

Urban Land as Common Property (Land Lines Article)

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In recent years, politicians, lobbyists and voters in the United States have often seemed polarized--or paralyzed--over where to draw the line between private and public rights in land. Common property, defined as group- or community-owned private property, straddles that line.

Most recognized common property is in natural resources, and most recognized commoners are rural people in developing countries. But the concept of commons might also apply to some aspects of urban land in the United States. At the least, common property theory may help U.S. policymakers understand more clearly what is at stake in debates about land rights.

At Voices from the Commons, the June 1996 conference of the International Association for the Study of Common Property in Berkeley, California, the Lincoln Institute assembled a dozen researchers and practitioners from the U.S. to discuss these new forms of commons, some of which are described in this article:

land trusts and limited-equity cooperatives
incidental open spaces
housing, including group homes, gated or common-interest developments and
the use of urban public property by the homeless
converted military bases

Property Rights and Land Use Strategies

Economist Daniel Bromley and legal scholar Carol Rose have proposed independent but roughly compatible schemes for classifying property regimes. Bromley focuses on the form of land rights, while Rose focuses on management strategies:

PROPERTY IN LAND

Bromley Rose

1. private property rights
2. state keep out
3. nonproperty do nothing
4. common property right way

Option 1 on each of these lists is classically private property. The owner's rights are exclusive, and the owner decides what to do with the land. Option 2 is often associated with public land, in the sense that government owns it and decides what, if anything, can

be done and who can do it on the land. Option 3 is the situation often lamented as "the tragedy of the commons," in which the land is owned by no one, and everyone therefore has both access and incentives to abuse it. Despite the "tragedy of the commons" language, this option is better described as "open access," "unowned" or "nonproperty." Option 4 is most often associated with common property, defined as private property owned and managed in a specific "right" way by a group of people.

There is not a perfect correspondence between Rose's strategies and Bromley's categories. "Keep out" as a strategy may apply to either private or group-owned property as well as public lands--wherever the main strategy is to restrict access to a defined group, or to no one. The "right way" strategy may apply to "nonproperty" as well as commons--if anyone, and not just members of a specific group, can use the resource simply by following the prescribed rules of use.

Nevertheless, putting Bromley's and Rose's lists side-by-side suggests that the distinguishing feature of common property may be assigning land both to a specific group of people and to prescribed uses.

Most urban land in the United States is defined as either private or public property. Yet such land may be more like common property than is usually recognized. Zoning and environmental regulations, for example, do not allow private landowners to do anything and everything with "their" land. Instead, for example, the private owners of land next to a river may not be permitted to install underground oil storage tanks. Those aspects of land use that affect the community's quality of life or shared environment are managed almost like common property.

What Makes a Successful Commons?

Elinor Ostrom has identified two prerequisites for successful common property regimes: the system must face significant environmental uncertainty, and there must be social stability in the group of owners/users. As Ostrom puts it, commoners must have "shared a past and expect to share a future." They must be capable not just of "short-term maximization but long-term reflection about joint outcomes."

Environmental instability gives commoners an incentive to share risks. Social stability allows or forces them to preserve resources for future generations. For example, in many Alpine villages, herds are private property but summer pastures are common property. To avoid overgrazing and free-riding, individual farmers cannot graze more sheep and goats on the summer pastures than they can feed privately over the winter. Access to the summer pastures helps to guarantee all families, whatever their private resources, a chance to earn a living.

Environmental instability and social stability are usually associated with rural places. Rural landowners face the random risks of droughts, floods and plagues, and are known--accurately or inaccurately--for their sense of community.

Do these requirements exist in the urban United States? Perhaps. Environmental

instability is easy enough to find, if "environment" is defined as social and economic as well as physical. For many inner-city residents, depopulation, gentrification, or plant and base closings are just as random and devastating as floods or plagues. The social stability of these neighborhoods may be largely involuntary, created by economic and racial barriers to mobility. But some community activists also see human knowledge, social relationships and the land itself in such places as "social capital," which can be mobilized for development through new forms of ownership.

Pros and Cons of Common Property

Most scholars who have written about common property have seen commoners as political and economic underdogs. A classic example is villagers defending their traditional forest grazing grounds against timber companies or government foresters who want to prohibit grazing to protect tree seedlings or prevent erosion. But commoners may also be prosperous or even highly privileged. For example, many private or gated "common interest" communities attempt to wall in high home values and wall out social and economic diversity.

Commoners are by definition conservative. To preserve their shared resources, they must exclude or expel anyone not willing to follow their land use rules. They must also keep the individuals who make the most productive or profitable use of the common property from taking their share of the proceeds and "cashing out" of the system. Although less comforting than the stereotype of downtrodden commoners who share and share alike, exclusionary commons may still be preferable to either privatization or state control.

But in practice, both these options may speed up resource exhaustion. Private owners may extract the maximum cash value from their land as quickly as possible, rather than preserve resources for their own or anyone else's future use. "Keep out" signs may not keep local people from extracting resources unsustainably from government lands--in fact, hostility toward a distant government may encourage such behavior.

Economist William Fischel has applied this implicit comparison to U.S. local governments' primary dependence on land-based (property) taxes. He sees all residents in a jurisdiction as commoners who share an interest in maximizing local land values. Fischel argues that California's Proposition 13 was exactly the equivalent of turning a village commons into a national park. By restricting local property taxes and giving state government a stronger role in school funding, Proposition 13 transferred "ownership" of the schools from face-to-face communities to a distant government.

From the local taxpayers' vantage point, this upward transfer of responsibility changed their schools from a local "commons," with strong norms about the "right way" to finance and use education, into state property, which local residents almost saw as nonproperty. As a result, the quality of California schools was leveled across local jurisdictions, but it was leveled down rather than up. Education was exhausted rather than managed sustainably.

New Commons

A few experimental forms of land ownership and management in the U.S.--including land trusts, neighborhood-managed parks, community-supported agriculture and limited-equity housing cooperatives--explicitly avoid the extremes of private or public property. All these "new" forms of common property fit Carol Rose's description of option 4: "right way." All aim to foster or protect specific land uses or groups of users.

These experiments with property rights and responsibilities raise questions that few researchers, either on urban development or on common property, have yet addressed. When and how should local policymakers support experiments with "common property"? For example, should local and state officials help to remove regulatory barriers to group ownership of land, or support new criteria for mortgage financing of group-owned land?

There are also long-standing legal objections to "perpetuities"--trying to tie the hands of future owners about how to use their land. To avoid these objections, land trusts must sometimes seek special legal exemptions, or even change state property laws. The long-term costs and benefits of common property experiments, however, may depend less on the initial distribution of land rights than on shifting local politics and economic conditions. Finding answers to these questions will require close collaboration between researchers and practitioners.

Sidebars

Land Trusts and Limited-Equity Cooperatives

Much of land's market value depends on whether it contains important natural resources, is located in a thriving community, or has access to services and infrastructure provided by government. The nineteenth-century American philosopher Henry George argued that all these values were created by something other than private action, and should therefore be captured for public use through taxation.

In recent years, land trusts and other groups have experimented with distributing the costs and benefits of land development in much the same way as proposed by Henry George, but through new forms of land ownership rather than taxation. Some of these experiments include limited-equity cooperatives and land trusts such as Boston's Dudley Street Neighborhood Initiative. The Dudley Street project has made the land in an inner-city redevelopment area the common property of a nonprofit group, while allowing private ownership of homes and other buildings.

Using similar arguments, groups such as the Connecticut-based Equity Trust have dedicated the "social increment" in property values--the increase in land prices as a neighborhood recovers from blight, or a small town grows--to social purposes. For example, the portion of a home's sale price that is due to the increase in land values rather than housing construction costs is used to subsidize the purchase price for the next homeowner.

Incidental Open Spaces

Vacant lots, old cemeteries and partially buried urban streams raise a host of questions about managing urban landscapes as commons. Groups seeking to reclaim or use such incidental urban open spaces must often persuade private owners to let them use and help to maintain the land. Some geographers and planners have remapped cities' neglected, and in practice often "unowned," open spaces.

Groups such as the Waterways Restoration Institute in Berkeley, California, have built on this research to help low-income city residents uncover and restore forgotten streams and their banks, turning them from neighborhood eyesores into neighborhood treasures. The process increases residents' appreciation of the interdependence between the city and nature, which they often think of as exclusively suburban or rural.

Housing

For the elderly, single-parent households and many low-income families, detached single-family housing is either inappropriate or priced beyond reach. Yet traditional land use regulations, grounded partly in concerns about property values, favor only single-family housing. Advocates of privatization, in the U.S. as well as in developing or transitioning economies, often argue for converting common property into private ownership to promote reinvestment or increase property values. Organizations serving the homeless, such as San Francisco's HomeBase, are seeing this argument applied even to traditionally public spaces such as doorways, parks and bus benches. To discourage the homeless from occupying these spaces, some local businesses and neighbors support regulations that convert them into quasi-private property.

Yet in all these settings, some researchers and practitioners have also proposed to manage the housing stock as a whole as a form of common property, both to meet needs not met by single-family detached housing and to encourage neighborhood reinvestment. In the U.S., researchers such as Cornell's Patricia Pollak have examined the sources of opposition to, and the consequences of, converting some single-family homes into group quarters, accessory apartments and elder cottages. Many home and business owners who oppose these land uses in interviews, expecting them to depress property values, are ironically unaware that their neighborhoods already contain some of this alternative housing.

Converted Military Bases

For each base closed, the federal government offers planning funds to a single organization. That organization must represent the entire local community affected by the base closing, from public to private interests and across local political jurisdictions. Researchers such as the Massachusetts Institute of Technology's Bernard Frieden are now studying the way that communities around these bases, which often include very diverse interests, are being forced to create at least temporary "commons" structures to receive federal grants.

Few bases have been all the way through the conversion process yet, so it remains to be seen whether these temporary structures will be converted for permanent land ownership or management. In the Oakland-San Francisco area, however, the Earth Island Institute's Carl Anthony and others on the East Bay Conversion and Reinvestment Commission consciously considered long-term group or community ownership of some base lands as a way to meet regional needs for housing, open space and jobs.

Alice E. Ingerson, director of publications at the Lincoln Institute, earned her Ph.D. in cultural anthropology, for research on the politics of rural industrialization in Portugal. She moderated the session "Is There an Urban Commons in the U.S.?" at the 1996 Voices from the Commons conference in California.

FYI

Courses

Municipal Open Space Conservation: Preparing and Funding Successful Projects, May 9, Orlando, FL

Publications

Blakely and Snyder, "Fortress America: Gated and Walled Communities in the United States," 1995. Working Paper. \$10 plus shipping and handling.

Korngold, "Private Land Use Controls: Private Initiative and the Public Interest in the Homeowners Association Context," 1995. Working Paper. \$5 plus shipping and handling.

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Daniel Bromley, *Environment and Economy: Property Rights and Public Policy* (Cambridge, MA: Basil Blackwell, Inc., 1991).

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Elinor Ostrom, *Governing the Commons: The Evolution of Institutions for Collective Action* (New York: Cambridge University Press, 1990).

Carol M. Rose, "Rethinking Environmental Controls: Management Strategies for Common Resources," *Duke Law Journal* 1991, no. 1 (February 1991), pp. 1-38.