

AGENCY FOR INTERNATIONAL DEVELOPMENT
WASHINGTON, D. C. 20523
BIBLIOGRAPHIC INPUT SHEET

FOR AID USE ONLY

Batch # 18

1. SUBJECT CLASSIFICATION	A. PRIMARY Agriculture	AE50-0000-0000
	B. SECONDARY Rural sociology	

2. TITLE AND SUBTITLE
Public interest in private property (land)

3. AUTHOR(S)
Penn, R.J.

4. DOCUMENT DATE 1961	5. NUMBER OF PAGES 7p.	6. ARC NUMBER ARC 333.32.P412
--------------------------	---------------------------	----------------------------------

7. REFERENCE ORGANIZATION NAME AND ADDRESS
Wis.

8. SUPPLEMENTARY NOTES (*Sponsoring Organization, Publishers, Availability*)
(In Land economics, v.37, no.2, p.99-104)

9. ABSTRACT

10. CONTROL NUMBER PN-RAB-006	11. PRICE OF DOCUMENT
12. DESCRIPTORS Land titles Public law Regulations	13. PROJECT NUMBER
	14. CONTRACT NUMBER Repas-3 Res.
	15. TYPE OF DOCUMENT

Reprinted from
LAND ECONOMICS
Volume XXXVII, No. 2, May 1961

Public Interest in Private Property (Land)[†]

By RAYMOND J. PENN*

"The most profound development in the last few centuries of world history unquestionably has been what Karl Polanyi calls the Great Transformation—the transition of society from a feudal to a market economy.

"Under feudalism, the common denominator of all social relations was the tenure under which men held land. The whole fabric of feudal society was tacked down at all strategic points to the land. Political power, social prestige, material wealth, and justice—all of these for any man were related to and dependent upon his land tenure status. . . .

"Sometimes we in the United States are apt to forget that feudalistic customs constitute a heavy barrier in many lands against the introduction of democratic principles of social organization. We forget that, in many parts of the world, agrarian feudalism lasted until late in the nineteenth century; that, in some countries, the break from feudalism has begun only since World War I; and that, in parts of many countries even to-day, a paramount social question is, 'How can we break the fetters of a feudalistic land system?'

"The problem of eliminating the vestiges of agrarian feudalism is of course bound up with the equally difficult problem of determining upon some other land system that will allow men the freedom and equality which feudalism does not allow, but that will still give men that degree of security which will assure the needed production of food and raw materials, the conservation of natural resources, and human satisfactions in living. In all parts of the world there are literally millions upon millions of people to whom this question is the great unsolved riddle of social organization."¹

THIS QUOTATION from a paper by the late Leonard A. Salter, Jr., published after his death, states quite clearly the central issues of land development and agricultural reform.

It is hard for us in the United States to realize how many people, in how many parts of the world are trying to untie themselves from feudalism. In varying degrees, both the poor farmer of the Andean Mountains and the agricultural worker on the large irrigated farm have seen that land ownership carries with it more than the right to manage the land and the income from it. In a sense, ownership of land carries with it ownership of government—the right to tax, the right to enact and enforce police regulations, and the right to judge. In addition, decisions on investments in social capital—education, transportation, hospitals, power projects—appear to be the prerogative of land ownership.

So, to the "campesino" ownership of land is both the symbolic and the real source of a new kind of life. It gives him food to stay alive, but it also gives him the right to build his own house in which to raise his family. It gives him, too, the right to tax himself to build a school. Is it any wonder then that land reform assumes major importance to those people who are still living under vestiges of feudalism, or at least outside of the market

economy? To a simple view, what Latin America wants is to industrialize, to expand production and increase the domestic market; in short, to raise the standard of living of the people.

From any point of view, these Latin American countries can do this only if all of their people are part of the economic system. They must produce to sell; and they must have the power to purchase. This requires a shift from feudalism to some form of market economy—an economy where division of labor is possible and where there is some reasonable security of expectations.

All countries are, of course, at different stages in this development from feudalism to a market economy. The process of the shift is different from one country to another, too. However, nearly everything I have read and the very little I have seen of Latin America leads me to believe that the basic issue is how to absorb the nearly 50 percent of the population into productive jobs in the economy.

Let me point out that the problem would be relatively easy if it were only what it appears to be—making more land resources available to the landless. It is that, yes, but it is much more. The pressure for land reform is, in actuality, pressure for a major change in the structure of the economy. I submit that what the landless of Latin America want, and what the economy of Latin America demands, is more than the breaking up of large landholdings. It is the breaking up of the bundle of rights which have so long been a prerogative of the large landholder and denied to the landless.

It is perhaps natural that we in the United States take a much more limited view of land reform. Our own nation was founded at a time when Europe was breaking away from feudalism; and our

† The ideas presented in this article constitute the theoretical portion of a paper presented by the author at the Conference on Land Problems and Policies, held in Santiago, Chile under the sponsorship of the International Cooperation Administration in February 1961. ICA representatives from twenty Latin American countries were in attendance.

* Professor of Agricultural Economics, University of Wisconsin. The author is indebted to Professor Bryant Kearl, University of Wisconsin, for many of the ideas and for invaluable aid in putting this manuscript into final form.

† Leonard A. Salter, Jr., "Do We Need a Land Policy?", *The Journal of Land & Public Utility Economics*, November 1946, pp. 310-311.

Constitution was established on the liberal ideas of those who knew what feudalism was and why it must be abandoned. The Constitution sets up courts, a police force and legislative authority apart from the ownership of land. Thus feudalism never really got established in the United States and some rather violent "rent wars" in New York in the 1840's dealt the final blow to the patron system.

Property in the United States still carries with it rights to land and the products from that land. It also imposes responsibilities on others to respect those rights. But the landless and those who own only a little have ways open to protect themselves and to advance. They can go to court and can count on fair treatment if the landowner abuses them. They can put pressure on the legislature for social security, minimum wages, safety requirements, and unemployment protection. Credit sources make land purchase more feasible. They can acquire property rights in industry; or, through their union, even feel that they have some security in the form of the laborer's right to a job.

So let me repeat, it is natural for us in the United States to look at land development and land reform issues in Latin America and also in other parts of the world in such a restricted way that we may miss the issue completely.

There is another reason why one needs to differentiate between the meaning of property in the United States and in countries that still have some feudalism. We think of United States firms as going into foreign countries and operating pretty much as they do in the United States, with labor and capital sharing the same rights and responsibilities as they do in the United States. Generally, however, this is not the case. When a com-

pany acquires property in another country it will generally follow the rules of that country. Willingly or not, it will find itself exercising the landowner's prerogatives of that country. It may furnish better than average facilities and conditions of employment for its laborers. Yet a United States company in a feudal country becomes a symbol of the general ownership structure of the past and, as such, the target of land reform programs. To put it bluntly, United States industry cannot operate in a feudal country without accepting the rules of feudalism and thus sharing the villain's role for those who want to strengthen the economic and legal position of the landless and jobbers.

Up to now we have been talking about the nature of private property in land and how the concept may be different in different countries or even in different parts of the same country. Now we come to the question of using resources in the public interest. Most of us would agree that the national interest (and simple justice) require that the use of resources be designed to bring the greatest good to the greatest number. This is what we mean by the *public interest*.

In the United States we feel we have a sort of built-in automatic regulator of public interest. In theory at least, each person does what he considered best for himself. He buys or sells land or any other product. He makes the most profit he can. Prices will fluctuate, production and demand will adjust, and competition will force each of us into his most productive employment. Hence, the sum of the maximum incomes of individuals will result in maximum public welfare.

On the strength of this idea the United States proceeded late in the nineteenth century to give almost complete and in-

violate private property rights in land. It is my feeling that this was possible only because of the large amounts of unoccupied land in the United States. At any rate, the United States encountered a number of problems in land use and in each instance the issue developed because individual responses to the automatic pricing mechanism were different from what the public wanted. For instance, the best interest of the heavily mortgaged farmer was to cultivate as intensely as possible even though the farm would wash away and a resource be destroyed as a result. The timber owner could make the most profit for himself by clear-cutting his land. The stockbroker would profit most by selling stock to an uninformed customer for more than it was worth. Our response to these abuses was not to abandon the price mechanism as a way of allocating resources, but to modify it by specific restrictions on what individuals could do.

In the twentieth century, with rapid increases in population, expansion of cities, greater demand for land and water, etc., the public interest in land use has come into focus more clearly than before. In the United States today I think we may fairly say that community land use planning (zoning, local government and services, etc.) is a public policy matter second only to international relations. Land use planning is our response to the challenge of protecting the public interest against unrestricted use of land by its owner contrary to the public interest.

The idea that private property in the United States was absolute and inviolate led Karl Marx into an erroneous forecast. He thought the power accompanying ownership of productive resources would become so concentrated in the

hands of a few, and these few would abuse the rights of the many so outrageously, that revolt would be inevitable. Marx missed the forecast because he saw only one part of the picture. He failed to see that an individual without private property rights may still, under a far-sighted governmental structure, have procedures available and freedom to develop new ones that will act in the larger public interest—restraining private interest if and when that becomes necessary.

I would like to draw a sharp distinction between public interest and public authority or government. Governmental authorities often come to believe that their actions are the only ones invested with public interest. This is true everywhere; it is true in the United States all too often. A conservation department considers its decrees synonymous with public interest and accuses its opponents of selfishness or dishonesty or both. A highway department puts its road-building program above any other land use or use of tax money in the public interest. Fortunately there are always groups or agencies to challenge such arrogance, often even within the government itself. In those countries with one-man control of government or with a dictatorship of a few, and with restrictions on freedom of speech and press, it is much more serious to consider government authority and public interest one and the same.

Public interest it seems to me should be the view of the public—of the people. Actions of individuals are often in the public interest; sometimes even when they conflict with governmental policies. Resolving conflicts between individuals, even on what might be thought of as private matters, may also be in the public interest. And of course projects which cannot be done by individuals or whose

benefits are widely dispersed are the most commonly considered to be in the public interest.

What does it take to define and determine what is in the public interest? Three things, I think. People must have an opportunity to express their desires, the right to get together in groups and arrive at decisions, and some bargaining power to put the group decisions into effect.

Procedures are important. We need procedures to help in arriving at group decisions (planning or policy formation). We need procedures which give the people power in putting their plans (their wills) into operation. And of course we need procedures to protect minorities. The force of public interest thus defined can be brought to bear not alone on the recalcitrant individual but also on the government agency that is failing to do a job that is needed—and may even be brought to bear on the government itself.

I submit that the most important ingredient in economic development is for people (the public) to have authority to express their interest. Land ownership was, at one time, the only channel through which this could be done. Today other procedures of a society give the public this force. The procedures must be flexible so that the structure can be continually changing to meet the needs of the times. When an institution or a rule is inadequate for current needs, it must be changed—either with orderly procedures or in a more violent manner. Witness the sit-down strikes in the 1930s or the Iowa judge unable to foreclose on a farm; these were violent reactions to rules too rigid for the public interest. The violence of the change is, I think, in direct proportion to the inappropriateness of the rule or institution and the rigidity with which it is held.

Public interest and procedures to give it expression in a continuing and orderly manner have not been conspicuous in Latin America. But such procedures must and will be developed. Latin America will not follow our procedures but they may find our experience useful in their own planning. Let me very briefly review the procedures we use in the United States to exert public interest on the use of land.

(1) *Police Power*. People, through their government, can pass such laws as are necessary for health, safety, security, and national welfare in regulating an individual's land use. We are required to stop at a stop sign, we cannot open a store in a residential area, we cannot plow up sod in some soil conservation districts in the Great Plains. This is strong authority; so it is limited. It is not to be used unless it is necessary to protect the *public health, safety, morals* and general welfare. It cannot be arbitrary and it must have some relation to the desired goal. It cannot confiscate the property. In addition, it must involve *due process of law* for the individual. He must be notified, have an opportunity to be heard, and have access to the court if he feels damaged.

(2) *Taxation*. People can levy taxes on land and income to support their government. These taxes must be uniform—similar pieces of land must pay the same tax. Taxes must be used for public purposes to finance the government. We in the United States have a rule that taxes are not to be used for regulation; though one from Wisconsin must say that with tongue in cheek. History has ample evidence that the power to tax is the power to destroy. All the more reason why it must be exercised locally, democratically, and with a broad sensitivity to the public interest.

(3) *Eminent Domain*. If the public must have a person's land it can be taken. This, too, is a power so strong that rigid limits have been placed on it. Any land taken by the government must be used for a public purpose. Highways, railroads and public utilities, schools, etc. are considered public but, in general, we could not use this authority to take land from one private person and give it to another for private use, as would be done in a land distribution program. Urban redevelopment (slum clearance), however, has used this authority to take private land, change its use, and return it to private use. The owner is compensated for the land taken but his only basis for contesting the action is the adequacy of the compensation and the validity of the public interest.

(4) *Spending Power*. Governments can have major effect on land use by the decisions made about spending. Roads, schools, power projects, airports, defense and other government purchases all can have a major effect on land. Subsidies, as well as taxes, can guide the nature of private land use. Considerable public expenditures will be needed in most of the settlement projects I have seen in Latin America. Spending power is important in economic development anywhere.

These, then, are some of the basic tools by which the people express their public interest in private land in the United States. Often, without changing ownership these tools give the government power over private property when it can demonstrate that its actions are in the public interest. Tools such as these are, of course, the particular peculiar combi-

nation that has grown out of the United States history and culture. Other cultures will find other ways in which people can give their interest form and force. Successful development of ways to express the public interest may let us substitute moderate changes in the structure of the economy for violent changes in the economic system. One way or other, however, peoples will break with feudalism (as we ourselves did) and establish the authority of the public interest against the authority of centralized government or economic class.

I have directed my attention in this paper primarily to land problems and policies as they relate to economic development. But *land* policies and *trade* policies and *national fiscal* policies and *total economic development* are all part of the same structure. Perhaps I can be excused, as a land economist, for feeling that land policies are strategic to these other areas of vital national concern. But as a social scientist of wider interests and as a person of deep democratic convictions, I must also make it clear that land ownership is a burning issue in Latin America only because of the other powers that, in a feudalistic society, accompany the ownership of land. The peoples of Latin America feel a passionate concern about owning land because owning land is their route to personal security, to autonomy, to freedom from arbitrary subjection to the will of others. It is, however, only one of several routes. It may, in fact, be a disappointment and a delusion if the other requisites of political and economic security are not present.