

PRIVATE PROPERTY IN AMERICA: LAND USE AND THE ETHICS OF OWNING LAND

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Private property in the United States arose out of a tradition that emphasized the individual freedom to control holdings without interference from governmental influences. A sharp distinction between society as a whole and individual rights isolated ownership of private property from a notion of the common good. This dualistic framework excludes the possibility for forms of property that do not fall completely into either category.

Property ownership attitudes are central to issues that often divide environmentalists and landowners. Property rights must be put in the context to understand the divergence between landowner attitudes and provisions made when the institution of private property was created. Finally, land itself as a type of property should be considered ethically distinct from other forms of property because of the interdependencies of human and nonhuman interests that the science of ecology has revealed.

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INTRODUCTION

Nearly 70 percent of America's lands today are privately owned. Fence lines, waterways, county lines and a variety of other cultural and natural features demarcate individual properties. The question of how land became owned under the institution of private property is a central consideration when examining how land use in present day America is justified. The central focus of this paper is how the history of land use affects the institution as it exists today. Once an interpretation of the theoretical basis of the right to own property is provided, then the question of how current land use practices diverge or follow from that history can be examined. Lastly, questions about what constitutes an ethical relationship between the landowner and the human and biotic communities may be examined.

Property owners commonly refer to their natural right to do as they wish with what they own, whether it be material goods, resources on their property, or the land itself. In the first chapter, the classical property model, which relies on a natural rights justification, as developed by John Locke is examined. Locke's theory emerged from a context of pre-existing land use and served as a justification to promote land use as it had existed in the Germanic tradition, and offer support for the freedom of the individual to benefit from the fruits of his or her labor. This labor basis for ownership was relevant for the development of land use attitudes in American history following the Revolutionary War, and was relied upon by Thomas Jefferson in his development of the U.S. Constitution.

Jefferson and other framers of the Constitution were greatly influenced by the view of distributive justice that land should be owned by as many landowners as possible, to avoid the concentration of power as represented by the British crown. They also viewed the potential for land ownership as developing and strengthening the new economy, both by generating federal revenue by selling off government land into private hands and by encouraging trade of goods and services produced utilizing land and resources. Eventually, the view that land ownership was tied to a conception of public good began to fade as an attitude of capitalistic individualism increased in America.

The attitude that land is merely to be considered of market value, and that private property rights are absolute is one expression of a dualistic treatment of nature and culture. I consider this dualism in the second chapter, how it is characterized, and the potentials for its resistance. It may be resisted from the standpoint of understanding current practices of land ownership and rights, and the hybrid forms they take with respect to possession and promoting a definition of common good.

In chapter III consider the approach to land ownership from various perspectives to examine possibilities for the ethical implications of land ownership. Values of land that transcend market value are considered, and the potential for perceiving one's land as a potential for practicing community values, which may be broadened to include the ecological community. The holistic model suggested by the land ethic presents a compelling possibility for resisting the isolative tendencies of the dualistic separation

between public and private interests, and the natural world as opposed to the civil world.

CHAPTER I

HISTORY AND PRACTICE OF LAND USE IN AMERICA

John Locke and the Property Concept

Much of the current day land use ideas and practices in America take their inspiration from John Locke's theory of property. When advocates of private property rights defend their natural right to do as they choose with their own land, and argue that they should not have to take into account any one else's interests in making those choices, they base their arguments on concepts originally expressed by Locke. However, there is a great difference between the social context in which his argument was originally developed and the pervasive demands of consumer culture on ecological systems of the present time. Furthermore, the mutation from his original theory to the concept of private property as it exists today is remarkable.

Locke's theory of natural rights is that each individual has certain inalienable rights and duties by virtue of his or her humanity. Locke based his theory on an idealized pre-societal humanity in a natural state that ought to be recognized by all. The natural state is contrasted with the political state by virtue of its pre-existence. Locke thought the purpose of the political state was to arrange laws that followed from the organization of the natural state. The primary obligation in this natural state is to not interfere with the rights of other autonomous individuals. According to this theory, the entitlements one has as an individual are the rights to life, liberty, and property.

Locke developed his theory of land and property in *Two Treatises of Government*. Originally published in England in 1690, it was largely written in response

to feudal government, and the excessive power wielded by lords over their subjects. Locke's argument was that the political structure ought to recognize the natural rights of everyone equally. He countered royal claims of divine ownership of the community's resources by divine right by considering property a common good.

Locke's theory of property begins with the concept of self-ownership. By being our own masters and exercisers of our capacities, in this sense we belong to ourselves by being ...

*Proprietor of his own Person ... [he] had in himself the great Foundation of Property; and that which made up the great part of what he applied to Support of Comfort of his being was perfectly his own, and, did not belong in common to others.*¹

Locke leads from this argument to the suggestion that labor produces not only a sense of entitlement but also an actual title of property, which grants possession. Possession of property entails the following rights:

1. Exclusion—within the limits of natural law, freedom from seizure or invasion of property.
2. Control—to use and arrange holdings as the titleholder sees fit.

These are applied not only to physical property, but also to oneself, the body and mind. The concept of self-ownership of one's labor, ability, and energy leads to the ownership of the improvements one effects on raw materials. These improvements then become one's property which excludes the common right of other people.

In Locke's formation theory, one is said to take ownership of any previously unowned natural product to which one has applied one's labor. First taking constitutes

¹ John Locke, *Two Treatises of Government*, ed. Peter Laslett (Cambridge: Cambridge University Press, 1967), Treatise II, sec. 44.

ownership, and is applied to three levels of natural organization: spontaneous products of nature, animals, and land. Nature is viewed as existing in a state of potential, requiring man's involvement to bring fruition to products and make things usable. Locke says that the example of animal behavior has provided the utmost property right available, which is to have a right to destroy any thing by using it. This use is to be justified only as a side effect of a complete utilization of the resource for sustenance. Locke also recognized in this the need to preserve the whole of each species (for future anthropocentric benefit).

However, in Locke's view, property rights not only included the effects of one's labor, but also the object(s) that were improved by that work. Therefore, if an area is cleared of trees and they are used to produce lumber for furniture, ownership is justified for both the lumber and the furniture which is produced. Robert Nozick has raised the question, "Why should one's entitlement extend to the whole object rather than just to the *added value* one's labour has produced?"²

The answer is that Locke views the engagement of human labor with raw materials as a creative act in which a new object is produced. This view of ownership of and exclusive rights to artifacts of human production is foundational to how rights are interpreted today, even as the raw materials are largely owned by individuals rather than belonging to a collective.

The theory of labor entailing rights also has significant ramifications with regard to how land is viewed as property. It is of particular importance when we examine what

² James Tully, *A Discourse on Property: John Locke and his Adversaries* (Cambridge: Cambridge University Press, 1980), p. 116.

is natural in contrast to what is artifactual. In particular, if human engagement with landscapes involves construction or restoration activities, does that activity “create” a new artifact out of a formerly natural setting? We are faced with a moral terrain that involves very different questions if we are talking about an artifact of human production as opposed to an autonomous natural place.

Ethical Obligations in Lockean Rights to Property

For Locke, one’s engagement with the land conferred ownership of that land, as well as the products of his or her labor. “Subduing or cultivating the Earth, and having Dominion ... are joined together. The one gave Title to the other. So that God, by commanding to subdue, gave Authority so far to *appropriate*. And the Condition of Humane Life which requires Labor and Materials to work on, necessarily introduces *private Possessions*.”³

In Locke’s view, appropriation of private possessions was naturally limited by the individual taking ownership of merely what could be used, and they would take no more than could be used because that would generate spoilage and be wasteful. Because of his emphasis on utility and production, and the moral obligation to not be wasteful, “the exclusionary right to use land [is] conditional upon, and entailed by, cultivation or other forms of making useful products.”⁴

³ Ibid., p. 119.

⁴ Ibid., p. 123.

Locke carefully distinguished between "*having Dominion*, which a Shepherd may have, and having full Property as an Owner."⁵ This distinction is taken to mean that a rights holder may have property in utilization of the land, but not full property as in ownership. Locke anticipates a division between full possession of and authority over what happens to an entity.

There is, according to Locke, another way in which an individual is said to have property without possessing an entity. If we consider this approach in the context of land use, claims of rights to use land in particularly defined ways are applicable here.

A use right is similar to property abstracted from possession, since the user barely retains, but does not possess, the land he uses. But it also contains the attributes of possession and alienation appropriate to property in its proper meaning. The rightholder possesses his right, but not the land over which it obtains.⁶

Locke's theory is a *limited* rights theory—where one's rights obtain provided that one's labors are in accord with God's laws. He also recognizes the obligation to charity and to make provisions for inheritance. While the primary moral obligation we find in Locke's theory is that one may not use one's possessions in a way that interferes with another person's enjoyment of their natural rights, there are some additional provisions that have to do with use. A proprietor is under obligation to sustain those who do not have enough provisions, if he or she has a surplus.

The rights to the fruits of one's labors are contingent upon the duty to distribute any excesses in an equitable manner. The needy have firmly grounded rights, according

⁵ Locke, *Two Treatises of Government*, Treatise I, sec. 39.

⁶Tully, *A Discourse on Property*, p. 113.

to Locke, to any surplus produced by their wealthy neighbors. As a moral agent, a proprietor is free to choose how to perform his or her duties to others, however, if the duty to give of one's surplus is not willingly performed, it is imposed upon him or her by the claim rights of others.

Another duty engages the proprietor with the transfer of his or her property. Each family member has a right to inherit the fair acquisitions of his or her ancestors. In Locke's theory, parents have a positive duty to provide for their children. The products of one's labor in this sense become a legacy that is reserved for granting to future generations: "It follows that any family man's property is not his property at all. It is the common property of the whole family."⁷

Therefore, according to Locke's theory, having fixed property in land is not a natural right, but one that is provisional. To be wasteful and allow the spoliation of one's fruits was an offense "against the common law of Nature, and was liable to be punished."⁸ Punishment is due because wastefulness of a common good, even if it is produced by one's labor, is an act that results in scarcity for one's neighbors. Even though the waste is of products which one produced oneself, it demonstrates a lack of restraint and application of raw materials and land, which might have been made better use of had it been under someone else's stewardship and production. The natural right claim is therefore not to the land itself, but rather to the products of one's labor on the land. Once one fails to make use of the products of labor, the cultivated land once again reverts to the common.

⁷ Tully, *A Discourse on Property*, p. 133.

⁸ *Ibid.*, p. 123.

Challenges to Locke's Property Theory in Practice

Locke's theory of property faces distinct challenges when the model is considered practically—applied to people on a broad scale living in community. Matthew Kramer asserts that unless the particular entitlements to property are sorted out on a social scale, Locke's theory presents little different than a Hobbesian state of social clashes, with each fighting for one's own privileges at the expense of the interests and well-being of one's neighbors.⁹

Lacking in Locke's theory is a discussion of the duration and breadth of the rights that obtain. Some rights over resources, usufructuary rights, endure only as long as the germane resources are being used or deliberately enhanced; other rights persist throughout the lifetime of a right-holder, even if he wholly neglects to use the relevant goods; still other rights last not merely during the lifetime of the current holder but also during the successive generations of heirs to the rights.¹⁰

While Locke does suggest that an individual has a right to inherit the fruits of labors of previous ancestors, it is not clear how such inheritance is consistent with the view that any surplus to one's labors on the land must be given to those who do not have enough for their sustenance. There is a wide margin of interpretative latitude that is given by Locke's theory regarding duties to others.

Further problems with the concept of property in common involve other inclusive rights. One individual can rob others by taking more than he or she can use. But it is

⁹ Matthew H. Kramer, *John Locke and the Origins of Private Property: Philosophical Explorations of Individualism, Community, and Equality* (Cambridge: Cambridge University Press, 1997).

¹⁰ *Ibid.*, p. 101.

unclear how such takings are assessed. Certain goods spoil and waste in a different manner than others. Food products, for example, have the most rapid rate of decay, but this rate is not comparable to the products of forestry or mining. Also, the value of money and the possibility for hoarding certain resources (such as the products of mining activities) are greatly underestimated by Locke. It is unclear how such resources that do not have an immediate and necessary application, as food does, fall under the ethical provisions against generating wasteful surpluses.

Since Locke developed his theory more than three centuries ago, many social conventions have arisen that he could not have anticipated. His theory was based in a world of limitless abundance.

No Mans Labour could subdue, or appropriate all: nor could his Enjoyment consume more than a small part; so that it was impossible for any Man, this way, to intrench upon the right of another, or acquire, to himself, a Property to the Prejudice of his Neighbour, who would still have room, for as good, and as large a Possession (after the other had taken out his) as before it was appropriated.¹¹

Some of the most problematic legacies from Locke's property theory are the views of and attitudes toward the state of nature that have to some degree persisted in contemporary culture. As Eugene Hargrove has stated, Locke's theory of property viewed the natural state of land as a wasteland, in need of human influence to add value to it.¹² The argument posits value only in those things that come from the human engagement or labor, and so only anthropocentric interests are considered. It is a strictly production-based value system in which even those anthropocentric values of

¹¹ Locke, *Two Treatises of Government*, Treatise II, sec. 36.

¹² Eugene C. Hargrove, "The Historical Foundations of American Environmental Attitudes," *Environmental Ethics* 1, no. 3 (1979): 209-40.

aesthetic or leisure interests in land are not considered because they are not viewed as useful.

It is interesting that Locke's theory has become the foundational principle guiding contemporary practices of private property as a fixed property in land, when this approach is not what Locke originally intended.

The conflation of Locke's 'property in' with private property is a quite recent phenomenon. Early nineteenth-century radicals fixed on Locke's theory of a natural property in the product of one's labor and used it to legitimate revolt against the prevailing system of private property.¹³

In this sense, Locke's theory was used to legitimate a communal property organization, rather than the individual-rights-based approach which it is summoned up to defend in present times.

Property and Land Use in the Germanic Tradition

Eugene Hargrove argues in his chapter on "Land Use Attitudes" that present-day private property owners who assert their right to do as they wish with their own property appeal to a history of rights that refer to early European traditions. Such a landowner is "appealing to the rights that he has informally inherited from his political ancestors, Saxon or German freemen—specifically, the right to do as he pleases without considering any interests except his own."¹⁴ The freemen were the most commonly found people in early Teutonic society, and they usually followed no religious or political authority, but handled their own affairs independently. In this tradition, Hargrove

¹³ Tully, *A Discourse on Property*, p. 124.

¹⁴ Eugene C. Hargrove, *Foundations of Environmental Ethics* (Denton, Tex.: Environmental Ethics Books, 1989), p. 55.

asserts that land was held rather than owned on freehold farmsteads. Possession of these lands would change hands regularly, as freemen moved about the land to establish new farmsteads and Germanic expansion across Europe continued.

Some have argued that Teutonic farmsteading was an early form of community ownership of land because the farmsteads were not bounded and possessed in a conventional sense. Historian Denman Ross states,

It is often argued that because there were no fixed limits, no boundaries, to individual holdings, the land must have been owned collectively or communalistically. It is said that the statements of Caesar go to prove the existence of community of land; *Feldgemeinschaft*, the Germans call it. The argument is inconclusive. The absence of fixed limits and boundaries proves simply that the land was undivided property; it does not prove that it was common property.¹⁵

Ross asserts that the Teutonic house community was not the equivalent of communal living, because despite the common use of the property and its resources, there was an independent titleholder who oversaw all aspects of the farmstead. As he characterizes it, there was "unity of possession, diversity of title."¹⁶

The argument came into fashion that the area of borderland that separated one settlement from another, referred to as "the mark" was communally owned because no one staked an independent claim to that land.¹⁷ However, these lands were eventually put to independent use as well. The most dramatic shift in land holding among freemen

¹⁵ Denman W. Ross, *The Early History of Land-Holding Among the Germans* (Boston: Soule and Bugbee, 1883), p. 17.

¹⁶ *Ibid.*, p. 161.

¹⁷ Enoch A. Bryan, in *The Mark in Europe and America: A Review of the Discussion on Early Land Tenure*, Boston: Ginn and Company, 1893), analyzes the arguments in support of this theory and claims that they correspond to the view that all cultures pass through a period of communal land ownership, which he argues is false. He says these arguments were developed to give a democratic basis to property.

came about as a result of scarcity of land and resources, and the problem of inheritance.

Hargrove details the shift from the multiplication of land holdings of heirs to the division of land. During this period the practice of primogeniture, or passing one's holdings on to the oldest male offspring, arose. This system of inheritance resulted in a disparity in controlling the means of sustenance from one sibling to the others. Poverty increased, and the feudal system emerged as a result of people needing the protections and resources the powerful land estates could provide.

The feudal system spread to England much later than it spread through Europe, but it arrived much more abruptly. The freemen in England continued their independent lifestyle as a resistance to the imposition of feudalism following the Norman conquest. It was only in 1660, however, that the institution of land ownership became official in England, by the Act of Indemnity and Oblivion.¹⁸ This ordered the abolishment of feudal dues and set up a system of taxation.

Hargrove draws a parallel with the county courts in feudal England and those courts common in the contemporary United States. They are characterized by being informal, and that local landowners take part in decision-making. Individual authority over personal affairs predominates. Another parallel Hargrove draws between land ownership in present-day America and the period in which Germanic people began dividing their holdings is the issue of land scarcity.

In the late eighteenth century and during most of the nineteenth, American rural landowners led a way of life much like that of prefeudal German freemen; now

¹⁸ Walter Phelps Hall, et al., *A History of England* (Boston: Ginn, 1961).

modern landowners face the same limitations their freeman ancestors did as feudal conditions began to develop.¹⁹

With an increased scarcity of land and resources, the question of how the individual landowner fits into the wider community becomes crucial. Issues of what land use fits with neighboring land uses or is acceptable with respect to definitions of public good are questions modern-day landowners are increasingly facing, and being called upon to be accountable for, as will be discussed in chapter two.

Private Property in Early American Practice

Land use in early colonial America was greatly influenced by the way the land was originally settled. It was characterized from the beginning by economic interest in the value of the land by wealthy individuals. The early colonial speculators were in fierce competition to offer incentives for settlers while trying to make a profit by charging them annual quitrents. Quitrents were rent payments made by a freeman in lieu of the services required by feudal custom. In order to ensure settlers would come to New England, the "economic considerations were temporarily subordinated to a methodical occupation of the land."²⁰ Large arable fields of several hundred acres each surrounded by a common fence characterized this methodical plan. The common field was then divided into smaller lots granted to individual families for farming. Expansion occurred when groups of families petitioned to purchase tracts outside the original boundaries.

¹⁹ Hargrove, *Foundations of Environmental Ethics*, p. 57.

²⁰ Joseph M. Petulla, *American Environmental History* (San Francisco: Boyd and Fraser, 1977), p. 28.

The mid-Atlantic region can be contrasted with New England by its proprietorship method of land settlement and distribution. Individual proprietors were granted large tracts of land by the king. One such proprietor was William Penn, who introduced the practice of selling land for income. He sold more than 300,000 acres in addition to receiving quitrents. There were many problems with quitrents, including late payment, avoidance of payment, and outright refusal to pay. It was largely an unreliable source of income and was primarily a symbolic gesture based on a feudal practice. In this region, "the proprietary system fostered an individualistic, random type of settlement in the Middle colonies. Farms and plantations followed rivers and streams and neighbors were rarely interested in forming an intentional community."²¹

A similar settlement pattern occurred in the south, where proprietorships abounded for tobacco plantations. The headright system was used and ensured that land was granted to those who could pay their own way to the colony. A headright was a land grant based on an individual investment in passage to the colony. Immigrant colonists were given one headright of fifty acres. Additionally, individuals would receive one headright each time they paid for the passage of another individual. This last mechanism increased the division between the wealthy landowners and the working poor.

As a counter to the British claim that all land in America belonged to the crown, early architects of the *American Declaration of Independence*, such as Thomas Jefferson, defended the rights of the colonists, claiming that they came to the colonies

²¹ Ibid., p. 29.

as freemen, and had earned their right to the land they held through their labor rather than any grants by the king. Jefferson embraced the property theory of Locke when he argued for the practice of the Saxon tradition of landholding in America. He favored allodial rights to property for all individuals, which meant that the land was “held in absolute dominion without obligation to a superior.”²²

When the Constitution of the United States of America was composed, it was without any explicit mention of the issue of land ownership, or the rights and responsibilities of individual citizens regarding the land, or the government’s involvement in regulating land use. This omission was largely due to the founders’ desire to avoid a strong centralized government. The Revolutionary War had overturned one such regime, and they were not eager to recreate it. To the new federal government, land regulation was a strictly private and local matter.

When the Fifth Amendment to the Constitution was ratified on 15 December, 1791 within the Bill of Rights, it established that no citizen shall be deprived of property “without due process of law; nor shall private property be taken for public use, without just compensation.”²³ It is interesting to note that there is a notion of public use of land. However, it is private interest that is clearly established and defended by this provision.

The idea of publicly held land was pronounced during a period from the 1780s to 1850’s when the federal government acquired several million acres of land. By 1867, with the addition of Alaska, it had acquired 2.3 billion acres, primarily through state cessions, treaties with Indian nations, and the purchase of land from foreign countries.

²² Hargrove, *Foundations of Environmental Ethics*, p. 58.

²³ The Constitution of the United States of America.

The U.S. government then began to sell off its land holdings to private citizens after it had been acquired.

Donald Worster, an environmental historian, has discussed two principles that were influential in the ideological framework of land in early American history.²⁴ One is that in order to avoid the corruption and excesses of Great Britain, the land ought to be owned by as many people as possible. The second is that the land itself and the products of the land ought to be commodified on an open market because they would supply a great boon to the new economy. He distills these into the freedom principle and the economic principle, and argues that they are inevitably in conflict. He says that they not only apply at the level of federal government, but also are experienced on a personal level as well. On the personal level, the value of privacy conflicts with the interest of capitalistic pursuits. For example, I may choose to be isolative and self-sufficient in my land use and ownership, but in so doing, I miss opportunities for making money from the land that require frequent contact with other people.

The sale of land holdings to private citizens by the U.S. government in the mid to late 1800's supplied a great economic benefit to the country by maximizing the productivity of the landscape. However, the production had damaging effects on the plant and animal life supported by the land, and it restricted free and equal access to land. The conservation movement arose out of a desire to uphold communitarian values, and public interest in land. In 1872, Yellowstone National Park was established as a permanently public property.

²⁴ Donald Worster, *The Wealth of Nature: Environmental History and the Ecological Imagination* (Oxford: Oxford University Press, 1993), p. 99.

Worster cites two revolutions in conservation. The first is that in the preservation of public lands, the American commons was invented. The second he calls the “ecologizing” of land use in America, and says that it has been applied to public and private lands alike. “More and more, we have begun to look at the land not merely as a storehouse of economic resources but as an interconnected, interdependent community of living organisms on which our survival depends.”²⁵

Worster views the conservation movement as turning American values away from an atomized, liberal state of autonomy and to a collective sense of shared responsibility and benefit. The ecological model of interdependency is closely tied to what is known as the “land ethic” introduced by Aldo Leopold. For Leopold, this ethic emerged out of a personal contact and direct accountability to the land and its inhabitants. Leopold was critical of some aspects of public land management, namely whether it could be efficiently managed from a top down bureaucratic approach rather than a private, intimate approach.²⁶

Worster argues that it seems implausible to cultivate a land ethic within the current system of private land ownership. He questions the possibility of developing broad moral concepts within the institution of private property that generates self-interest. He says that landowners can only develop these ideals “by becoming *bad* property owners. Once a farmer or rancher has put other values ahead of acquiring personal wealth, he or she has ceased to have good reason for exclusive, sovereign

²⁵ Worster, *Wealth of Nature*, p. 107.

²⁶ Aldo Leopold, “The Land Ethic,” *A Sand County Almanac, and Sketches Here and There* (New York: Oxford University Press, 1949). This is a key point which will be examined further in chap. 3.

ownership. Private deeds and private fences can simply get in the way of the land ethic."²⁷

Worster suggests that communally owned ranches and farms are the only way people will think cooperatively about society and nature. This argument appears to be simplistic in reducing the capacity for moral judgment to being generated without thought and merely to affirm an existent state of affairs. I argue that communal values are consistent with private property ownership, particularly when ownership is conceived as a tenureship on the land, and that currently many land preservation trusts in America focus on preserving privately held land in perpetuity.

Furthermore, the sharp division between privately and publicly held lands is somewhat illusory, as I argue in chapter two. I do not think that federally held public lands are the answer to land preservation for the future. The bureaucratic protections afforded by the federal government and regulations must be tempered by local influences over the land to enact decision making consistent with the land ethic.

²⁷ Worster, *Wealth of Nature*, p. 109.

CHAPTER II

PROPERTY OWNERSHIP AND THE LAND USE DUALISM: PUBLIC AND PRIVATE

Perceived Heritage of Private Property

Private property is an institution that has developed over time and undergone many changes. Accounts of land use from the 1800s, when private property drew close attention from historians and anthropologists, viewed private property as a system that evolved “naturally over time in a distinct, predictable way from rights held by people in common to rights that [gave] extensive, exclusive powers to individuals.”²⁸

This view supported the belief that individual property ownership was a state of order for society that emerged from increased economic flourishing and more sophisticated social practices. It was assumed that property ownership was a teleological end state for advanced societies and provided the greatest fulfillment for individuals within society.

By the early 1900s, new scholarship concluded, “in terms of property’s beginnings, no instance could be found in any society, including tribes embracing Stone Age economies, in which private ownership was entirely absent.”²⁹

A primary argument of this paper is that there is a conflict between the perceived heritage of property rights among many land holders and the historical foundations and practices through which the current system emerged. One assumption made in the classical conception is that private property rights are a static tradition and

²⁸ Eric Freyfogle, *The Land We Share: Private Property and the Public Good* (Washington: Island Press, 2003), p. 44.

²⁹ Ibid.

that the practices of the current generation of landowners follow from a uniform right to the land which has been consistent throughout its history of ownership. Another assumption is that the purpose of private property is individual freedom, and that this freedom entails the right to do what one wishes with what is owned. A third assumption is that when one owns land, one also holds a right to all aspects of that land and should have absolute authority regarding decisions made on that property.

The popular cultural attitude about land ownership that is pervasive in the twenty-first century United States is one in which there is a dualistic separation between public and private spheres of concern, and that private property is a strictly private interest. Issues such as limited natural resources and habitat fragmentation point to areas in which what occurs on private land has vast implications for the wider land community. What happens on private property is absolutely vital for the future of conservation efforts, and it is of great importance to interpret what it means to own land, and the responsibilities as well as rights which are entailed.

When the history of private property ownership in the United States is examined carefully, it is revealed to be a dynamic unfolding institution which changes to better serve a concept of public good. In addition, few lands can be said to be altogether public or private, but rather are increasingly understood to be held by a combination of ownership interests. Furthermore, there are many interests which are often vested in the decisions made on individual land parcels, and a fundamental moral question is involved when considering the legitimacy and scope of the interests of others in land.

Public and Private Land Use and the Logic of Dualism

Ecofeminist philosopher Val Plumwood provides a detailed analysis of dualistic relationships, their development, and consequences.³⁰ Dualisms are characterized by sharp distinctions between an included privileged concept or entity and one that is excluded as other and inferior. Dualisms are closed systems in which one end of a polarity is prioritized and justified as dominant over the other, and this “results from a certain kind of denied dependency on a subordinated other.”³¹ The logical structure of dualism arises from the relationship as it is constructed between these two ideas conceived as opposites. Plumwood finds that dualisms are “closely associated with domination and accumulation, and are their major cultural expressions and justifications.”³²

The culture/nature opposition is one of the primary dualisms that keeps taking new forms throughout history, and to understand it requires consideration of the logical system of dualism. Plumwood presents a list of similarly connected dualistic relationships, associating them loosely. These include culture/nature, male/female, self/other, mind/body, and reason/matter. Linking postulates are assumptions implicit in the cultural background which lead from one dualized pair to another.

Plumwood asserts that the dualistic relation of public/private realms is linked to the rationality/nature split.

³⁰ Val Plumwood, *Feminism and the Mastery of Nature* (New York: Routledge, 1997).

³¹ *Ibid.*, p. 41.

³² *Ibid.*, p. 42.

... the sphere of the public is linked with reason via the qualities of freedom, universality and rationality which are supposedly constitutive of masculinity and the public sphere, and connects that of the private with nature via the qualities of dailiness, necessity, particularity and emotionality supposedly exemplified in and constitutive of femininity and the private sphere.³³

I think that Plumwood's linkage is historically relevant when considering the public and private spheres of life in discourse and concern with the domestic duties of everyday life—the former have been associated with masculine and the latter feminine aspects. However, I make a connection that, in light of the cultural dominance of individualism and concern with rights, the institution of private property belongs to the sphere of the rational or cultural and the landscape as a whole is the marginalized other. It follows from a landowner/land as property dualism to assert that the bounded private property would be valued above the wider landscape and separated from it by various conceptual means.

The features that characterize dualisms include a denial of dependency, hyper-separation of poles, incorporation, instrumentalization and homogenation of the marginalized other. When considering the denial of dependency with respect to the land, in Locke's view it has been understood as mere waste until mixed with human labor to provide utility. The dominance of social and civil matters in much legislative discourse, and the absence of recognition of the ecological framework demonstrate that many view nature apart from culture, and deny the dependence on nature for the survival of culture. The hyper-separation between two poles denies the continuity between them, but it is more than simply making a distinction between two things,

³³ Ibid., p. 45.

such as private property from public land. In dualistic structures, there is no room for overlap between the two boundaries. In terms both of ownership, and the ecological quality of the land itself, my argument is that there is a grounding of continuity between public and private land.

Incorporation involves giving a definition to the inferiorized other only in relation to the superior. The other is defined as exhibiting a dearth of the qualities that are valuable and prized in the superior. Again, Locke's view that property was created only in relation to human labor, and that before nature was considered to be inert is a way of defining nature negatively, as a lacking the valuable qualities of human improvement. Plumwood asserts that the urgency to incorporate the other is because its "unassimilated otherness" poses a threat to the security of the superior. "The other is recognized only to the extent that it is assimilated to the self, or incorporated into the self and its systems of desires and needs: only as colonized by the self."³⁴

Instrumentalization and colonization are closely related with respect to the classical or traditional conception of the relationship between culture and the land. Land is often viewed as only a means to the ends of human support and survival, and it is seen as useless before it is inhabited or otherwise developed by culture.

Hybrid forms of land use, which are presented in chapter two, demonstrate potential interdependencies between the public and private realms of land use, and historical precedents for those relationships. These interdependencies reveal the institution of private property to be flexible and changing to meet the concepts of social

³⁴ Ibid., p. 52.

welfare, rather than to strictly serve the individual's concept of rights. The land ethic, which is examined in chapter three, provides one source of resistance to the problems that the dualisms between public/private land use and individual welfare/social welfare present. The land ethic resists hyper-separation because of its emphasis on a holistic ecological model. It also resists instrumentalization of the land by considering the possibility that the land and its nonhuman inhabitants may be their own source of value, which ought to be recognized in their own right, rather than merely of use to humans.

The Individual Land Owner's Rights

Despite the contention of many landowners that they possess absolute ownership of their property, there is an interesting reciprocity between all landowners that illustrates the illogic of this claim. The rights of one landowner are necessarily constrained by the rights of neighbors. This is to say that land ownership provides more than the right to put land to use; it also includes the right to complain when other landowners interfere with an individual's quiet enjoyment of his or her private property.

If a system existed in which one person possessed absolute power to do as he or she wished with his or her land, fairness would require that all other landowners would possess the same right. In this scenario, no one would have the right to contest another's usage. The converse of this possibility would be a system in which each individual could halt any land use which he or she found even slightly disruptive to his or her own activities. In this case, neighbors would also possess the right to stop the

land use activities of the individual in our example, and ownership powers would be strictly limited. In these examples, it is evident that neither scenario is consistent with land use as it is generally understood. Both are very different than our normal understanding of rights to private property, and yet, they both have similarly restrictive results. Land use as it is practiced in the United States is a blending of the two approaches, a middle ground on the continuum of extremely autonomous to extremely restricted property rights.

The preceding examples illustrate an important point about governmental regulation of private property rights. Oftentimes when one private property interest loses in a legal battle that results in the restriction of their property usage, the property rights of a neighboring interest are upheld. Nuisance law provides a forum for disputing any activities in which a property owner's land usage results in substantial, unreasonable harm on neighbors. As Freyfogle states, "a world where landowners can do as they please is a world in which property rights are in fact tenuous."³⁵

One example which Freyfogle cites is the proposed construction of a Confined Animal Feeding Operation (CAFO) by landowners on 960 acres of farmland in Iowa. Proponents sought an agricultural area designation to provide legal protection to support the operation, which would house thousands of animals in an intensively used facility. The designation was provided by the county board and two neighboring families filed suit to have the designation removed. The neighbors believed that such an intensive land use would interfere with their own enjoyment of property and have an

³⁵ Ibid., p. 18.

adverse affect on their property values. The agricultural area designation would prevent the neighbors, the Bormann and McGuire families, from utilizing nuisance law to complain about any odors, waste problems, or pests resulting from the CAFO operation. The families argued that they should either be compensated for the taking of their legal rights to enjoy their property, or the designation should be removed.

The Iowa Supreme Court resolved the dispute by upholding the families' claim and removing the agricultural area designation that would have made the CAFO immune to lawsuit under nuisance law. In this case, by finding in favor of the neighboring families, the court's decision was neither pro- nor anti-private property rights. Instead, the regulation upheld the private property interests of one group of landowners at the expense of the landowners who wanted to construct the CAFO. The court recognized the value of the right to complain and file suit about disruptive land use outweighed the economic value of following a specific development plan for intensive land use. This is an important point because private property rights are often used as a rallying point against government influence. Industries and developers often use a defense of private property rights to relieve themselves of regulatory influences.

Individual Rights and the Common Good

During the rise of industry during the late 1800s in America, there was also a rise of individualistic values. At this time, corporations were given the same rights granted to individual persons. Legal rulings made a sharp distinction between the private and public spheres of life. As Freyfogle observes, "This conceptual separation led to an

awkward division of the various laws that combined to prescribe what landowners could and could not do."³⁶ On one side, the Constitutional rights were seen as guarantors of private autonomy, while on the other, government regulations were viewed as interfering with private interests.

Freyfogle argues that this situation had the unfortunate result of extricating individual rights from the context of promoting a social good. During this process, "the mutual reliance of individual and community would decline, and liberty would be seen more as immunity from governmental interference and less as freedom to engage with other community members in collective self-governance."³⁷ The autonomy celebrated in this instance is a freedom from harm or intrusion, or a negative freedom. This negative freedom is in contrast to the freedom to do something, a positive liberty.

With the dualistic separation of private and public spheres, private property became disconnected from the pursuit of virtue and public service, and more of an institution to protect privacy and economic security. As private separation from public influence increasingly took the form of independence from government, the belief began to become strengthened that private property was a natural right as Locke had asserted that had not been created by law. Law in the form of state and federal governance began to be viewed as something which invaded rather than protected individual rights.

³⁶ Ibid., p. 80.

³⁷ Ibid., p. 81.

Mediating Public and Private Interests in Land

Several issues are involved in the property rights controversies that have emerged in the system of property ownership practiced in the United States. One is the question of property regulation by the federal government, specifically the question of whether uncompensated "takings" of property from landowners ought to be allowed under the provisions laid down in the Constitution. Another important issue is the question of the ethics of ownership. This area of consideration involves fundamental questions about the tension between society and the individual and the public and private spheres of concern.

Even though many private property rights activists claim their rights against the backdrop of what they perceive to be enlarged federal control, a sharp distinction between private rights and public control with respect to property in land is neither useful nor accurate. A more meaningful way to categorize public and private rights is as a continuum rather than a dualistic separation, or an either/or situation. Many current policy analysts have observed that "private rights are no longer exclusively private nor are public rights exclusively public."³⁸

The individual property owner has historically been given the following property entitlements: the privilege to use property, the right to exclude non-owners, freedom from nonconsensual harm or loss, and the power to transfer property to successors. As a result, Americans have understood property as a bundle of rights residing in one individual landowner. However, this understanding has increasingly been shown to be

³⁸ Charles Geisler and Gail Daneker, eds., *Property and Values: Alternatives to Public and Private Ownership* (Washington, D.C.: Island Press, 2000), p. xiii.

an outmoded view of land ownership. Instead, it is often the case that a community or public group holds some of the rights, while the titleholder holds other rights to the land. The rights are separable from one another as opposed to a singular mass or an all-or-nothing form of ownership.

Models for property that combine the best aspects of public and private ownership are currently flourishing. The new models take into account not only the way in which public policy changes affect the individual landowner's rights and responsibilities, but also the value the individual landowners may provide to the community they live in. These hybrid forms of land use are often referred to as "third sector" property. They share the following characteristics:

1. Ownership of land is neither public nor private; ownership rights are shared among multiple interests.
2. The primary function of property is not to increase the wealth of an individual, but to meet broadly defined needs on social and individual levels.
3. To preserve affordability, access, and distributive social justice, the property is price-restricted.
4. Local control over property is primary.
5. The decentralized system of ownership prevails so long as civil liberties are respected.

This property system focuses on limiting the economic values of land use so that social values may be promoted. It prohibits a system of monopoly ownership of land, wherein power and decision-making are in the hands of a few. It seems that any promise this system may have for recognizing and considering non-anthropocentric values stems from a moral extension from the human social community to the land

community as a whole. In order to promote the preservation of open space, natural areas, and ecological integrity within this hybrid system of ownership, the local populace has to deem those to be fundamental priorities for its community.

The community has to establish standards for ecological health that all landowners who reside there would be required to uphold. For example, these may include prohibitive provisions against pollution and invasive species, and positive requirements to provide wildlife cover or stream-bank fencing to control erosion. However, the community first needs to recognize a specific value, and then associate a specific practice with the promotion of that value. Whether this approach is more or less likely in a hybrid model of ownership remains to be seen. However, it seems that the debate between public and private interests needs to be more inclusive of nonhuman interests as well.

Joseph William Singer critiques the traditional property concept, because it makes the conservation and use of land problematic and troublesome. Singer defines the following features which characterize this traditional notion of property:

1. A particular person is identified as the owner, regardless of where property rights reside.
2. An assumption exists that rights go together and must be held by a single owner.
3. A moral prescription is created wherein the owner ought to be immune from nonconsensual loss or harm, and any restriction of these rights is viewed to be unconstitutional and immoral.
4. A presumption exists that these rights can be sold, changed, or transferred in the open market and that non-alienable interests do not count as property rights.³⁹

³⁹ Joseph William Singer, "Property and Social Relations: From Title to Entitlement," in *Property and Values: Alternatives to Public and Private Ownership* (Washington, D.C.: Island Press, 2000).

Singer wants to replace the single-owner concept with property “as a social system composed of entitlements which shape and are shaped by social relationships.”⁴⁰ In the classic concept, the private landowner had permanent title to resources with full power over what was contained within rigidly defined spatial boundaries. Any regulation or restriction applied to this right was viewed as an alteration to this preexistent baseline right of ownership. This system promoted a sense of autonomy, security and privacy for the landowner, but it was descriptively inaccurate and normatively flawed. As Singer observes, “vastly oversimplifying both the kinds of property rights that exist and the rules governing the exercise of those rights ... distorts moral judgment by hiding from conscious relevant moral choices about alternative possible property regimes.”⁴¹

There are several instances that demonstrate the problem of describing land ownership in the classical sense of one titleholder. In cases where there is a mortgage and the bank has a lien on a property, where there is a divorce, or where a corporation exists, the possessor of the title is not completely clear. In other cases, where a titleholder is clearly defined, there are often disputes that arise between two titleholders. Many disputes arise between neighbors regarding land use. These are often resolved through nuisance law and rules regarding specific types of interests.

In nuisance law, a moral question often arises about who possesses the burden of proof. When non-owners lodge a complaint against titleholders, they have to establish that they do in fact have rights to the land that is owned by another person.

⁴⁰ Ibid., p. 4.

⁴¹ Ibid., p. 5.

They are required to do so because the classical definition of property often prevails in local courts, and the landowner is not required to provide justification for the harmful effects of his or her land use practices. Singer points out that what is required is an adjustment in the relationship of the non-owners and the titleholder, and a revised perspective of the relationship of non-owners to the land in which they have legitimate interests.⁴²

In practice, property owners' rights are often limited to promote the interests of non-owners, or other property owners. An example that Singer uses is that a business does not have the right to exclude a patron on the basis of race. The right to exclude non-owners is the most fundamental right associated with property, but it does not apply in this case. An example of private property rights restrictions for individual landowners occurs in most American housing subdivisions. Many people favor restrictions on their neighbor's private property rights and will obey covenants that greatly restrict their own land use options just to ensure that their neighborhood will be free from undesirable nuisances.

Singer claims that because property owners' rights must be so frequently restricted, it reveals a morally objectionable quality of the traditional concept of property.

The ownership model of property utterly fails to incorporate an understanding of property rights as inherently limited both by the property rights of others and by public policies designed to ensure that property rights are exercised in a manner compatible with the public good.⁴³

⁴² Ibid., p. 16.

⁴³ Ibid., p. 7.

The presumption that the traditional model ensures autonomy for the owner leads to a feeling of mistrust in governmental regulation of property rights and the perception that when this occurs, something is unfairly being taken away from the property owner. Furthermore, it cannot articulate conflicts between property owners. "Public accommodation laws appear to limit and interfere with property rights in order to promote equality. To justify them, we must explain why equality as a value justifies taking or interfering with established property rights."⁴⁴ In the new model, businesses are understood by virtue of their public nature to have already transferred some of their rights in property to the public at large.

Singer does not discuss how moral questions should be codified or expressed in public policy; rather, he points out that they are traditionally lacking in the currently held concept of property and the laws which regulate it. He says that the ownership model of property "has no vocabulary for describing or expressing certain types of property use as themselves [to be] inherently suspect."⁴⁵ Property rights are, as Singer argues, both contingent and contextual. They do not exist independently of social influences which justify them and establish their usefulness to communities, and society as a whole. However, many property rights advocates ignore this dependence of property rights justifications upon a perceived social benefit. They uphold the classical model of land ownership refuted by Singer.

⁴⁴ Ibid.

⁴⁵ Ibid.

Justifications of Private Property Ownership

To understand the views of property rights advocates, it is helpful to consider ways in which ownership of private property has been supported. Freyfogle identifies four arguments which have been used to defend the power that individual landowners possess in America.

(1) One is a "first in time" argument, which holds that whomever is the first to seize a parcel of land or resource on that land is its rightful owner. This argument is the weakest of the three justifications because it relies on simple happenstance to provide its legal and moral grounding. It requires the recognition of society to uphold the property holder's claim. This argument has been historically honored in the United States in a few cases, most notably as an incentive to produce some social benefit, such as railway construction in the 1800s.

(2) The second is the labor theory of defending property ownership, as put forward by Locke, which is discussed in chapter one of this paper. The "Lockean proviso," as it has been called, states that the basis for ownership is that once a laborer removes the raw materials and finished product of their labor from the common resource pool, there remains "enough and as good" of the same kind of resource for others to use in the same way. As Freyfogle puts it, "Only when a resource is essentially inexhaustible in supply does the labor theory apply."⁴⁶

Social reformers used part of the labor theory to argue for general access for all to the sources of wealth. They called into question the legitimacy of massive

⁴⁶ Ibid., p. 112.

landholdings and the powers of industrial owners. During this time, the labor theory was abandoned by defenders of industry, who had formerly used it to justify broad private powers, and the rights to the fruits of their labor. When labor occurred on a larger scale, it became less of a justifiable position for factory owners to claim rights to what was produced by others.

One of the problems with the labor theory is the inability for it to adapt to the scarcity of resources that exists when multiple interests are placing demands on the system. Few resources are so abundant that they have no value when removed from the common pool, and it is only when resources are so abundant that their utilization is ethically permissible. Additionally, this theory cannot deal with the problem of non-renewable resources. Conservation is not necessary because of the assumption of superabundance and replenishment of resources. Because harmful results of resource and land use are unanticipated, the labor theory makes no provisions for those who damage the common fund of resources to make restitution.

An underlying assumption of the labor theory is that use of resources is always better than non-use. When colonists settled the United States, Indian lands were often seized because their less intensive forms of land use appeared to the settlers to be non-use. As discussed here in the section on dualistic relationships, the lands that were unused were assumed to possess no value.

(3) A third justification of private property ownership is the personality theory. This theory states that owning land enhances the personal development of the property owner. To promote maximal flourishing of human potential, the argument is that land

should be owned. The land is seen as an extension of the owner's identity. However, the question of which people are permitted to thrive in this manner, and which ones will be deprived raises significant moral problems. This theory does not stand alone to justify the possession of private property.

(4) A fourth theory, which Freyfogle endorses as the strongest view, is aggregate social utility. This is the theory that "private property exists and is legitimate because of the overall utility it generates for society as a whole."⁴⁷ This theory provides a utilitarian justification of property ownership. Property ownership is not an intrinsic or natural value, but its worth comes instrumentally by virtue of the results.

The strengths of this theory are that it is able to be flexible and change with the needs of society; there are neither strict rules to be applied nor limits on what may be owned and what is excluded from ownership, such as Locke's theory entails. During the beginnings of the industrial period, when social goals were defined as an expanding economy and industrial progress, the courts used a form of aggregate social utility to support industrial interests at the expense of other landowners' right to complain. This focus on social goals makes short-term harms acceptable and intensive land use allowable.

Weaknesses with this theory include the question of how to identify the "greatest aggregate good" and incorporate it into policy decisions. It is a complex task to consider, and even if it could be accurately assessed, it is questionable how non-human interests would factor into this equation. The greatest good calculation would be

⁴⁷ Ibid., p. 118.

applied to meet wide reaching social needs, rather than a public opinion poll that summarizes what each person desires. Therefore, standards for judging the best social goals are crucial, and this theory does not provide guidelines for determining what they ought to be. In practice, market measures are the most often relied upon indicators of social flourishing. However, there are many values that are not measurable on the market, and they are often excluded from such analyses.

Elements of Ownership: Heritage and Legacy

Privately owned land in America currently is viewed primarily as a market commodity, wherein the best use is often identified as what will earn the greatest return. When considering the land as a sustaining ground for all human activities in light of rapid increases in population and development, an important question arises. The question is how ownership of land fits with multiple values that are beyond economic consideration, and how those may be accommodated.

Freyfogle has identified several aspects applicable to the legal and moral traditions that have shaped land ownership in the United States. These traditions are often marginalized or ignored when individual property rights advocates argue for freedom from governmental influence and regulation, but they form an important heritage of what it means to own land, and the purposes it serves.

1. Landowners have an obligation above all to refrain from activities that are harmful to the public. This provision is known in legal terms as *sic utere tuo*.
2. One owner's property rights are commonly limited by the existence of rights held by others to use or limit the owner's use of their land.

3. Private land ownership is a contested concept, subject to change over time.
4. Ownership of land is a profoundly powerful position that must be considered in a moral sense and justified philosophically.

Decisions affecting the land have much farther-reaching effects than the scope of a human life, or even several generations of human life. Therefore, land ownership belongs in a prioritized category of ethical concern. The consideration of private property strictly in the realm of legal discourse and public policy is clearly an anthropocentric and perhaps human-limited project. However, certain trends within it hold promise for the broader understanding of humans as plain citizens of the biotic community as well. Particularly, if the private control of an individual landowner can be broadened to accommodate multiple interests or stakeholders whose interests are taken into consideration for decision-making regarding the land, perhaps the integrity of the surrounding biotic community may be considered as well.

Two questions, which pertain to the ethical consideration of landownership that will be discussed in chapter three, are, "What is a legacy?" and "What persists over time?" Many people view the idea of legacy as passing on what has been accumulated to their heirs. Many people restrict themselves only to the world of human concerns, rules and regulations, yet, they often have the desire to belong to something greater. Perhaps thinking of some large, abstract biotic community is too far removed to conceive of belonging to. What if we simply thought of our heirs as everything that we come in contact with? The expansive sycamore which shades us every afternoon, the wildflowers blooming each summer, the frogs on the stream bank which runs through our property, and the owl we hear each night, won't all of these remain after we are

gone? Don't they warrant some of our consideration? If we are of a mind to consider these nonhuman others and the place they inhabit as part of our legacy, perhaps we will understand too that our human heirs and neighbors have the potential to value the land as we do, as more than something which is of value on the open market, but as something with natural heritage value as well.

CHAPTER III

THE ETHICS OF OWNERSHIP

Boundaries and Sense of Place: Henry David Thoreau's "Walking"

In his essay "Walking," Henry David Thoreau articulates a sense of experiencing space that is rooted in a perception of his surroundings on a wide scale, rather than as a series of small, independently owned parcels. To be able to encounter an area as he describes requires that one surrender conventional notions of the constraints established by humanly imposed boundaries.

For Thoreau, walking is a practice that has the potential to engage one with the landscape, and reveal the groundedness of the human condition, which is "as an inhabitant, or a part of parcel and Nature, rather than a member of society."⁴⁸ He connects this practice with his distinction between culture and nature in terms of freedom. Nature is "absolute freedom and wildness, as contrasted with a freedom and culture merely civil."⁴⁹ The civil freedom that pertains to land involves private property rights, and is defined as a "negative" freedom because it is a freedom from interference and trespass. A freedom that focuses on limitations and restrictions to the behaviors of others is very different than the "positive" freedom represented by the openness of being in the natural world.

Thoreau discusses the freedom that comes from being a walker: being disburdened of one's ordinary concerns and rigid concepts of self and external

⁴⁸ Henry David Thoreau, "Walking," *Civil Disobedience and Other Essays* (New York: Dover Publications, 1993), p. 49.

⁴⁹ *Ibid.*

boundaries to make way for a practice that is liberating and revelatory of Being. Those who are able to walk and experience place in this way are true saunterers or, as he defines it in part, those who have “no particular home, but [are] equally at home everywhere.”⁵⁰ Even though there is a freedom to make one’s home in any place, there is also an intimate knowledge and description of the land and its inhabitants.

Experience of place free of humanly imposed boundaries avoids the homogenizing effect that wide scale intensive commodification and development can have on communities.

For Thoreau, humanity belongs to Nature in an enduring and irrevocable way, despite what political conventions exist regulating land use. He finds great joy in the absence of human influence he sees in the landscape, as the wildness he sees reflected in the landscape allows him his requisite freedom to saunter. Thoreau points out that

... almost all man’s improvements, so called, as the building of houses, and the cutting down of the forest and of all large trees, simply deform the landscape and make it more tame and cheap. A people who would begin by burning the fences and let the forest stand! I saw the fences half consumed, their ends lost in the middle of the prairie, and some worldly miser with a surveyor looking after his bounds, while heaven had taken place around him, and he did not see the angels going to and fro, but was looking for an old post-hole in the midst of paradise.⁵¹

The boundaries here serve only to destroy the continuity and beauty of the land, and those who attend to them at the expense of the surrounding integrity of the landscape are, for Thoreau, committing profanity and turning away from the heaven

⁵⁰ Ibid., p. 49.

⁵¹ Ibid., p. 53.

that is the natural world. He argues that human spheres of influence should properly refrain from taking up space in the natural world.

Gary Snyder has discussed the significance of experiencing place as an extension of the development of oneself and identity.⁵² He says that we all carry with us a map of the terrains we have explored on foot early in our lives. This is an argument for access to land which rests on similar grounds as Freyfogle's "personality theory" to justify land ownership from chapter one. In order to cultivate a sense of interconnection and interdependence with the natural world, it is essential for human development to have the opportunity to walk.

Many landowners defend their right to exclude access to their property on the basis of past negative experiences with noise disturbances, poaching of wildlife, and wastes discarded by careless users of the land. Oftentimes, there is fear on the part of owners because they do not know these interlopers, and therefore cannot judge whether or not they pose a threat to their own security. However, some landowners recognize that their land has values other than what economic benefit they can reap from its use. As one landowner put it, when considering his own creek-front property and limited efforts to deter trespassers, "There's just something about the water ... people just want to be there, and I think it's pretty useless to try to stop them."⁵³ Implied in this view is the recognition that the private property rights of one owner often exclude non-owners from liberties which they might otherwise be free to enjoy.

⁵² Gary Snyder, "The Etiquette of Freedom," in *The Practice of the Wild* (San Francisco: North Point Press, 1990).

⁵³ Ken Staver, sheep farmer and educator, private conversation.

Snyder defines freedom in a way similar to Thoreau's expression of the autonomy afforded through walking. It is a positive definition, rather than an attempt to define freedom as freedom from harm. He says "To be truly free one must take on the basic conditions as they are—painful, impermanent, open, imperfect—and then be grateful for impermanence and the freedom it grants us. For in a fixed universe there would be no freedom."⁵⁴

Thoreau and Snyder both critique the market-value estimation of the worth of land because it is a profoundly reductive way of assessing the land. This is a crucial point about land ownership: land is so much more than an economically valuable source of profit, it is the grounding place which gives shape to ecological relationships and what happens on one parcel is interdependent with what happens on the next. And it is through meditative engagement with the landscape that humans may themselves come into a fuller sense of flourishing than would be possible by strictly limiting themselves to the world of civil concerns. Overconcern with the land as one's own possession deprives others from the chance to encounter and recognize other values that exist in the land. Furthermore, a reliance on economic value as the only value in the land and as providing stability discounts and ignores the impermanence of all things that Snyder discussed. An abundant reliance on possessions for measuring one's worth is characteristic of a refusal to accept the impermanence and change which is a fundamental character of existence. Despite the prevalence of this attitude as a cultural norm, it is not necessary that all landowners view their land as a possession in this

⁵⁴ Gary Snyder, "The Etiquette of Freedom," p. 5.

manner. It is therefore helpful to consider other models for the landowner and the wider community, beyond the boundaries which demarcate the property lines.

Boundaries and Community: Frost's "The Mending Wall"

Robert Frost's well-known poem "Mending Wall" raises the question of boundaries, and what they are capable of designating on the levels of nature, culture, and the interior world of the individual. In his essay, "Bounded People, Boundless Land,"⁵⁵ Freyfogle uses this poem as a point of departure for his own consideration of what is meant by the pivotal line of the poem, "Good fences make good neighbors."⁵⁶ The wall itself that is being repaired in the poem is a neighborly project with participation on both sides to fortify it. It is a boundary that is always in flux, and always being eroded by natural processes, which is why it requires this yearly maintenance.

The narrator of Frost's poem is unsure of his participation in this ritual. He expresses a dislike for the wall, and the arbitrary demarcation of land that doesn't seem to fit the landscape and the yearly wear and tear of natural processes. He seems to recognize the necessity for careful attention to why the wall is there, and what its wider implications are. "Before I built a wall I'd ask to know what I was walling in or walling out, And to whom I was like to give offence."⁵⁷

⁵⁵ Eric Freyfogle, "Bounded People, Boundless Land," in *Stewardship Across Boundaries*, ed. Richard Knight and Peter Landres (Covelo, Calif.: Island Press, 1998), pp.15-37.

⁵⁶ Robert Frost "Mending Wall" in *The Poetry of Robert Frost*, ed. Edward Lathem (New York: Holt, Rinehart and Winston, 1969), pp. 33-34.

⁵⁷ *Ibid.*, p. 33.

The purposes of applying boundaries to the land from the human perspective are several. Walls provide a delineation of mine from yours; they protect resources, and prevent trespass. In this way, they lend support to a neat and orderly efficiency among human relationships. Where borders are clearly drawn, there can be no question of what constitutes a harmonious existence with one's neighbors, and conversely what would indicate an aggressive or disrespectful relationship.

However, with respect to human relations, the question remains what is there left in common, or shared by all. If people are to conduct their business solitarily, within their own borderlines, the question of what sense of community can be maintained is worth consideration. In "Mending Wall," what is shared between neighbors is the wall itself and the act of its repair. And the natural processes are experienced by both neighbors, slowly dissolving the architectural boundary and necessitating this activity.

Boundaries are so steeped in the human psyche and traditional relations between people, that the narrator in Frost's poem, while he begins to point out some questions, he withholds from entering a speculative discourse about the good of the boundary, and instead pitches in with the repair.

This tradition of respecting and maintaining one's boundary lines sets the tone for private land ownership in America. Libertarian-influenced advocates for private property rights view the freedom to do as they wish with what is theirs as supreme, so long as it doesn't infringe on the rights of their neighbors. As Freyfogle comments,

“particularly in landscapes controlled by private landowners, the old grid mentality of separate land parcels retains a firm grip in American culture.”⁵⁸

Let us consider what a traditional landowner who holds a discrete parcel might consider to be his responsibilities that are the counterpart of his rights to do as he pleases with his land. To promote harmony with his neighbors, we can imagine our landowner ensuring that his garbage is disposed in a reasonable amount of time and that he has no standing sources of water to avoid mosquito proliferation. He is careful to keep his brush piles neat, so as not to create a fire hazard, and is vigilant about removing diseased animals or carcasses from his land. This is a very responsible landowner, and yet, the scope of his focus is very limited. His concern is with his immediate effects on his neighbors, not with how his parcel of land fits into integrity of the landscape as a whole.

There is a holism suggested by ecological principles that indicates the interdependence of living things, and the integrated fabric of life and the landscape which is not a collection of separate pieces. When this holism is taken seriously in the political sphere as well as the ecological, a community-based land management makes sense. A worthwhile goal to inform land use decisions is the concept of land health.⁵⁹

This concept, informed by both science and ethics, has continued to be developed as the state of our understanding of natural processes changes. It is a complex idea, which tries to take into account the dialectic between individual species

⁵⁸ Freyfogle, “Bounded People, Boundless Land,” p. 18.

⁵⁹ For a definition of land health, and a discussion of how private land holdings can contribute, see J. Baird Callicott “Aldo Leopold and the Foundations of Ecosystem Management,” *Journal of Forestry* 98, no. 5 (2000): 5-13.

and the system as a whole. When we consider land health as a desirable goal, we are challenged to resist thinking of the land or ecosystem based on our artifactual delineations as discrete parcels, or even as restricted by various political jurisdictions.

However, there are issues which must be considered in the practice of land management and stewardship and the system of land ownership as it exists.

Boundaries are very real entities to human communities and individuals, and perhaps it is by recognizing the need for their transcendence in particular instances and making sacrifices of their perceived rights of property that people may be more engaged in the process of fostering land health.

Freyfogle refers to Wendell Berry's essay "The Boundary" to present an outline of how private property ownership can be supportive of an intimate concern for land health and stewardship.⁶⁰ Berry argues that unless land is divided into manageable units, the possibility for personal knowledge and interaction will be excluded. His character in the essay, Mat Feltner, is approaching the end of his life and is reflecting on his lifelong history with his farm, how his family has lived and grown in working with the land over many generations. He also thinks about the boundary between life and death, and how he will be crossing it soon to join all of those he has known who have crossed it. He approaches a fence to make sure that it has been repaired by the younger farmhands, and finds that they have done a fine job. He thinks about how his land will be passing into capable, attentive hands. The land is the constant, while the community of people and others who dwell there is in constant flux over generations.

⁶⁰ Wendell Berry, "The Boundary," *That Distant Land: The Collected Stories* (Washington, D. C.: Shoemaker and Hoard, 2004), pp. 289-307.

What also remains are the remembered traditions that have endured. With respect to Mat's predecessors, "They are largely dead now, at rest on a hill not far away, yet Mat senses their presence beside him. Transcending death, they have retained their memberships in the local community. They remain present in the enduring memories of the living and in the communal wisdom that they nourished and passed down."⁶¹ Mat Feltner reflects on the concern that characterized his relationship to the land and community throughout his life, and how it connects him and his predecessors who gave all they had to working on the land. He recognizes that this is his way of belonging to a whole.

In Berry's view, land division is a favorable prospect. He interprets the meaning of the fence in a very different light than does Frost in his poem. The fence is emblematic of a rallying point, unifying the succession of new blood to take care and tend to the land. He presents several clear advantages to boundaries. They mark lines of responsibility, allow for a special bond between the landowner and the soil, and give a sense of continuity across generations. Therefore, when land is boundaried, careful attention is given to the question of inheritance, and the land is well cared for before it is passed down. A bounded parcel of land is a manageable unit, a "human-sized piece," which promotes intimate practical knowledge and sensitive land use.

As Berry points out, the word *property* "always implies the intimate involvement of a proprietary mind—not the mind of ownership, as that term is necessarily defined by the industrial economy, but a mind possessed of the knowledge, affection, and skill

⁶¹ Berry, "The Boundary" in Freyfogle, "Bounded People, Boundless Land," p. 23.

appropriate to the keeping and use of its property."⁶² Berry's idealized, though reasonably genuine, farm community is very appealing at first glance when considering his argument for the virtues of private land ownership for promoting land health and a sense of connectedness.

In his example, Berry's landowner Feltner not only has a sense of himself as a member of a human community, but this sense of membership gets extrapolated into belonging to a larger ecological land community. Freyfogle notes that Feltner "exhibits little of the libertarian fervor that has so infected modern understandings of private property rights."⁶³ This point is important to note because it indicates that landowners such as Mat Feltner should be characterized by the way in which they stand out against the current attitudes of many landowners. The guidelines for Mat and other wide-minded landowners are responsibility and community rather than their individual rights. Holding land to them is something they have been entrusted with, which has contingent obligations upon them. In this view, one's ownership of land and the resources therein is really a way of designating a sense of belonging or ownership of oneself by the land community and obligations to others.

However, private land ownership and membership in a community by itself is not enough to ensure good citizenship. An ethic of concern must be present to guide decision-making. As Freyfogle defines it, "a vigilant alertness, an attentiveness to the

⁶² Ibid., p. 25.

⁶³ Freyfogle, "Bounded People, Boundless Land," p. 26.

land's health and a commitment to learn and do whatever becomes needed to sustain that health."⁶⁴

Property Ownership and the Land Ethic

Land is bounded and set aside as discrete, independently owned parcels for various reasons, among which are the right to privacy and the right to protect economic resources from loss. However, just as Thoreau pointed out in his attentive account to the landscape, there are problems that arise when land is parceled in this manner. It seems unnatural, and in a real sense, it is.⁶⁵ There is a disconnect between the way the institution of private property is practiced and portrayed in culture, law and economics, and the way this land exists in the natural world.

As Freyfogle has written, "Private land in the law is an abstract human construct; a bundle of legal rights and responsibilities typically defined without regard for the land's natural features. Property in the law has clear legal boundaries that crisply divide one parcel from the next. In nature, the situation is starkly different. Nature is an interconnected whole, one parcel fully linked with the next."⁶⁶

⁶⁴ Ibid., p. 27.

⁶⁵ I would make a distinction between natural and cultural in the artifactual delineations of property lines with fences or other demarcations. They are clearly artifacts of human design, and they are ubiquitous. This is not to say that I insist there is a dualism between the human and the natural. In fact, I think it is because humans are "natural" that we can recognize the exclusion and separation of parcels from the integrated landscape as being disruptive. I agree with Max Oelschlaeger in his comment directed to J. Baird Callicott, asserting that humanly-induced carbon emissions are unnatural. However, I would argue against his assertion that we are natural simply because we are subject to the laws of nature. Max Oeschlaeger, "On the Conflation of Humans and Nature," *Environmental Ethics* 21 (1999): 224.

⁶⁶ Freyfogle, *The Land We Share*, p. 7.

Leopold's essay, "The Land Ethic" was the concluding chapter in *A Sand County Almanac*, and contains a crucial argument for an ethics that resides not only in the world of human consideration, but considers the relationship of the individual landowner to the broader community of living things and natural processes, which Leopold calls "the Land," collectively. Leopold thought many of our failings in managing land effectively came from human arrogance about our status among other living things. Leopold advocated a view in which humans were plain citizens in the land community, rather than the only morally considerable species. Leopold noted that humans ought to be considered unique among other creatures not for technological know-how and our capacity to control, but the ability to recognize value and moral relevance in things other than humankind.

Leopold began his development of the land ethic with the assertion that "all ethics so far evolved rest upon a single premise: that the individual is a member of a community of interdependent parts."⁶⁷ The interdependence here involves an interplay of cause and effect which engages humans in a behavioral model which balances competition and cooperation. The scope of these relationships has traditionally been limited to human interactions. Humans have a choice in how they conduct themselves, to voluntarily restrict some behaviors and promote or choose to act in accordance with ethical imperatives. Leopold's assertion is that since humanity is ecologically interdependent with natural processes and entities, it makes sense that they should be taken into account within the ethical framework of the present time.

⁶⁷ Aldo Leopold, "The Land Ethic," in *A Sand County Almanac and Sketches Here and There* (New York: Oxford University Press, 1968), p. 203.

Leopold does not argue that natural processes or entities should be afforded the rights of each human individual because his focus is on the land as a whole, life-organizing and sustaining matrix. It would not make sense to consider a natural process as entailing individualistic rights because of the many component parts and relationships among processes of nature. Furthermore, human knowledge about the way that nature works is, to a great degree, incomplete. In light of this ignorance, Leopold asserts that humans must be very careful and pragmatic in their assessment and management of nature. Leopold asserts that simply by virtue of the fact that it exists, a thing ought to continue to exist. This is not on the level of an individual entity, but the entirety of a kind. Most importantly, Leopold does not rely on economic valuation to give the organism its value. He points out those environmental arguments that rest on justifications of economic expediency are weak because they can be done away with when an environmental deleterious effect can be proven to be more profitable. The environmentalist is then forced to concede the argument if it is proven to be less economically viable, because they had agreed to the premise that land is to be considered of merely instrumental use, with no inherent value of its own, when presenting their initial argument. When environmentalists argue for economic or utility-based reasons to preserve natural entities, they remove those entities from the scope of wider ethical consideration and limit them to the world of human uses and control.

Thomas Birch in his essay "Moral Considerability and Universal Consideration"⁶⁸ notes that the Western tradition of ethics has relied upon categorical separation

⁶⁸ Thomas Birch, "Moral Considerability and Universal Consideration" in *Environmental Ethics* 15 (1993): 313-332.

between what is morally considerable and what is not. He argues that environmental concern is an area in which the question of what is morally considerable has been extended to encompass animals and some other non human others, but not all. He says "moral considerability is one of the credentials for membership in the elite club of those humans and nonhumans, like national parks, who are to benefit from the ultimately violent suppression and exploitation of the rest."⁶⁹ Therefore, his project is not an extensionist ethics which would just broaden the scope of consideration to certain other species or entities. Instead, he says that "it is ethically wrong to suppose that we need and ought to establish a criterion of moral considerability, and that just supposing that we *can* do it means primarily that we intend to persevere in our unethical Western imperial venture."⁷⁰

Despite the difference in approach to moral considerability, there is a resonance between what Birch suggests and Leopold's land ethic because of the openness of the project. Both are proposing a new relationship between humans and what constitutes the world of our attention, beyond merely instrumental use as a utilitarian argument would provide, and without reliance on a closed, rights-based ethic. As Birch contends, "The lesson of history is that we must open up the question of moral considerability and *keep it open*, not close it off again by instituting practices based on the latest, and no doubt mistaken, "final" criterion. Of course, keeping the question open *does* mean

⁶⁹ Ibid., p. 316.

⁷⁰ Ibid., p. 318.

abandoning the usual presupposition that the question can and should be closed, and resisting the customary impetus towards closure."⁷¹

Leopold's land ethic maxim is one such open-ended moral imperative. It provides an appropriate pattern of behavior, rather than an unchanging definitive prescription. What changes with time are our definitions of what constitutes beauty, integrity and stability and how human actions affect these things. But even to ask these questions is the source of developing an ethical relationship to the land. The attitude is of careful attentive consideration, and a prescription of "*sic utere tuo*" to the land and what constitutes it overall rather than only refraining from harming other humans.

The nonhuman interests that compose the land community were historically excluded from ethical theories because they could not reciprocate in a moral community. Since the land itself and its nonhuman inhabitants have historically been categorized as property, the land community was viewed as having merely instrumental value. By presenting a holistic ethical model, Leopold advocates not only a much broader scope for moral concern, but also a revolution in the way humans have perceived their role among nature. Leopold suggests nothing less than that human moral actions would be well served by following the scientific evidence supporting interdependence between biotic and abiotic communities.

Holmes Rolston, III echoes this argument with a discussion of the way that humans may follow what is observed in nature, and the relationship between recognizing natural values and the generation of human duties. One of the ways

⁷¹ Ibid., p. 321.

humans may follow nature is in the "imitative ethical sense," in other words, learning proper action through observing the interactions among beings in the wild. Rolston argues that because nature is amoral, it cannot provide direct advice for a course of action for what ought to happen. However, he makes a concession that "there may be goods (values) in nature with which we ought to conform, even if the goods have not been produced by deliberative moral processes."⁷² I agree with this assertion, and think that one area in which imitative ethics may make sense is when we consider how other organisms have an economy of consumption, which is to say that they rarely over consume a resource which allows them to exert less demands on their habitat.⁷³

Private Land Ownership and the Question of Compensation

Advocates of private property interests have argued that private landowners should not be required by government to actively promote public goods such as historic preservation, sprawl control, or conservation of natural areas because "land use regulations that yield benefits for the public as a whole should be accompanied by the payment of compensation to landowners whose land values are reduced as a consequence."⁷⁴

⁷² Holmes Rolston, III, *Environmental Ethics: Duties to and Values in the Natural World* (Philadelphia: Temple Press, 1988), p. 38.

⁷³ This may appear to be an assertion which posits moral qualities on amoral interactions. Certainly, it does not make sense to assert that nonhuman organisms choose not to over consume their resources. Perhaps they would consume more than they needed if they could. Current developments in the science of ecology refute the stability theory of ecological organization. See J. Baird Callicott's "Do Deconstructive Ecology and Sociobiology Undermine the Land Ethic?" for an analysis of these developments and how they may challenge Leopold's community-based ethic. However, the system as a whole functions with an economy that prohibits the complete domination of resources by one non-human species.

⁷⁴ Freyfogle, *The Land We Share*, p. 13.

Leopold adamantly opposed the payment of landowners to comply with environmental management strategies, because he thought it was an ineffective method of promoting environmental goals. If landowners believed they ought to comply, they would regardless of compensation, and the landowners who did not want to comply sometimes relied on minimal compliance to gain economic incentives, and then demanded more for doing less to promote good ecological practices on their lands the next time.

One recent legislative decision demonstrates the current attitude toward compensation, private property rights and responsibilities. The House of Representatives voted to repeal the existent Endangered Species Act (ESA) of 1973 on 29 September 2005 and put forward a new strategy. The modifications introduced by the new Threatened and Endangered Species Recovery Act (TESRA) of 2005 include among other things, measures which change the designations of the land on which endangered species currently reside or which their future recovery may depend upon. Private property owners will have more control over what happens on their land, and recourse to collect compensation for any voluntary conservation of species on their property.

Since ninety percent of all endangered species in the United States rely on habitat that is privately owned, private property is a central issue to the debate over endangered species.⁷⁵ Proponents of TESRA say incentives for private property owners will mediate the adversarial relationship between federal regulators and private

⁷⁵ U.S. Fish and Wildlife Service.

interests. These proponents say that there is a tendency among private landowners burdened with restrictions on their land to “shoot, shovel, and shut up.” They claim that “the ESA has created perverse incentives that prompt land owners to actually destroy species habitat to rid their property of the liability that comes with endangered species.”⁷⁶

However, the historical basis for takings legislation did not include regulations depriving economic value or certain uses of land. Instead, it was a provision only utilized when physical seizure of one’s actual property took place and ownership was transferred.⁷⁷ The U.S. Supreme Court and other state Supreme Courts have affirmed that endangered species regulations on private lands are not a form of constitutional seizure that requires financial compensation. TESRA “overturns the courts—the fundamental basis of property law—by requiring compensation when at least 50% of the value of a property is impacted by endangered species protections.”⁷⁸

The Secretary of the Interior has sole discretion in determining the status of the private property, and designating it as a “take.” Where compensation is authorized, it must be paid “out of the currently available appropriations supporting the action or program” which caused the loss. Because endangered species receive only a small share of Department of Interior and Commerce funding, diversion of these conservation

⁷⁶ Committee on Resources, “H.R. 3824: The Threatened and Endangered Species Recovery Act (TESRA),” <http://resourcescommittee.house.gov/issues/more/esa/tesra/background&need.htm>, 9/27/05

⁷⁷ Freyfogle, *The Land We Share*.

⁷⁸ Center for Biological Diversity, “Pombo Bill Would Repeal Endangered Species Act, Eliminate Recovery Goals and Requirements,” Kieran Suckling, <http://www.biologicaldiversity.org/swcbd/press/Pombo07-08-05.html>, 7/8/05, Refers to TESRA: 20:63:3-7.

funds will greatly limit the protection afforded by endangered species legislation. In addition, the "take" status and subsequent compensation applies not only to preexisting land uses which now must be ceased in compliance with TESRA, but to future potential land uses in which the owner may wish to engage. Landowners are entitled to written determinations of whether land uses will be accepted or prohibited by TESRA, and whether they qualify for incidental "take" status and compensation.

Opponents of TESRA argue that its concern with landowners' rights interferes with its ability to provide sound protection of habitat. There is a "no surprises" clause that now codified provides for "land owners to continue implementing conservation plans even if scientific research indicates that the plan is not working. This policy has been opposed by hundreds of scientists because it effectively prohibits adaptive management and use of new scientific information."⁷⁹ Since a crucial evaluative method for ecological is scientific analysis, and science adapts its theories to correspond to new data, establishing an unchanging rule to follow a conservation plan because to change it would present an unexpected situation for the landowner to deal with greatly restricts potential efforts to conserve endangered species.

The Promise of Private Land Ownership for Preservation

According to a 1996 Natural Resources Conservation Service census, approximately seventy percent of America's land (not including Alaska) is privately

⁷⁹ Center for Biological Diversity, "Pombo Bill Would Repeal Endangered Species Act, Eliminate Recovery Goals and Requirements," Kieran Suckling, <http://www.biologicaldiversity.org/swcbd/press/Pombo07-08-05.html>, 7/8/05, Refers to TESRA: 18:49:22-25, 18:50:1-7.

owned. The landowners make up about two percent of the entire population of the United States. Because of the great amount of land that is held privately, for conservation strategies to be effective, there is a great need for cooperation across boundaries between public and private lands. "Stewardship of ecological resources across boundaries between public and private lands is one of several defining goals of contemporary ecosystem management."⁸⁰

Several trends affect the privately owned land bordering public lands. Among these are increased density of human population, increased economic activities which are dependent on public land resources, and changes in biotic communities and processes along these transitional regions. Land that borders public parks and preserves is highly prized by many who desire to live in an unspoiled natural area. Economic incentives to develop land along public grounds have increased, resulting in larger housing developments and greater population densities in these areas. With this increase in population, there is also an increase in secondary effects on the wildlife and plant communities living in these transitional areas. Knight and Clark cite many instances of human disturbances which all have effects on the native plant and wildlife communities.

Dogs and cats introduced into rural areas prey on several species of animals, and may also reduce the available prey of medium sized carnivores and birds of prey.

People in housing or commercial developments often use nonnative species to

⁸⁰ Richard L. Knight and Tim W. Clark, "Boundaries Between Public and Private Lands: Defining Obstacles, Finding Solutions" in *Stewardship Across Boundaries*, ed. Richard L. Knight and Peter B. Landres (Covelo, Calif.: Island Press, 1998), p. 175.

landscape their properties, thus reducing the integrity of preexisting communities, and forcing them to compete with the newcomers. Furthermore, some species of wildlife are attracted to and are able to benefit from opportunities afforded by human development, whereas other, more sensitive species are repelled and vacate areas of increased development.

According to Knight and Clark, private lands are so vital because “most species have 80 percent or more of their known habitat on nonfederal lands, and over a third have all of their known habitat there.”⁸¹ To help resolve some crucial challenges this habitat distribution presents to land managers, an ecosystem approach to land management is recommended and is being applied at the federal and state levels. The Interagency Ecosystem Management Task Force has the goal of breaking down administrative boundaries and working extensively with private interests to develop decision making processes that effect the ecological integrity and quality of land.

There are several objectives that will help to bring together public managers and private landowners to make decisions which are representative of public interest and ecological balance. These include: (1) Developing a shared perspective of the issue for consideration (2) Identifying shared goals among participants (3) Increasing collaborative efforts between governmental officials, private landowners, public land managers and (4) Interpreting results of historic practices and trends, assessing successes and failures.

⁸¹ Ibid., p. 181. Refers to a 1994 General Accounting Office report.

These areas are very challenging to surmount when there is a diversity of interests at work surrounding decision-making. However, successful collaborations are possible, even when not all goals are shared. Many local conservation organizations provide information to the public, often with state or other governmental input, on ways that developers and private property owners can improve the quality of their lands to protect wildlife and minimize soil erosion among other effects.

Accessing Private Property: Environmental Education and Other Permeations

The Manada Conservancy, a local land trust in southern Pennsylvania, has as part of its mission an educational component to present issues to the public such as habitat fragmentation, endangered species recovery, and the value of native plants in home landscapes. The effects of this educational outreach include a more informed community which tends to see itself as a whole and has a greater appreciation for the effects of human disturbance on the local ecosystem.

Environmental education also helps to engender a sense of place, particularly if it involves learning and putting into practice details about local environmental issues. Reintroduction of native plants into home landscapes is one practice with great promise for cultivating this sort of relationship. Participants learn about the types of plants suited for their particular growing conditions, for example the climate, soil type, and whether it will be a sunny or shady spot for planting. In addition, information is also provided about what kinds of wildlife will be supported or encouraged by the growth of particular plant species.

If the plan is successful, this is the first step towards a new relationship with one's backyard. The first year, the plants settle in and begin to take root. The second year, when they reemerge, you might notice the large brown bell-shaped flowers of *Asarum canadensis* laying flat against the ground beneath an abundance of shiny heart-shaped leaves. Or on the *Asclepias tuberosa*, fast growing monarch butterfly larvae feed voraciously and grow. You may ask yourself, "How did the butterfly know where to lay those eggs? This is the first time the plant has grown here since I have lived on this property." By the time you see goldfinches feeding on the seedheads from your *Echinacea purpurea*, you will likely be convinced that a few small adjustments to your home landscape can have great potential for supporting wildlife and adding ecological richness to your surroundings. By learning about the relationships between the plants and insects and other wildlife on the land you inhabit, you may start to value the increasing diversity of species. Every year, you may decide to chip away at the monoculture of grass that constitutes your lawn, and appreciate the beauty of a "naturalized" landscape because you recognize the value of the habitat it provides.

Education of private property landowners on the historical grounds of private property in the United States and how to manage their lands according to the best information about ecologically sensitive use at the present time are two ways in which change may be instituted in order to foster an ecologically informed populace. However, as Leopold points out, "obligations have no meaning without conscience, and the problem we face is the extension of the social conscience from people to land. No

important change in ethics was ever accomplished without an internal change in our intellectual emphasis, loyalties, affections and convictions."⁸² This is a crucial point.

The ethical emphasis on nature and its ecological processes cannot be deposited upon people if it is to be effective. It is the goal of most environmental education programs to foster understanding so that an increased familiarity and sense of responsibility will continue to develop in the individuals who are educated. In this way, the data may be internalized and ethical considerations may be drawn from what is suggested, particularly about the human state of interdependency with nature.

Decisions affecting the land have many farther-reaching effects than the scope of a human life, or even several generations of human life. Therefore, land ownership belongs in a prioritized category of ethical concern.

CONCLUSION

The land use attitudes that form the backbone of a strictly market value view of land rely upon a perceived history of private property traditions that never existed. These attitudes represent a misinterpretation of natural rights in property, and are of particular concern when it pertains to land use because of the ecological ramifications. Privately owned land is essential for the survival of most endangered species and the maintenance of their habitat.

The sharp conceptual dualism between nature and culture is supported by the contention of private property advocates that they cannot be told what constitutes

⁸² Aldo Leopold, "The Land Ethic," pp. 209-210.

acceptable usage of their land because it belongs to them. One symptom of the dualistic framework with respect to preservation is that environmentalists must often resort to economic benefits arguments to justify their position that a certain species or land feature must be preserved. Also, there is a trend to offer compensation to landowners for any activities undertaken to promote public good or goals for ecological health. The passage of TESRA by the U.S. House of Representatives is one example of this trend. However, these arguments invariably fall short because they are founded on indefensible grounds. If the market value of the species in question is disproved, then the argument collapses.

Several sources are suggested for undoing the dualistic contentions. One is that the institution private property as it is practiced in America is neither wholly given over to the private or public sector, but exists as a continuum, with many hybrid forms of land use. Another is that this institution emerged historically to support a notion of the common good, and was never strictly for private benefit. A third is that legislative precedents also resist this categorical separation between public and private interests, as demonstrated by nuisance law rulings.

Furthermore, the science of ecology itself suggests an interdependency between human and natural interests that cannot be severed. The question of how to promote an ethic of consideration among landowners to recognize values in their land other than economic value is challenging because of resentment of landowners against outside interests instructing them how to care for their property. As Leopold has suggested, this requires nothing less than a change of conscience. Attending to the historical values

associated with private property ownership, and the notion of a collective good that is inclusive of nonhuman interests offers possibilities for the cultivation of such an ethic.

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