease it for longer than a period of three years. Washington includes other aliens who have not declared their intention to become citizens. The Supreme Court, in two decisions handed down in 1923, decided that these laws are constitutional.

It has been pointed out above that private property is one of the fundamental institutions of our present

economic system and that private property in land is firmly established in the United States. However, the right of use, control, and disposal of land is almost always limited by law. The important limitations of private property rights in land at the present time are taxation, the right of eminent domain, public ownership, building restrictions in cities, and the prohibition of the right of property to certain classes of persons.