

Land Ownership and Sustainable Development

Prof. Richard K BULLARD, United Kingdom

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ABSTRACT

The terms ownership and sustainability are in many ways incompatible. Most owners would, without restrictions, exploit their land without consideration for sustainability.

The cause and effect of development should be considered when sustainability in the context of land and its use becomes a priority. There is a need to apply pressure on land owners to achieve sustainable development showing that the benefits gained by such actions far outweigh the costs, while benefiting the rest of society in the process. The process could be subtle where owners would be complimented and rewarded for their positive actions, or at the other extreme where they would be severely fined for the damage they cause by exploiting resources.

The issue of who owns land and what control a government can impose on the owners must be determined, as must a clear definition of sustainable development. Too often governments clearly define the rights of ownership without considering or defining the responsibilities of these land owners.

There is an ongoing crisis in the world where the exploitation of land and the resources it contains continues, often unchecked by the government agencies, together with a matching lack of responsibility from the owners. Too often land is exploited for short-term gain without consideration of the damage caused and its impact on the environment in the long term, let alone that land use choice becomes more limited in the long term.

This paper will set out the responsibility that land ownership imposes and the means by which a government can impose methods to achieve sustainable development on the owners of land within their country.

CONTACT

Prof. Richard K Bullard
Department of Built Environment,
Anglia Polytechnic University,
Bishop Hall Lane, Chelmsford, Essex CM1 1SQ
UNITED KINGDOM
Tel + 44 1245 233 351
Fax + 44 245 233 751
E-mail richard.bullard@cwcom.net

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1. INTRODUCTION

The Roman concept of 'allodium' (absolute ownership) is still in use in many countries, but the status of land ownership in the future must be to establish both the legal status and the state's control over an individual's rights. Ownership should ideally provide benefits to all those who have an interest in land, either those obtained by the process of formal registration of land rights or through informal usage where rights acquired have not been registered or legally recognised. Increasingly ownership in most enlightened societies will entail responsibilities on the part of those owning the rights. It is questionable if these currently relate to a requirement to achieve sustainable development.

The common assumption regarding land ownership is that "land cannot be created or destroyed" and that "land is unique because it cannot be moved, and therefore it is physically secure". Land must increasingly be considered in the context of security and responsibility of ownership if sustainability is to be achieved.

The human pressure on land as a resource requires agricultural regeneration of the land and buildings used in the past and not to build on land, especially the green field sites. In an ideal situation only 'brown-field' sites should be used for development. Development taking place on flood plains has, in conjunction with global warming, created unforeseen problems as experienced world wide but especially more recently in Europe and Africa. The issue of sustainable development has, to the enlightened members of a community, become of significance but to the majority of the population it is either not understood or unaffordable. Ownership does not presuppose connections with sustainability but it must in the future if we are to provide adequate resources for future generations.

To enforce owners to use their land so that sustainability can be achieved must be a consideration for future development. Planning applications for development must investigate the sustainable nature of any proposal. Owners must be monitored to ensure their actions, after approval and implementation of development has occurred, are carried out the spirit of sustainability.

2. OWNERSHIP

An appropriate saying with regard to the responsibility of land ownership is that attributed to a Nigerian herdsman, "...land belongs to a vast family of which many are dead, few are living, and countless members are still unborn", (Lane 1998). Ownership can only remain with a person for their lifetime. For those who will become the landowner in the future a responsibility rests with the present owners to act in a sustainable way in the broadest sense, thus ownership should be seen as a responsibility including sustainability, for those who become owners in the future.

In the developed world ownership has reasons been formalised which has enabled those having title to use it as collateral to raise loans for development. The reverse applies for many in the developing world where formal titles do not exist and development requiring capital is restricted or non-existent. As de Soto (2000) states “Any asset whose economic and social aspects are not fixed in a formal property system is extremely hard to move in the market.”

It would therefore be expected that those without formal title would not have the means or certainly not the will to achieve sustainability if it involves cost or if the state imposes controls which involve taxes or expenditure

In the developing world there are major changes occurring regarding the ownership of land. In South Africa the former ownership of land was along ethnic, religious, and cultural lines, this is changing since the abolition of apartheid (Bullard and Waters 1995).

2.1 Implications of Ownership

Ownership or ownership-like-rights to land imply the long-term security of possession and freedom from periodic landlord like extractions, namely rent or its equivalent (Prosterman and Riedinger 1987).

In a primitive society the basic principle of the land tenure system was the right of a farmer over any land which he or she had brought into cultivation (Reynolds and Cousins 1993). Provided there was sufficient land and the density of population was sparse, there was usually no reference to a superior, usually the ritual leader or headman. It is of interest to note that the settlement of hunter gatherers occurred in urban areas and only spread into the rural areas as land became scarce in the cities (Powelson 1988). This questions the interpretation of the past and present meaning of rural and urban, which came first and whether a village is in a rural or urban area?

It is estimated that some 100 million agricultural families work land owned by others and are amongst the world’s most disadvantaged citizens (Prosterman 1996). The implication is that the lack of ownership prevents these citizens from even reaching the poverty level. In addition to these families who have access to and the use of land owned by others, there are those classified as landless.

In the developed world the ownership of land becomes a social, cultural and racial issue, this situation is most noticeable in the USA. In the 1920s African-American owned farmland totalled 15.6 million acres while today this figure has dropped to 2 million acres. During the same time the number of black farmers has dropped from one in seven to one in sixty-seven of the total number of farmers. One of the possible reasons for the fall has been discrimination over loan-approval decisions (Patterson 2001).

Patterson (2001) states that the minorities in America have lost their land at alarming rates, and credits staff at the Land Tenure Center (LTC) in Madison for the major effort they are undertaking to stop the slide. It was appropriate that in 1998 LTC hosted a Conference – Who

Owns America? (Jacobs 1998). An organisation that for 40 years had been involved with land issues throughout the World was at last turning its attention to those within its own country. A parallel in the UK would be the Land Reform legislation being implemented in Scotland, ensuring that occupiers of land have the right in the future to purchase the land.

While the end of feudalism in the UK might be approaching it is noticeable that still over seventy per cent of the land is owned by one per cent of the population (Cahill 2001). The scarcity of and the high cost of building land (only about eight per cent is covered by buildings) are due to the restrictions imposed by Local Government on obtaining building permission. This in turn encourages the retention of land by the minority.

There are specific economic and social issues regarding ownership in the paper on land reform in Eastern Europe. Victorin (1997) clearly indicated the requirements for judicial control and democratic decision making. His statements clearly state both the economic and social needs which equally apply to developing countries as well as those in transition.

Economic Needs

- To clarify rights (ownership and other rights).
- To create suitable real estate units.
- To secure and facilitate conveyance of real estate.
- To allow for suitable forms of tenancy and other forms of exploitation, e.g. of natural resources.

Social Needs

- To create suitable conditions for building and infrastructure.
- To control the use of land.
- To guarantee public access to land for exploitation.
- To control the exploitation of natural resources.
- To create the necessary preconditions for a suitable environment including the environment in general, nature reserves, cultural environment etc.

2.2 Rights and Ownership

In Britain the signing of the Magna Carta by King John at Runnymede in 1215 together with the Bill of Rights in 1688 did not achieve for Britain the powerless and nominal monarchy that had been intended (Cahill 2001). The 63 Articles of Magna Carta have become the source of many of today's concepts of human rights and incorporated into the European Convention on Human Rights as statute law in October 2000 (Cahill 2000). The ceremony took place at Runnymede.

The land rights of commoners in Britain were further reduced by the implementation of the Enclosure Acts of the 18th Century when a total of some 8.4 million acres were lost. The right to use waste and common land was lost by the commoners as the land was enclosed by the land owners, thereby increasing their already large land holdings. As the Industrial

Revolution was occurring at the same time, commoners were flocking to urban areas to seek employment away from the land, the social impact was not as might otherwise been expected. The Labour Government in the UK, largely representing and supporting the rights of the urban community, has undertaken to clarify the rights of access to land as well as curtail some of the long established activities undertaken in rural areas (Bullard and Bullard 2000). The Countryside and Rights of Way Bill currently before Parliament is a further attempt to open up the right of access to the countryside as first happened almost 50 years ago when the National Parks were formed. Gradually the lost rights are being returned, but not the ownership of land. Only death duties have in the past been seen as a means of reducing the size of the large estates. The creation of trusts has provided a means to avoid the process of death duties because only the individual dies not the trust.

The purist form of private ownership is expressed in the French Civil Code of 1804-8, commonly known as the Napoleonic Code. The Code defines ownership as the right to absolutely free enjoyment and disposal of objects, provided they are not in any way contrary to the laws or regulations (Payne 1997).

The rights regarding the ownership of land that people claim to own are only as good as the system that records ownership, and can only be maintained while the owner can pay all the taxes that apply directly or indirectly to the land. The taxation applied directly or indirectly on land is more easily applied than that for the individual tax payer. While an individual can live outside a country and therefore be ineligible for that country's income tax, their land in that country would not be so exempted.

The proviso in Britain about ownership must always be to establish the owner. While in most countries a visit to the local registry office would suffice, this is not true of England and Wales. The Land Registry records only those titles which have been transferred since the Land Registration Act of 1925 came into being. Even then the compulsory areas for first registration were limited to the metropolitan areas, the whole of England and Wales where first registration was compulsory was in the rural areas of Essex, Hereford, Suffolk and Worcester, and this was in 1997. As a large area of land does not change ownership this will not appear on the register, nor is there any proposed legislation to bring it onto the register.

2.3 Responsibilities of Ownership

The responsibility of ownership becomes an issue when addressing the issue of responsibility, and despite the term *allodium*, implying that one does not recognise a superior landlord, the reality is that controls imposed by the state, as the controller of taxes, and even the actions of ones neighbours, can undermine the freedom of a land owner. The non-payment of taxes could result in the seizing of the estate to obtain the outstanding dues. The neighbouring owner can bring about an expensive law suite which could result in one or both owners having to sell their properties to pay costs.

The rights of others also impinge on ownership. The rights of way, and the Scandinavian Everyman's Right allow others to freely wander, but within defined constraints, over land which is generally not clearly used by the owner.

The owner has the responsibility with riparian rights to allow the flow in rivers and streams to be maintained and is usually restricted in the volume of water that can be extracted.

Owners will be expected to prevent water flowing across their land onto other property and to prevent erosion that will damage a neighbour's property.

2.4 Legislation

In some countries the regulations are that certain positive actions must be undertaken to preserve the rights of other, riparian rights and avoidance of erosion.

The legislation that controls the ownership of land must provide the owner with certain freedom which can be contained within the following (Bullard 1993).

- Planting.
- Harvesting.
- Clearing.
- Hunting.
- Trapping.
- Food Collection.
- Building.
- Passage.
- Grazing.
- Mining.

The legislation controlling the above rights will enable a wide range of persons to enjoy "the fruits of the land" including the owner, leaseholder, adjoining owner, selected person, and in certain circumstances the general public. Some rights will be established by custom, others by the holding of a registered right. The rights may be classified as real or praedial.

The owner can cause damage to the land or exploit the resources by overuse. Typical examples of land exploitation could be some of the following.

- Creating waste – not disposing in an eco-friendly way or recycling.
- Creating pollution – toxic chemicals in land, air and water causing contamination
- Consumption of water – excessive amounts consumed without recycling.
- Sewage disposal – not using the correct methods of disposal causing pollution in the process.
- Energy consumption – excessive amounts consumed and lack of energy saving policy.

The legislation can be adapted to ensure that the owner avoids the excesses expressed above. While the priority will be to protect the land the consequences will be to also reduce pollution and save energy.

3. LAND USE AND DEVELOPMENT

Land use and development are closely tied into ownership issues and will be involved in the control of current and future activity on the land. Without control of land use by a government the intended official use cannot be achieved, despite the regulated use not being the most beneficial. Controls on development, even for the optimum purpose will inevitably lead to financial pressures resulting in inflated land values, especially in densely settled regions, and in the ideal locations. Control also encourages corruption by giving both politicians and civil servants the illegal opportunity to seek payment for making decisions that might otherwise not be approved.

3.1 Land Use Activity

The activity on the land will ideally be allocated by regulation to achieve optimum land use and development with sustainability. The likely impact of controlling land use is to classify and restrict to one appropriate activity. The cost and enforcement of land use regulations must be judged against the impact of reducing the control.

In rural areas the need to retain land for agricultural use usually excludes changes to other uses. The foot and mouth epidemic in Britain established that the income from leisure and tourism is 20 times that from agriculture. This difference has a dramatic impact on the priority given to agriculture in rural areas and questions its future.

The BSE crisis shows that beef exports are less important than other higher revenue producing activities. The value of beef exports is greater than the imports while the reverse applies for the quantity. The justification of this market should be questioned, first from the land use question, and secondly from the objective of achieving sustainability.

The expansion of the EU beyond the current 15 countries raises the question of agriculture in the rural areas and the retention of the Common Agricultural Policy (CAP).

4. SUSTAINABILITY FOR EXISTING AND FUTURE DEVELOPMENT

The objective of sustainability is to leave the land in a better state than that which the owner found it in at the time of acquisition of their right. That future generations can continue to reap and even obtain greater rewards from the land would be an objective for the individual with the encouragement or enforcement of the state.

The ideal would be for all the citizens to co-operate with their government to achieve sustainability on the land which they own or rent. Many owners and tenants exploit the resources that are available, apparently without a thought for the future generations.

Living in a democracy provides freedom of expression and of action but this can only be allowed within the constraints of the law. Citizens' rights are jealously guarded, especially by Civil Rights bodies who see any form of control as erosion of their rights. There must be a healthy balance between human rights and government legislation and controls.

To achieve sustainability the following should be considered (Bullard 2000a):

- The needs of future generations when establishing the ownership of rights.
- The type of tenure that is introduced should ideally suit the long term needs for sustainable development and benefit the market economy.
- The cadastral data is the base plane of a LIS and other planes to support sustainability should be built upon it.
- The collection of multiple data at the same time can save costs and assist in achieving appropriate interpretation to assist the process.
- Monitoring the extraction of resources can help to avoid their exploitation and lead to the reclamation of land disturbed during the process.

The above comments will need questioning when addressing the issue of ‘ownership for life.’ The process should impose more restrictions but it will ensure that the owner will use land in a sustainable manner as stated in future regulations.

The short term tenure may not be ideal as the owner may be more likely to exploit in the short term as opposed to those on longer or freehold tenure.

The state must ensure that the appropriate planes of data are available when questioning whether sustainability is taking place. Records that provide details of the loss and gain of resources from the land, for example soil erosion, would be of benefit to establish if sustainability is being achieved.

4.1 Changes in Development

Changes in land use can be extreme as is being applied in the European Union. Because of a surplus of food in some countries of the EU, land is taken out of production (Bullard 2000b), known as ‘set aside.’ The ‘set aside’ insists that land is unused because the owner is paid to keep such land out of production. With a shortage of land for development this again creates an anomaly and thereby forces up the price of land eligible for development.

4.2 Development Control and Enforcement

The process of development, including underdevelopment, is an ongoing unending process. Changes will inevitably occur as demands and life-styles change. Increasing population is still a problem in developing countries, though less so in the developed countries. Italy is concerned that with a declining population where there could be no Italians in the next two hundred years.

In Britain the increased need for single parent/person housing due to the greater independence amongst young adults has led to increased housing demand, despite minor change in total population.

With more mature adults working and living longer their changes in life style have created new demand for housing. Fewer houses are becoming available and although fewer rooms may be required the floor area sizes have increased.

The life span of the population is increasing and therefore the occupancy of housing is lengthening. These factors all question the design and construction of housing for the future as well as energy requirements.

The process of enforcement can either be voluntary or compulsory. The ideal would be to introduce a voluntary system which would not need policing. In practice a compulsory process would be required and taxation related to land ownership would be appropriate.

The advantage of a tax on land is that it is 100 per cent efficient if backed by the right to foreclose on the property in the case of no payment (Müller 1995). Wunderlich (1995) considers the relationship between the environment and agricultural land ownership. Some of these detrimental aspects on agricultural land can be listed as follows :-

- Pesticides and other chemical intrusion.
- Excessive water run-off. leading to flooding and pollution.
- Soil erosion caused through wind and water.
- Woodland destruction.
- Loss of wildlife and habitat.
- Aesthetic degradation.

The taxation authority would have to quantify the impact of the above environmental damage and establish a tariff for infringements.

5. MAINTAINING SUSTAINABILITY

FIG in 1991 published 'Sustainable Development' when its Bureau was under the control of Finland. The objective then, and now, was "to ensure that the surveyors' professional skills are used to promote environmentally sound planning and management of natural resources and human settlement."

FIG has further addressed the issue of sustainability in its Agenda 21 (Onsrud 2001). The objective is to extend the 1991 activity and to incorporate the work of UN Habitat in 1996 as well as its own Bologna and Bathurst Declarations.

The means to maintain sustainability will be enhanced if land owners are encouraged and enforced to undertake their responsibilities. The development issues have been listed in 4 above and present ideas as to how the imposition of land taxes could restrict as well as enforce the controls. Enforcement can be coupled with development control but can be extended to encompass the objectives of sustainability.

5.1 Monitoring Sustainability

The process of monitoring must be both cost effective and achieve its stated objective. The priority is to ensure that the correct and appropriate land use has been allocated to land and that it is taking place on the ground through the appropriate monitoring technique.

The damaging consequences of development should be monitored on a regular basis. The disposal of waste, despite the adoption of the appropriate procedure, can result in toxic waste and extrusion. Illegal dumping must also be eradicated where it is recorded in the monitoring process. The prosecution of owners' illegal acts which undermine sustainability must be detected and implemented.

6. CONCLUSIONS

Sustainable development can be achieved through the efforts of the owners, either voluntarily or compulsorily through an enforcement process. The compulsory process is considered to be the most affective.

Ownership and the rules and regulations that govern it need amendment to force owners to undertake land use and development in a sustainable way.

People's precious land rights must not be diminished in the process of change to achieve sustainability.

The rights of others may have to be questioned when they conflict with the owner's attempts to achieve sustainability.

Major changes in land use will occur in many countries, in Britain the recent impact of animal diseases will ensure this will happen. The crisis has shown that agriculture is no longer the major source of income in rural areas.

Methods of taxation should be introduced that will reduce the damage being done to the land and thereby achieve sustainability.

The monitoring of activities on the land must be undertaken on a regular basis and at sufficient resolution to ensure that damage is detected before it becomes serious. The land use and development change that is achieving sustainability should be established.

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BIOGRAPHICAL NOTES

Prof. Richard K. Bullard

A freelance consultant and part time Research Professor in the Department of the Built Environment at Anglia Polytechnic University (APU). Started surveying career in Zimbabwe and to date has worked in 40 countries. Completed Masters in Engineering by research at the University of the Witwatersrand, Johannesburg, and Doctorate at Sheffield University. Worked in many of the activities of surveying including, cadastral, engineering, land management, photogrammetry, remote sensing, and topographical. Was a former national delegate, appointed by the RICS, to FIG and was Secretary of Commission 2 (Professional Education) and currently a corresponding member of Commission 7 (Cadastre and Land Management). Is a Fellow of the Royal Institution of Chartered Surveyors, and a Fellow of the Survey Institute of Zimbabwe. The Vice Chair of the Geomatics Faculty Board and Member of the Executive of the RICS. An RICS APC examiner. With the European Faculty of Land Use and Development and is a Professor in *Systemes d'Information du Territoire*. Main interests in consultancy and research include land reform, land management, land consolidation and coastal zone management. Particular interest in the multidisciplinary aspects of land development for countries in transition and in the developing world. Is the author of books, chapters and publications in the above fields of activity.