“Editorially Speaking”

Property Rights or Wrongs?

BY GARY CHILSON
Paul Smith’s College

For me, the conflicts over our use of land here in the Adirondacks are among the most fascinating in the world. No where else does society deliberately seek to maximize both the community’s ecological integrity and the individual’s rights to their pursuit of happiness and prosperity.

Yet the mechanics of the current social process (such as bothersome rules, information requests, interminable delays) plus the high costs of it all, chill the entrepreneurial spirit so necessary for prosperity, if not happiness, too. I expect that out of the fire of repeated conflict some new social mechanism will be discovered and implemented to solve the apparent clash between environmental protection and our personal freedoms. How this particular challenge plays out over time presents Environmental Studies students with an unparalleled view of the complex woven tapestry of our evolving concept of community in American society.

Environmental studies, as in the name of this journal, is a new kind of academic discipline. It is a transdisciplinary approach to understanding our relationship to the whole environment. At its most basic, environmental studies (ES) is a study of the community of life across the spectrum of its many types. At one extreme of the community of life spectrum is wilderness; our great megalopolis are at the other. The foundation of the community of life, the whole spectrum for the focus of this subject, is land as Aldo Leopold describes the land in his Sand County Almanac. ES is, explicitly, a value-laden approach to the subject. It is humbling, too—for Leopold teaches that humans are just another member, among many others, in the community of life.

If we apply the transdisciplinary ES approach to understanding the tapestry of community here in the Adirondacks we might begin with the warp—a little political philosophy. We know, for a fact, that Americans have chosen to live together in community through the use of individual rights. These rights are the social mechanisms we established to moderate and control our actions, and those of our neighbors, human and other, with great and far.

Equal in importance, along with our own rights to life and liberty, is our right to pursue our version of happiness. We operationalize this right through the institution of private property rights. The saying goes, ‘It’s my property; I can do what I want with it.’ As we established in the American Revolution, life, liberty and property are the legs of the famous three-legged stool of individual freedom. Thus, private property rights must be considered crucial in an American’s political philosophy. Private property rights are clearly important to people in the Adirondacks!

Now tracing a thread through the tapestry from the science of economics, we see that property rights are also the foundation of our economic system. With our right to liberty, property rights make our free market system work. We get to own the means of production. We get to keep the income produced. We have property rights in our labor, in our capital or tools, and in those portions of Nature we domi-
nate, called 'land.' The social mechanisms called property rights enable us rightfully to own our incomes and, through exchange, our many consumer goods and services as well. Economic history easily demonstrates how individual rights to liberty and private property became the incredible engine of our prosperity as a people.

So far, so good. But . . . while we have been exuberantly seeking to gratify ourselves, the natural sciences have also learned about the effect we have on the larger ecological community of life.

Apparently, some forms of prosperity and our growing numbers are simply not sustainable. There is evidence to suggest that the energy and materials we take from the biosphere and alter and consume within our sociosphere, plus all the waste heat and garbage we dump back out into the environment, are adversely affecting the life-supporting biosphere surrounding us. Despite all the happiness there seems to be in our social system these days, the natural sciences are strongly suggesting—not with absolute conclusive proof of course—that our social system is growing and vibrating, actually swelling and pulsating dangerously, within the much larger but still rigidly limited, life-sustaining ecosystems of the biosphere.

This is not good news. The humanities—history, anthropology, and philosophy especially—attest to the fact that the human story is a story of our struggle for existence in a harsh and impersonal natural world. It has gotten so bad at times we have even asked God for His special help in dealing with Nature. Even so, isolated populations of us have died off before the human species became so numerous, integrated, wealthy and so powerful!

Given this history, I think it is understandable that most Americans are unwilling to sacrifice our engine of prosperity and power on Nature’s altar—to sacrifice our individual rights to liberty and property—just because there are some vague warnings about limits in a physical world or mumblings about Others’ rights. We know that if the right to any one of the three legs is reduced, the whole stool topples—unless all our rights are reduced equally. Since the Renaissance and the discovery of the New World, humanity has wanted the stool of individual freedom to be as tall as possible (even if it does face us into a corner).

If we refuse to stop our inquiry here and follow some of the threads just a little further, we see a fascinating new perspective beginning to emerge in the tapestry. Where these threads take us we can’t know yet, but this new perspective is based on the idea that some of the threads in the tapestry might best be recognized and expressed through an ethical obligation to consider other lifeforms on earth as if they were fellow community members. The challenge in this perspective is to maintain or even increase the height of the stool of individual human freedom while safeguarding the morally deserving rights of Others. Who knows? It might even be good practice if we should discover Others off-planet.

In any event, to meet the ethical challenge of physical limits while maximizing the height of individual freedom requires us to acknowledge three concepts. These three ideas help us determine just how long the property rights ‘leg’ really ought to be. First, there are different kinds of
things along a spectrum of things. In short, not all things are the same. Second, we have different kinds of property rights in these different kinds of things. Third, at one end of this spectrum there are things that shouldn’t be property and, at the other end, things that can’t be property at all.

At one extreme, humans are an example of things that shouldn’t be property. This is true even though we kept slaves for most of our history. It’s instructive to remember that the first democratic government was founded upon a slave economy. So was the greatest democratic nation in the world today, some two thousand years later. History has recorded our great, if slow, progress as a species toward correcting this great injustice.

Our record of progress at the other end of the spectrum is less positive. Clearly, the atmosphere and the oceans can’t be property. So far, we have simply relied on the great abundance of this global commons. We keep all that we can capture or control and call it property. This is a big part of our Nature/ Human problem, as Garrett Hardin pointed out in his famous article, because the part of Nature that can’t be property is destroyed by our rational behavior in a property rights-based economic system. Examples of the tragedy of the commons include global warming, ozone holes, smog, acid rain, ocean fishery collapse, species extinctions, etc., etc. Progress at this extreme of the spectrum obviously requires us to do something about this tragedy collectively, through mutual coercion, mutually agreed upon.

Be that as it may, nothing so large as a global, or even a regional community for that matter, is required for something so mundane as land. Land is not at all like the atmosphere or the hydrosphere. We can and have turned the exposed and useful surface of the lithosphere and its inhabitants into property, complete with enforceable sanctions and penalties for trespass. Territoriality is a fundamental and necessary function of government, though some systems and levels of government are better at it than others. For example, and I’m not suggesting any modern parallels, there once was a time when local aristocrats of a distant monarchy hanged us if we were caught poaching their rabbits.

So, if there is a social mechanism malfunctioning, i.e., the physical limits of some ecosystems are being exceeded, it could be the result of a basic design flaw. Perhaps we are mistaken. Perhaps land is more like things that shouldn’t be property than it is like things that can’t be property.

At first glance, this notion seems to smack more of socialism than of the classical liberalism that gave us freedom from slavery. That would be a very mistaken impression, however. It is actually more the failure of John Locke’s justification of property rights in land to stand both a test of individual freedom and population growth over time.

John Locke was an Englishman who many call, ‘the intellectual ruler of the eighteenth century.’ He had a tremendous influence on colonial Americans including one of my ideological heroes: Thomas Jefferson. In 1690, Locke established his position on property rights in land with the proposition that man (and only males, no females) has absolute rights in land because God commanded man to work the earth and dominate Nature. It is this God-given right which entitles man to appropriate the land as property.

Unless Americans are ready to specify which religion and gender a person must have, I believe the relationship between humans and the land must be based on some other rationale.

Finding another rationale that still supports an absolute form of private land ownership will be difficult. This is because even Locke recognized land as a very special kind of thing along the spectrum of things.

Land is so special, in fact, that Locke qualified a man’s right to property in land with several conditions. (These conditions are largely forgotten by the property rights advocates of today. I’m very sorry to see).

First, in order for land to become property, the individual must actually mix his labor with the land (usufruct as opposed to speculative rights); second, the land must not be already owned by another; third, there must be enough of this kind of land to go around; and, last, what land is left for others must be as good as what one gets for himself [Second Treatise, Chapter Five, especially par. 31 and 32 of John Locke, Two Treatises of Government, (NY: E. P. Dutton & Co. Inc., 1943)].

Close consideration of Locke’s conditions for private property rights in land demonstrates this particular social mechanism’s inadequacies for the modern world. Every single condition is violated to some degree. Some, like the first condition, more egregiously than others.

But how to accommodate Nature in our conception of community has always been problematic. This has been true for at least as long as we’ve had enough humans in a particular place to worry about territoriality. This is especially problematic now if we stop ignoring the land’s theft from Others, both human and nonhuman.

Perhaps the living entity that Leopold called land, the ‘foundation of the community of life,’ should be treated more as we treat another human’s existence, than as we treat inanimate things like bulldozers or factories. Suppose that the land is alive like some kind of collective, synergistic entity that we still only dimly perceive through interpretations from the young science of ecology. Being alive should be a difference that makes a difference. In our search for an ethical approach to dealing with physical limits, if being alive is a difference that makes a difference, then land should be treated differently from inanimate things, like capital, as well.

There is a serious implementation problem with this approach, of course. Philosophy reminds us that humans are functional individuals in our community;
they are moral agents, while land is not. The land can not be a liberated individual.

Finding a solution to this problem will be harder for society to do than liberating slaves. We can’t just do it by fiat or a war. The land can’t speak up for itself, and our legal system isn’t designed to recognize a nonhuman collective entity as a rights-bearing individual. Unlike stockholders in a corporation, forests and rivers can’t vote, don’t have standing to sue, and won’t even scream very loud when killed.

To operationalize Aldo Leopold’s land ethic we have to create some special kind of social institution, some new kind of mechanism in our social system, to immortalize the correct way to behave toward the living foundation of the community of life.

That’s just fine, but our American civilization’s centuries-old approach to solving problems is simple pragmatism. The problem of our ethical relationship to land, as we colonized the continent, was simply solved by turning land into private property. It was the easy thing to do and we hoped for the best with two assumptions: (a) that the owner’s enlightened self-interest would be enough protection for the community’s interest; and (b) we would come up with something new when there were more people who wanted land than there was land to go around. On our unclaimed continent, though, we didn’t have to worry about running out of enough land for the foreseeable future.

If it could work, enlightened self-interest would be a great social mechanism for handling the problem of land’s inarticulate nature. Unhappily, it is, in this case, too much like how slave owners were supposed to be interested in the welfare of their slaves or husbands were for their wives back when all such were considered chattel—other examples of failed rationality by their short-term perspective. Insofar as possible, then, communities of life should own themselves. This is especially true as our world’s population grows by another 100 million people every year. There simply isn’t enough to go around.

In the meantime, however, short-sighted pragmatism and our lazy reliance on outdated social mechanisms overrules adherence to principle. Our social system will struggle along with increasingly burdensome land regulations and the mounting frustration of titular land owners. The pressure to discover a new and better set of social mechanisms will surely grow as the anomalies in our present paradigm accumulate.

AJES is a journal that seeks to record this particular region’s approach to developing an ethical community of life. In this issue, Glenn Harris initiates our ‘News and Reviews’ section by reviewing Phil Terrie’s latest book, Contested Terrain: A New History of Nature and People in the Adirondacks. This is followed by two independently developed articles in our ‘Forum.’ John Sheehan chronicles the events and ideas associated with marketing Little Tupper Lake from his perspective. Then Christine Snide, Town Supervisor of Long Lake (which includes the Whitney Park property), presents her perspective on the important issues involved in the sale, such as who best can protect the land and brook trout of Little Tupper Lake while also providing the level of property tax revenues that people need to support their local community.

The ‘Policy’ Elizabeth Thornsdiere’s broad proposals for policy research, development, and reform in the Adirondacks.

The remaining essays are in our new ‘Regional Perspectives’ section and carry on the theme of promoting both economic prosperity and ecological integrity at the same time. The Reverend Earl Arnold opens the discussion with an important reminder about “The Church’s Stake” in sustainable community development. Jerry Rosenthal describes how one community, located in the center of the Adirondack Park, chose to develop... a sustainable economy in harmony with the community and the environment. . . .” Ernest Hohmeyer concludes this issue of AJES promoting a community-level approach to Adirondack economic development policy because, as he puts it, “the biodiversity of the Park is dependent on healthy economic diversity.”