

“No property is an island”: the private lot as the basic unit of landuse planning & management of a wider world

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Abstract: Informed by basic neo-institutional economic and property law concepts, this essay points out that private property in the form of a lot is rarely an isolated piece of land due to the social nature of private property of land; and explains that private property rights of land necessarily include the *negative rights* not to use, to derive income or alienate. The distinction between *de jure* rights & duties and *de facto* access conditions is useful; and the number of individuals on land should not affect the nature of private property though it may affect its use. Reference is made to an interesting re-interpretation of *The Tale of Peter Rabbit* by Blomley.

Keywords: Private property rights, exclusivity, negative rights, lot, layout, spatial division of labour

PREAMBLE

It has been said that “no property is an island.”¹ This is a generalization that supports some regulation of the rights of and/or imposition of some extra liabilities of the owner by the government in consideration of the interests of others. However, when private land property is entreated in academic exposition as media, often both the land and its owner are cast as vivid insular and insulated figures, who use property boundaries to set the rest of the world apart. *The Tale of Peter Rabbit*,² in the interesting script re-writing of Blomley (2004), becomes an anti-fable of an exclusive unwelcoming garden, owned by Mr. McGregor the single landowner, upon which Peter, a rabbit, trespasses at risk of becoming the meal of Mr. & Mrs. McGregor.³ The motif seems

to be that private ownership of land is swallowing up social life, a message that stimulated the writing of this essay.

1. INTRODUCTION

There is no more dangerous and presumptuous understanding of private land property than the idea that a private landowner *must* always exclude others, *must* constantly maximise income at all time and *must* sell/ lease his/her property at the best price, although he/she can do so. And there is no greater mistake in the discussion of privately owned land than seeing it as a high security defensive base of one owner living in seclusion cut off from the rest of the world.

Both views, often promoted by property rights economists stressing exclusivity and numbers of rivals, implicit rather than express, lend support to intellectual and rent-seeking attacks⁴ on the institution of private property. This paper offers an account of private property rights to land with reference to the extant concepts and examples that put these views in proper perspective, one which recognizes both the *abuse* and *contribution* of the institution as a means for social existence.

As Blomley's fable highlights land boundaries, hence "lots" of land are in focus, this work will begin with the lot.

2. THEORETICAL CONTEXT OF LOT STUDIES

Though there may not be any reference to "lots" or "boundaries" in theoretical discussion of land⁵, there are many research areas treating the "lot" or "lots" as a subject matter. A large body of work has centred on the law of "minimum lot size" (Hart 1976, King 1978, Boudreaux 2022) and economics of "lot size" (Barnes 1935, Asami & Niwa 2008). However, few works centre on the lot itself. A rare good example is the architectural analysis of the lot as "a basic unit of urban morphology" by Blackwell & Fortin (2022). Their inquiry focuses on the physical configuration of lots as a variable in shaping the urban form. That form is larger than its constitutive units. But what is a lot?

3. WHAT IS A LOT?

The court in *North Shore Realty Trust v. Commonwealth, Supreme judicial Court of Massachusetts* (2001) defined a "lot" when it was asked to determine what helps delineate a "lot" within the meaning of a zoning law for purpose of compensation. In this legal definition, "boundaries" is a keyword, but not so for exclusion or ownership.

Holding. The supreme court affirmed. A lot is the basic unit of reference for much of the zoning ordinance because the law permits, restricts, or prohibits various uses of property based on the dimensions, location, and characteristics of a lot under consideration. Zoning must be construed reasonably and a reasonable construction of the zoning scheme is that *a lot is a unit of property capable of identification and measurement within defined boundaries*. While the most common forms of a boundary will be streets or boundary lines between neighboring parcels, *the term lot also recognizes the possibility of natural boundaries*. (*North Shore Realty Trust v. Commonwealth, Supreme judicial Court of Massachusetts* [highest court], Decided May 14, 2001, 747 N.E. 2d 107, as cited in 53 ZD 226 — Massachusetts (2001))

Predicated on this legal definition of a lot for zoning control, what else can we say about the lot as private property? For the rest of this essay, it is understood that a lot is land (as "real" rather than "personal") property with its boundary clearly delineated & legally recognised, protected and enforceable. Two important connected considerations of the lot as an entity with a boundary are perimeter and space.⁶

Delineated perimeter-border

A lot is land, but land un-delineated is NOT a lot or property at all. A land boundary, however delineated, is *invisible*. Neither a rabbit nor a human being, including the owner, can tell whether there is a property boundary without any physical sign of the existence of that boundary. As many would ignore or even be invited by mere signs, a perimeter fence or wall is erected along the perimeter as a border. This border is often a common one because the lot, even if it is the same as an island, does not border on a vacuum but within a larger area of land on which there are other owners, private or government.

Space valuable

Though a lot may have its *intrinsic value* for some matter⁷ found within or near the lot, which is destructible, it is economically principally *valued* as a uniquely shaped and located & indestructible Euclidean *space*. In this space, activities can be carried out, fixtures erected and the owner & his companions can live/rest/work (all being forms of consumption and investment).

These two considerations point to the fact that a lot cannot be an isolated entity but is an integral part of a wider human sphere, coordinated or un-coordinated.

4. THE LOT AS PART OF THE WORLD: IN A TOWN PLAN IN THE LAND MARKET

There is no need for land property or any lot or valuation of it if there is only one person or community of persons in the world. The fact is that a lot emerges exactly because of the reality of a highly populated world, which has called forth spatial differentiation and thus a need for some coordination.

There are two forms of spatial social-economic coordination (Coase 1937). The coordinated sphere belongs to the realm of *town planning*. The uncoordinated sphere is the *land market*.

Both forms of coordination are at work in shaping the lot and what happens on it and adjoining land. Planned coordination involves public ordering of land for private ownership, and market coordination involves transactions based on mutual consent and contracts, which are necessary wherever there is a spatial division of labour.

The lot as part of a government layout

The lot as uniquely located space with a clear boundary did not come into the world from nowhere. It was most likely called into being by a government as a part of a layout (a town plan) laid down by a surveyor (Lai & Davies 2020) and “inscribed” on a map.

The layout typically makes use of streets and/or rivers as boundaries and means of transportation for a block of lots, many with party or common boundaries, often granted with stipulations for certain obligations/liabilities (“encumbrances”), including controlling against subdivision.

Within this framework subject to the common law, a lot owner enjoys his/her rights, which are never unlimited or unconstrained, even in the absence of any subsequent zoning, owner liability, and environmental legislation. The common law restrictions on the enjoyment of land property are numerous and keep on developing. This simple fact seems to have been ignored by many critics of private property.

A lot, as part of a government plan, is therefore a *unit* of governing and legally constraining private planning and use, experiment, investment, and accounting (rates/council levy/property tax etc.), as well as a store of value (whether such value is intrinsic or extrinsic).

The boundary of this unit delimits the spatial confines of the rights and obligations *not only* of strangers, guests and neighbours *vis-à-vis* the owner but also those of the owner himself/herself *vis-à-vis* the rest of the world. It is a unit of not just *reciprocal* rights but also obligations.

Furthermore, the layout of a well organised pattern of lots is an important physical foundation and setting of a land market.

The lot as a unit in the land market

The value of a lot as part of the economy, as explained in the next paragraph, is determined by the market (thus “externally” or “extrinsically” in that sense but always lot boundary-related), as a lot is by nature part and parcel of spatial differentiation to allow owners/users of the property to enjoy the fruit of *spatial division of labour*.

The value of a lot (and its betterment) is assessed by an appraiser or a valuer in a process called *valuation* that takes into account market “comparables,” i.e. recent transaction values of similar lots. This value can grow in time, *ceteris paribus*, because of boundary-specific investment (e.g. better infrastructural services, tree management, advertising etc.) by the lot owner, his/her neighbours and the government in a process called betterment. Such betterment is often subject to taxation.

5 . PRIVATE PROPERTY RIGHTS & LIABILITIES

It is a great mistake to regard private property rights to land or any other matter as including only the *exclusive* rights to use, maximise income and alienate. A true private owner enjoys negative rights not to exclude, to maximise income or to part with his/her land (Lai 2014). Say if Mr. McGregor the landowner *must* use his garden to grow blackberries but cannot let it lie fallow, he *must* grow more expensive berries than vegetables, and *must* sell it to a Cultivation Renewal Authority that offers a price greater than the highest offer in the market, he can hardly be said to be a true private property owner.

The adjective “exclusive” is an unfortunate choice of words. Exclusion is a form of use⁸ of land while “exclusivity” is really about the *autonomy* of the owner in using/deriving come/alienating his/her property without the formal legal need for concurrence or approval by another party, subject always to the applicable law. This is the central message of Buchanan’s (1994) idea private property as a condition for of self-production. A landowner is responsible legally and above all morally for his/her decisions regarding land. That Mr. McGregor’s decision about land use (say catching any rabbit [that eats the vegetables] on his garden) is conditioned by his wife or children does not alter his legal or moral autonomy. In the mind of some economists, only a singular (and “exclusive”) owner is a “private” owner because increase in the number of owners will render consensual (public) decision making impossible. We shall come back to this point.

It is a greater mistake, committed by both the friends and foes of private property rights, to equate “exclusive right to use” with “duty to exclude.” There do exist real life examples of a high degree of open access to private property not being a requirement of law or planning conditions. The Tiger Balm Garden in Hong Kong in the past and the Haw Par Villa in Singapore till now are some examples of private gardens of the well-to-do regularly open to the public like public parks. The MTRC, the government dominated rail transit corporation of Hong Kong often claims that it must increase fares “to be accountable to shareholders”, an excuse based on the false notion that a business firm must maximise profits.

That in practice most landowners *do exclude* and most parks are supplied as if they were free goods⁹ by government is another issue. However, a normal landowner does not exclude his/her own family members, guests and servants. Likely he/she does not exclude but welcomes unthreatening domestic and wild animals like Peter Rabbit.

6. DISCUSSION

Private lots are units of land that serve as bases for social interaction. That they may be used as welcoming gardens or unwelcoming bunkers is a matter of choice for the owners, who are nevertheless legally and mor-

ally responsible for their conduct. Mistrust of private property may indicate a mistrust of human nature and/or government.

In any case, these lots are usually not fenced off camps or prisons and even the most “selfish” owners¹⁰ need to interact with the rest of the world in order to enjoy the fruits of the division of labour. An autarkic life on a large lot is just a rare short term possibility.¹¹ Property goes beyond trade. In an excellent work, Penalver (2005) pointed out that private property enables both *exit* from the demands of community and *entrance* into community by tying individuals into social groups.

Note that in non-exclusive alternatives to private ownership of land, which cannot be “freed” from its boundaries, a pathetic “tragedy of the commons” of Peter Rabbit can be imagined, say Peter is spotted by a group of merciless hunters treating the McGregor’s garden as commons.

When a private landowner has a dispute or conflict with any party, both parties can fight out at court or seek government intervention. Either party can also concede or negotiate with the other to work out a win-win settlement.

Many economists wrestling with property rights have a great interest in the phenomena of *access*. A distinction between *de jure* rights/liabilities and *de facto* exercise of rights/performing duties, as far as exclusivity or inclusivity (i.e. access) is concerned, is helpful to grasp the of private land property. *De jure* private land property can be *de facto* intentionally and effectively gated or orderly ungated; or left by default open access by inability or neglect to exclude strangers or squatters by its owner or occupier.

Other economists are interested in the *number of owners* as a variable that may render private property no longer private. Is ownership a matter of the numbers of owners? It is posited that if there is an increase in the number owners, then ownership degenerates into “anti-commons.” The better view is that numbers *per se* do affect the way use/income/alienation rights may be exercised but not the *right* to or *duty* in use/income/alienation.

Say there are two adjoining pieces of (to simplify complications) freehold land (fee simple absolute in perpetuity). On lot, A₁, the owner A legally owns and lives alone on it (within a fixture). On the other lot, B₁, B is the legal owner who does not live alone but in a house on the lot with his large family (including B’s spouse and their 10 young children). Now both pieces of land are privately owned. Surely the way in which B’s property is used among members of the family is a matter of domestic decision but it can hardly be said that because of a difference in numbers, the nature of the freehold interest on these two pieces of land are different. The property of B is not less exclusive or less private, even granted that the spouse of B is an equitable owner and all their children are beneficiaries. They can be said to be interested or connected parties or stakeholders. But they are not owners and cannot alienate the property. More importantly, nor is it communal (unless A or someone else has a legal say about the exercise of rights by B). Once one owns the land, how to use the land (by living alone or sharing it with others) is a matter of the private property rights to use/not to use in whatever way that land, subject to the prevailing law.

7. CONCLUSION

Private property is part of social life. Its rights can be abused and obligations neglected. However, legal and policy researchers have not found a better or more acceptable institutional alternative and rarely is it condemned by most people, even those who are not property owners. *The Tale of Peter Rabbit*, within Blomley’s frame, can be compared to an old anti-fable *The Fable of the Bees*. This essay seeks to set the idea that private land must be exclusive to all in its land use planning and market context. The boundaries of the lot are signs that point to not only rights to exclude but also rights to include and as reminders of the many serious obligations of an owner/occupier—tax to pay, safety of third parties etc.¹²

NOTES

- 1 Acton (1988, p. 730). Probably, the original is John Dunne's poem (Meditation XVII in his *Devotions upon Emergent Occasions*, 1624) "No man is an island entire of itself; every man is a piece of the continent, a part of the main;..." So, by inference "No property is an island..." suggests not so much a support for regulation but, in arguing that any property entails the existence of all other property, that any one property is simultaneously the expression of the entire social and economic system of property without which it could not be.
- 2 The reference here is to the illustrated children's book by Beatrix Potter, *The Tale of Peter Rabbit* (written 1893, privately published 1901). The nub of the story is that Peter (and his father before him) enter the garden to eat (i.e. 'steal') the vegetables that Mr. McGregor grows there, and Mr. McGregor's punitive response (that Peter just escapes but his father did not) was to protect his produce and deter unauthorized expropriation.
- 3 In the original story this had been the fate of Peter's father, which is why his mother had told him never to enter the garden, and why his sisters, Flopsy, Mopsy and Cotton-tail obey their mother's order. Interestingly, Beatrix Potter's work is often cited as a case study in the whole issue of copyright, since Potter's failure to ensure copyright meant wholesale pirating of *The Tale of Peter Rabbit* in the USA.
- 4 Rent-seeking refers to the capturing of rent by regulation. Government led urban renewal backed by eminent domain, taking or resumption is often rent-seeking by developers working in tandem with government. The typical excuse is "strategic behaviour" of "holding out" (i.e. greed) of owners in frustrating government or private projects or near impossibility of owners in agreeing to jointly redevelop their lots as if they must do so for land use efficiency sake. The vicissitudes of the *Kelo Case* show how expropriation in the name of public interest can result in lose-lose outcomes.
- 5 See for instance Li (2014).
- 6 A key feature of Beatrix Potter's story is EXACTLY that boundaries are in an important sense sacrosanct. Mr. McGregor is chasing Peter, but Peter escapes under the gate in the boundary fence, wriggling beneath the gate in a way that removes his clothes, leaving them on Mr. McGregor's property. Two things of note. First, as soon as Peter is OUTSIDE Mr. McGregor's property he is safe (i.e. there is no suggestion of a right of hot pursuit beyond the boundaries where Mr. McGregor may exercise his proprietary rights). Second, the clothes that Peter loses become Mr. McGregor's, and Mr. McGregor uses them to dress his scarecrow—i.e. a device intended to scare away crows that, like Peter, may descend to raid Mr. McGregor's produce. The story also makes a point about the difference between a private lot—Mr. McGregor's garden, where he has rights over what is therein—and the common ground (the lane) outside where the produce is free to take, which is what Flopsy, Mopsy and Cotton-tail do when they go to gather blackberries growing in the hedgerow when Peter goes trespassing.
- 7 "Intrinsic land value" is often articulated in biocentric terms. See for instance Bergstrom *et al.* (2004). Cockrell (2005), Collins (1991), Jiang *et al.* (2021), Li (1999).
- 8 Exclusion is the restriction of use only to the owner and those he/she welcomes and the exclusion of others from the land.
- 9 Tax payers pay for them in the final analysis.
- 10 Even hermits and monks in monasteries choose to live apart from the world ideally not just for themselves out of selfishness but for its conversion out of charity. They are not spiritually or economically cut off from the rest of the world.
- 11 Robinson Crusoe was forced by circumstances to live in isolation.
- 12 This essay is dedicated to Mr. Keith Gordon McKinnell to whom this author owes for entrance and re-entry into academic life. The author is grateful to his teacher Dr. Stephen Davies for his comments on the draft of this paper. He contributed to most of the footnotes (Nos. 2, 3, 4 and 7). All errors and faults are the author's.

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