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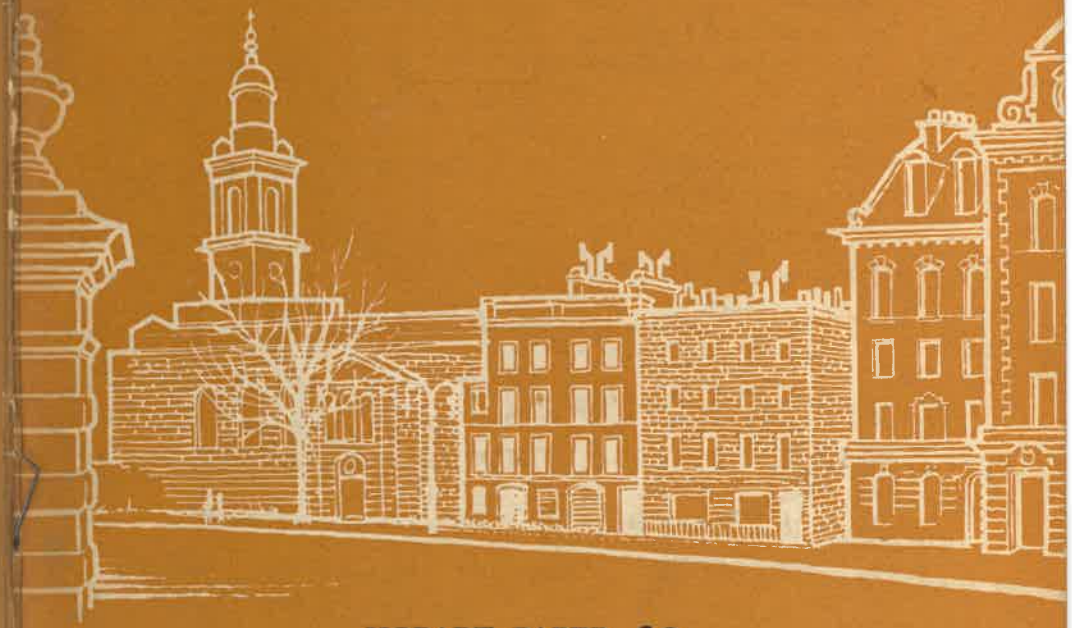
Land in the Market

D. R. DENMAN



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Land in the Market

A fresh look at property, land and prices

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and

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in the University of Cambridge

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FOREWORD

The purpose of the *Hobart Papers* is to contribute a stream of authoritative, independent and readable commentary to the discussion of economic opinion and policy. Their general purpose is to analyse the economic system and its institutional environment most likely to ensure the use of resources that best satisfy consumer preferences; their general form is therefore an analysis of the exchange between buyers and sellers of goods and services in markets and the legal framework within which they work.

The market for land has preoccupied public discussion for several years largely because of the movement of population and industry into areas favoured by the public for their amenities or by industrialists for their cost or other advantages. The predictable results have been an increase in the price of land, especially for house building, exceptional profits by land-owners and by individuals who acquired land on which to build property in relatively high demand, and increased activity by politicians in proposing solutions.

In these circumstances the Institute invited Dr D. R. Denman of the University of Cambridge to analyse the market in land, to appraise the solutions, and to examine alternative suggestions for policy. He has responded with an essay that follows the high standard set by the distinguished contributors to the *Hobart Papers*: a combination of scholarly approach, animated writing and stimulating discussion of policy. He analyses the economics of the land market within the legal and institutional framework of common law and statutory rights of property; and he reconsiders the fundamental quasi-legal concepts of rights and justice on which the discussion rests. Throughout his *Paper* he emphasises: first, that buyers and sellers in the market for land are concerned not with exchanging physical areas of grass or woodland but rights established by law and made valuable by the interplay between supply and demand; second, that in consequence, 'landowners' are not a small number of wealthy country gentlemen but millions of people with varying rights to dispose of homes, shops, farms or other property occupying land; third,

that disregarding the unambiguous rights of individuals may not (in normal times) be the best way to serve the more indeterminable rights of 'the community'.

In his examination of the reasons for movements of prices in land and the buildings erected on it, and of the numerous proposals for taxing the increases in prices and values, or for transferring them from individuals to the community, Dr Denman returns to the first principles of economics in his emphasis on price as the means of bringing supply into harmony with demand. He reviews the conditions in which the compulsory purchase of land by individuals, municipal corporations or the state can be justified, but argues that the buyer should pay a price which compensates the owner for current and expected satisfactions. He questions the proposals for transferring the increments in land values from the owners to the community by arguing that if they are passed on to individual house buyers they cannot be enjoyed by the community, and that if land prices are not allowed to rise the increment can be enjoyed neither by the community nor by individuals. He argues that if there are to be levies for betterment there should be compensations for detriment. In particular he is sceptical of the proposal for a Crown Lands Commission, which he argues might accelerate the increase in land prices and/or reduce the supply of land available for house building. His main conclusion, again following first principles, is that if it is desired to keep down price in land the only way is to increase supply by removing restrictions on densities in urban areas and on building in green belts and elsewhere.

Instead of the devices for preventing would-be sellers of land from coming together with would-be buyers, Dr Denman suggests that the market in property and land should be overhauled so that it serves buyers and sellers better, and that urban renewal might be facilitated by compulsory re-allocation of land that would remain in private ownership rather than be transferred to public control.

Dr Denman has concentrated discussion of the many aspects of a very large subject into compact space. The Institute thinks it will be found educational and invigorating to teachers and students of the economics and the law of property in land, to people who own, buy and sell rights in land, to economists, journalists and others who contribute to the formation of opinion,

and to people in public life who make policy.

In view of the increasing use of Hobart Papers in formal university, polytechnic and school teaching, we propose to extend the reading lists and add suggested questions for discussion by teachers and students. We hope they may also provide a valuable discipline for other readers.

The Institute does not necessarily endorse Dr Denman's analysis or conclusions but offers his *Hobart Paper* as a searching appraisal of the land problem.

THE EDITOR

THE AUTHOR

DONALD DENMAN was born in London in 1911 – four years before the first Rent Act. Later in life he graduated at London University, subsequently entered Government service and in 1946 accepted an invitation to a University Lectureship at the University of Cambridge.

Tenant-Right Valuation in History and Modern Practice, his first book, was published in 1942 and *Tenant-Right Valuation and Current Legislation,* its supplement, in 1948. Two books followed each other in quick succession in 1957: *Estate Capital* and *Origins of Ownership*. In 1958 he supervised the compilation of a *Bibliography of Rural Land Economy and Land Ownership, 1900-1957,* and a year later with Vivien Stewart published *Farm Rents*. He edited and contributed to two series of published lectures, *Land Ownership and Resources,* 1960, and *Contemporary Problems of Land Ownership,* 1964. In addition he has published a number of monographs and contributed many articles to the academic, professional and popular press.

Since the Second World War he has served on a number of commissions and committees of Church, State and Universities in Britain and overseas on land problems and research. He is a Fellow of Pembroke College, Cambridge and Head of the Department of Land Economy in the University.

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I. THE PROPERTY MARKET

Land and property

When a king in Old England gave vast tracts of land away – the Isle of Wight, Selsey Bill, 'all the land of Lothian' – he called it 'my land'. The words, Maitland tells us, do not mean what they say. The land charters, despite their language ('my land'), conveyed not the ownership of the land but a superiority over land.[1]

As it was in the beginning, so now. Land deals are transactions not in land but in rights in and over land, rights which in the aggregate are known to English law as property.[2] Ownership of property in land is ownership of a bundle of rights. The bundles, estate and interests, vary in content. The greatest is the fee simple absolute, a form of freehold estate.[3] Of equal importance is the term of years absolute, the normal leasehold estate.[4] Estates and interests are the staple of the property market. Always the market is dealing with property in the abstract sense and never in land. The land market is a market that never was. The concept of property must be firmly grasped if we are to understand the property market and keep our feet off the ground.

Land is not cut up like linen cloth. More than one interest may exist in the same parcel of land. Picture a Neapolitan ice-cream, the horizontal layers – vanilla, strawberry and coffee. Peculiar to the owner of 'vanilla' property may be the right to occupation of the land; to the owner of 'strawberry' property the right to reserve rent from the 'vanilla' interest; and peculiar to the 'coffee' property the right to sanction or prohibit the development of the land. It can be seen then that the term 'large landowner' is ambiguous. A man may be lord of the manor over thousands of acres at a stretch, a large landowner if one counts the physical domain, but one whose property rights are so exiguous as to cause him more financial embarrassment than enjoyment.

[1] F. W. Maitland, *Doomsday Book and Beyond,* C.U.P., 1907 reprint, p. 232.
[2] See *O. D. Carrs Ltd. v. Belfast Corporation,* (1960) 2. W.L.R. 148, at p. 154.
[3] See Note (i), p. 60.
[4] See Note (i), p. 60.

Since property is a bundle of rights, a property owner is linked in a special way with his neighbours and with the members of the public against whom he must uphold his rights. Property has personal overtones which land has not. Rights run between man and man. Robinson Crusoe could occupy land on his island but he could not hold property until Man Friday came. It takes two to create property. One man cannot uphold a right against himself. We cannot deal with, interfere with, or use property without involving people and personal relationships.

Our landownership system should be thought of, therefore, as a honey-comb of inter-related proprietary rights. The shape and content of the honey-comb and the activity within each cell make a decisive contribution to the national land use pattern. The pattern of national land use is always the outcome of proprietary land use. For this reason we want to know very much more than we do at present about the ownership of property in land in this country. A 20th century Domesday Survey would be an invaluable asset.

A peculiar attribute of property rights in land is a tendency in densely populated countries for them to become a depleted residuum where the area owned is extensive. For this reason the nationalisation of land is likely to be or become a nominal affair. When land belongs to the community, lawyers may argue that a Minister of State or officials of his Department have custody (possession) but not ownership. What it amounts to is the *de facto* exercise by bureaucrats of the rights of property in what political convention calls the citizens' land. Property rights cannot be exercised by an indeterminate body of persons, the community, over the entire length and breadth of a country.

Land is the medium in which property rights subsist and the meaning of 'land' is as important as the meaning of 'property'. Lawyers and economists have different opinions. When an economist looks at land, from what Marshall calls the social point of view,[1] he sees only the virgin resource, the free gift of nature. For the lawyer, to follow Cheshire, land

> 'includes the surface of the earth together with all the subjacent and super-jacent things of a physical nature such as buildings, trees and minerals.'[2]

[1] *The Principles of Economics,* 8th Edition, Papermac 16, 1964, p. 66.

[2] Cheshire, *The Modern Law of Real Property,* 9th Edition, Butterworth, 1962, p. 100.

The distinction is wide and of cardinal importance to our appreciation of property issues. In this *Hobart Paper,* unless otherwise stated, we have adopted the lawyer's definition.

Equipped thus, the following pages attempt to look afresh at certain aspects of the property market now in the public eye. We start with prices.

Ambiguity of prices in land

Because an estate in land relates to a particular area of land, its price can be given as so much per acre or per foot frontage. Unit costs are paraded as 'land prices' and help to confound land and property. It would be less confusing and more apposite to speak of 'prices in land' and this we shall do.

Differences in price per acre may be entirely due to a diversity of proprietary interests. Standard area price comparisons are misleading if we cannot relate the prices to standard proprietary interests. For this reason alone quotations of prices in land should be approached with caution.

There are, however, other grounds why these prices should be accepted with reserve. A quarter-acre plot, for instance, is sold for £15,000, the equivalent of £60,000 per acre. The purchaser is the owner of an estate in fee simple in 20 acres of land adjoining the quarter-acre plot and the plot itself he holds on lease for six years. The plot blocks access to the 20 acres. If the owner of the 20-acre estate had the freehold of the quarter-acre plot he could open up the 20 acres to development or sell the freehold estate in 20¼ acres for £200,000. As it stands the estate in the 20 acres is worth £20,000. By buying the freehold estate in the quarter-acre plot for £15,000, the purchaser merges two proprietary interests worth in sum £35,000.[1] After merger he has a single estate worth £200,000. He has then paid £1,728 per acre for an estate worth approximately £10,000 per acre. The figure of £60,000 per acre if quoted as the value of land in the neighbourhood would be wholly misleading.

The proper pointer to the state of the market is the average price per acre. In the course of a debate on the cost of land in the House of Commons on 5 June, 1964[2] attention was drawn to the

[1] This ignores the value of the leasehold interest in the quarter-acre plot.

[2] *Hansard,* Vol. 695, No. 115, Col. 1460.

sale of half an acre of land for £20,000 which it was alleged pointed to a price level of £40,000 per acre. Now, a developer may need an extra half acre to give him proprietary rights over an acreage which makes economic development possible. Piecemeal, perhaps, he has bought here and there and accumulated all he needs bar the last half acre. For this he gives a figure far exceeding what he would pay on previous occasions. The developer cannot afford to pay overall what he gave for the last half-acre. Suppose £5,000 per acre means sound business and he buys a 20-acre freehold estate, a total price of £100,000. The developer can afford to operate on the following price schedule:

	£
15 acres at £3,500 per acre	52,500
4 acres at £5,000 per acre	20,000
½ acre at £15,000 per acre	7,500
½ acre at £40,000 per acre	20,000
TOTAL	100,000

Pinpoint the last transaction to the exclusion of others and the impression is given of a developer paying £40,000 per acre for his estate when in fact he pays £5,000 per acre.

Figures prepared by Mr John Mcauslan[1] from auction sales in different locations are analysed in Table I and indicate in a rough and ready way that prices for relatively small parcels of freehold land tend to be higher than prices for larger sites. The parcels sold have not been related to specific developers' needs and are simply given as possible indicators of the manner in which small sites probably obscure average prices paid by developers for entire estates.

Farms, houses and building sites

The complications that beset the presentation of prices in land make the compilation of statistics extremely difficult even when the market data are available. Despite public and political concern over 'land prices' no official statistics are published. The most comprehensive information appears in the *Estates Gazette*. Each week the results of public auction sales are listed and at the end of the calendar year professional opinions are sounded on the price

[1] 'The Property Market 1961–62', in *The Chartered Surveyor*, February 1963, p. 408.

TABLE I

AREA OF SITES AND PRICE PER ACRE

1961-62

2½ acres or less			2½ acres or more		
Location	area (acres)	price per acre £	Location	area (acres)	price per acre £
Portsmouth	2	7,000	Bingham	19	950
Reading	1¼	7,280	Mowden	157	1,540
Farnham, Bucks	2¼	9,240	Hythe, Hants	21⅓	2,110
Woodley	¾	9,330	Liphook	4¼	2,350
East Grinstead	¾	10,000	Bristol	30⅓	2,770
Windsor	½	21,000	Runcorn	3⅓	3,030
Rickmansworth	1¾	25,140	Sturry	23	3,300
			Canterbury	11	3,540
			Braunstone	10	4,600
			Coventry	2⅝	4,920
			Reading	3½	5,710
			Reading	19¼	6,700
			Tettenhall	10	7,750
			Weybridge	12	11,660
			Maidenhead	7½	12,670
Average		12,713			4,907

trends of private treaty sales. The auction results are the more reliable. Obviously at best they are inadequate representations of market trends in general. Analyses have been made of them, notably by Mr G. H. Peters of the Agricultural Economics Research Institute at Oxford,[1] and Dr P. A. Stone of the Building Research Station.[2]

As a result of these analyses we know substantially more about the behaviour of prices in land than we knew before. We have no way of telling how they influence the average cost per acre and per foot frontage paid by the respective purchasers. If the crude

[1] 'Farm Sale Prices in 1963', *Estates Gazette*, 22 February, 1964.

[2] *Current Papers*, Design Series No. 23, Building Research Station, 1964.

figures refer to freehold interests in land they indicate the following trends of primary importance:

i) prices of freeholds in farmland keep closer in step with farm incomes than with farm rents;
ii) prices of farm freeholds with vacant possession moved upwards faster than prices of freeholds subject to farm leases from 1939-55 and slower thereafter;
iii) prices of freehold house plots have moved with house prices generally and not with prices in building land ripe for development;
iv) prices of freehold house plots are influenced directly by the density of houses per acre and by the distance of the land from an urban centre.

TABLE II

INDEX OF PRICES OF FARMLAND, FARM INCOME AND RENTS, 1939 to 1963

Year	Farmland Prices		Farm Income	Rents
	with possession	let		
1939	100	100	100	100
1955	252	218	625	172(a)
1963	541	627	725	301

(a) 1956.

Table II illustrates the first and second trends. Farming incomes from the evidence of the annual Agricultural Price Reviews rose 525 per cent from 1939 to 1955 and 16 per cent from 1955 to 1963. Freehold farms with vacant possession rose in price 152 per cent over the first period and 115 per cent over the second period, while in the same periods farm rents improved no more than 72 per cent and 75 per cent respectively. The general trend illustrates the effect of different proprietary interests upon property values. While the price for freeholds with vacant possession improved 152 per cent from 1939 to 1955, the price of reversionary freeholds moved up only 118 per cent; between 1955 and 1963 the respective movements were 115 per cent and 187 per cent. Farm rents dragged far behind farm incomes and the price of freeholds. The acceleration in rents after 1955 was due to an

amendment in the law in 1958 which required arbitrators in rent disputes to award rents in accordance with open market values.[1]

TABLE III

INDEX OF PRICES OF BUILDING LAND AND HOUSES, 1939 to 1963

Year	Building sites		Houses
	Per ft. frontage	Per acre	
1939	100	100	100
1959	323	792	333
1963 (mid)	526	1,615	437

Source: Compiled from Estate Exchange figures in the *Estates Gazette* except for the house price index which has been calculated from prices published from time to time by the Co-operative Permanent Building Society.

Table III shows the third trend. Isolated freehold building plots usually developed with roads and other services moved upwards in price from 1939 to 1959 by 223 per cent. House prices kept closely in step and moved over the same period 233 per cent. Freehold building sites ripe for development and priced by the acre moved upwards 692 per cent, three times as fast as the price per foot frontage of isolated plots.

The land factor in the price of freehold houses, it would appear from these figures, had not altered in proportion to total cost between 1939 and 1959. *Housing in Britain,* a survey recently published by the Town and Country Planning Association, points out[2] that in 1939 a £1,000 freehold house would stand on a freehold plot worth £180, or 18 per cent of the total house price, and in 1959 a freehold house worth £3,300 would occupy a plot worth £600 or again approximately 18 per cent of the total cost. The individual freehold plots are priced per foot frontage and therefore the constant proportion which the land cost bears to total cost of a house is not to be accounted for by a reduction in the frontage of house plots. From 1959 to 1963 the price per acre of

[1] Agriculture Act, 1958, Section 2.

[2] Cf. D. R. Denman, 'Peak Prices and Planning', *Journal of Planning and Property Law,* July 1960.

freehold sites jumped 104 per cent against 63 per cent in foot frontage prices and 31 per cent in freehold house values. Acreage prices again race far ahead of plot prices, but the latter now outpace house prices. An investigation made by the Minister of Public Buildings and Works in the summer of 1964 shows the proportion of the land factor in house prices was the same in 1938 as in 1964.

These figures should be read in the light of observations made by Dr Stone who has carefully analysed movements in the prices of house plots in the London and Birmingham areas.[1] Dr Stone shows that the average price per plot did not change appreciably from 1960 to 1962. The exceptional price rise from 1939 to 1959 where land was sold by the acre was not reflected in a corresponding rise in the price of houses and house plots. The ratio of plot price to house price was the same in 1959 as it was in 1939. Where, then, small parcels of land were sold by the foot frontage, the length of frontage offered in 1959 would have been the same as in 1939. But it does not follow from this that the size of the plots would have remained constant; the ratio between house price and price per foot frontage could remain constant if the plots were unchanged in width but shorter, so that the 'superficial area' was less. The constancy in ratio between plot price and house price, in the face of a rise in acreage prices more than twice that of the increment in house prices, points to smaller plots and higher densities on the newly developed housing estates, and of course to the erection of blocks of flats. Between 1959 and 1963 both frontages and plot sizes were squeezed into narrower dimensions and thus maintained the constant ratio between land price and house price. The steep rise in prices in land sold by the acre did not push house prices up proportionately at any time. What the higher prices in land have done is to reduce considerably the physical ratio between land and house premises. A house bought in 1939 was set in a more spacious garden and had more and larger rooms than the corresponding house of 1963.

Table IV shows Dr Stone's figures from his analysis of the market for building freeholds in the London and Birmingham regions. They reveal how the price per acre of freehold residential building land is influenced directly by the distance of the site from

[1] *Loc. cit.*

TABLE IV

ESTIMATED AVERAGE PRICES PER ACRE FOR RESIDENTIAL BUILDING LAND, 1960 to 1962

Region	Distance from the centre (miles)	Density (dwellings per acre) 5	10	15	20	30	40
		£000's					
London	5	12	17	23	28	39	50
	10	10	14	19	23	32	41
	20	7	10	13	16	22	28
	40	3	4	6	7	10	13
	60	1	2	3	3	5	6
Birmingham	5	8	11	14	17	23	
	10	6	8	11	13	18	
	20	3	5	6	8	10	

the centre of the city (London or Birmingham) and by the density of houses per acre at which the sites are developed.[1] They therefore show how influential these two factors are in the prices of land.

Market imperfections

That land is fixed in supply was a premise from which the classical economists argued that an all-round improvement in the wealth of a society inevitably benefited landowners at the expense of others. The economists were analysing a world where, subject to a number of other assumptions, the land market dealt with land in its virgin condition. In reality, as stated above, estates and interests are the merchandise of the market. Their supply is not fixed, as is the supply of virgin land. Land is developed and redeveloped, and estates and interests are created in it to meet the changing moods and intensities of demand.

Supply is affected by the type of estate in land. Alter the contents of the bundle of rights and the commodity offered alters

[1] Dr Stone points out that although price of land and density are proportionately related, the relationship between price of land and distance is not necessarily proportional.

in character. At the present time in the London region there is an unprecedented demand for fee simple estates in building land unencumbered by restraint on development. For these estates prices are soaring. There is plenty of land – square miles of it – in the green belt[1] and elsewhere, but the required kind of proprietary interest is in short supply. Fee simples in the green belt are estates whose complement of proprietary rights is curtailed by social planning prohibitions. If to the bundle of their rights was added the right to develop the land, the character of the proprietary interest would broaden, the supply offered on the property market expand and, other things being equal, prices would turn downwards.

What is confusedly thought of as demand for land is a demand for property rights, and in some types of estate the property market is remarkably dull. Examples are found within hailing distance of the Metropolis. Hundreds of acres within 30 miles of Charing Cross have gone back to natural scrub because the fee simple estates are encumbered by private and public restraints. Manorial customs and restrictions imposed by the Commons Act, 1876, reduce the estate owner's rights to a worthless residuum. For some of these estates all traces of the owners are lost; there is nothing to gain by pursuing a claim to them.[2] Likewise before the introduction of creeping decontrol of rent-restricted houses in 1957, owners whose freeholds were encumbered by statutory tenancies found no market for their estates. Elasticity of supply in the property market depends upon the extent to which it is possible to create or adapt proprietary interests to meet demand.

Some sections of the property market suffer from poor communications. Supply is ignorant of demand. Vendors offer a field here, a house there, isolated shops, leasehold reversions, a scattered array like stars in a night sky. Simultaneously developers cry for the moon – extensive compact estates which in normal circumstances can only be formed by consolidation of smaller units. Agents acting for the vendors may be aware of the nature of the demand but professional decorum debars them from touting among owners in an attempt to bring the two sides of the market together. Now and again an agent is instructed to act for the

[1] See Note (ii), p. 61.

[2] D. R. Denman, 'The Future Use of Common Land', *Royal Society of Arts Journal*, March 1964.

purchaser. Even so, he seldom comes out into the open to let it be known what he is after. A normal approach is a cloak and dagger act, piece-meal territorial acquisition, sinuous manoeuvres to hide the source of the demand lest the market is alerted and plays the oyster. Thus the property market is disjointed. Supply is seldom face to face with true demand. An overhaul of the market machinery is overdue. Maybe the Stock Exchange with its jobbers and brokers would provide a useful pattern which, suitably modified, would make a more effective property market.

Who are the land speculators?

Bringing the two sides of the property market together can be a tiresome, tedious and risky business. Builders and developers cannot always spare the time and money. Neither is it their primary business. Fortunately, the property market and incidentally society at large is well served by active property investors prepared to act as middlemen in the hazardous but tantalisingly profitable venture of shaping supply to meet demand.

A great deal of rhetoric is deployed even in responsible quarters about land speculators. *Signposts for the Sixties* lamented 'the exploitation of the public by the private speculator and landowner'.[1] Mr Harold Wilson has spoken of land speculators holding the people to ransom.[2] The term is used with the utmost indiscretion, sometimes to the point of suggesting that all landowners are racketeers cornering a 'bull' market. Without the property investor the property market as at present constituted would be impaired. Far from being worthless parasites they bring essential knowledge to bear on market transactions. Money, time and labour are saved. The operation certainly involves holding property over periods of time; subsequent purchases must be added to earlier ones to meet developers' needs, an operation which is not maleficent speculation but one essential to the efficient working of the market.

Planning decisions which decisively affect property rights introduce a real risk element into landownership, one which some developers are not prepared to take. In these circumstances property will come on the market for development only where an

[1] P. 21.

[2] At Hammersmith on 28 September, 1964 in the course of the General Election campaign.

investor is prepared to buy it and take the risk of obtaining planning permission to develop it. Such risk-bearing is vital to the economy and to the property market, although, for example, Mr John Mackie, Parliamentary Secretary to the Ministry of Agriculture, has criticised it as pure speculation.[1]

The property developer can be likened to a manufacturer, one whose initiative, enterprise and skill add to the nation's stock of wealth in fixed capital assets. He must acquire interests in land as an essential and major part of his stock-in-trade. In the public image of him, too much emphasis has been placed on this acquisitive, preparatory activity and far too little upon the specialist creative role he plays in a modern economy. He creates (manufactures) houses, shops, offices, factories, warehouses and so on, not only as self-contained premises, but as constituents of overall plans often carried out in association with local municipal authorities for the renewal of extensive urban areas.

Mr Arthur Skeffington, now Parliamentary Secretary to the Ministry of Land and Natural Resources, in the House of Commons debate on the cost of land on 5 June, 1964, objected to the restoration of 'a free market for the speculators in land (sic) for all types of development'.[2] Only one construction can be put upon these words. They imply that by a speculator he means anyone who wants the best price the market is prepared to give for the property he holds. Mr Skeffington cannot really imagine that land 'for all types of development' is wholly in the hands of men who by guile have got it from erstwhile owners to hold in a monopolistic vice draining supply and driving the property market to desperate lengths. If unscrupulous gamblers are draining the market of interests in land, the pinch would be felt at once in the building industry where men would be stood off and plant lie idle for want of land to build on. There is little or no evidence of this. The building industry has been actively employed over the past six years, as Table V indicates.

An up-to-date survey of the housing position in the London area prepared by the London County Council to be given as evidence before the Milner Holland Committee on Housing is reported[3] as showing that land shortage in London is not the

[1] *Hansard,* 5 June, 1964, col. 1469.

[2] *Ibid.,* col. 1476.

[3] *New Society,* 22 October, 1964, p. 19.

TABLE V

PERCENTAGE OF UNEMPLOYED IN CONSTRUCTION INDUSTRY

Year	Numbers registered		
	Total	Unemployed	
			% of
	000's	000's	total
1959	1,523	55	3.6
1960	1,567	39	2.5
1961	1,617	33	2.1
1962	1,653	54	3.3
1963	1,681	67	4.0
1964	1,694	67	3.9

Source: Ministry of Labour Gazette, May and June, 1964; with the exception of the 1964 figures (average January to April) the figures are approximate and are for June of each year.

main factor slowing down the drive for more houses. The limiting factor according to the LCC report is shortage of architects and other technical staff and of building labour.

Here and there people may be hoarding land in the hope of raising prices; they can only be relatively few in number and in influence. Their influence may, however, partially account for the small percentage of slack in the labour force of the construction industry as indicated in the above Table; it cannot be a major factor and it is reasonable to suppose that a highly influential cause is maldistribution of labour.

Land speculators in the derogatory sense are a mythical people unless, following Mr Skeffington, we fill their ranks with the millions of folk who own property rights in the land of these islands – householders, farmers, garage proprietors, shop keepers, merchants of all kinds, business houses, factory owners, local authorities, and government departments – all of them ready to drive a good bargain in a sellers' market.

II. CONTROLLING THE PROPERTY MARKET : CAUSES

For various reasons, some technical, some economic, some political, the free working of the property market has been interfered with. In this section we shall set out the principal reasons for interference and control, in III look at the ways and means adopted in pursuing them, and in IV consider the ends to which they lead.

Broadly, the causes can be classified as follows:

i) advancing technology;
ii) social equality theory;
iii) price control;
iv) appropriation of unearned increments.

Advancing technology

Technological progress over the last 200 years has revolutionised agriculture, industry and domestic life. Yesterday was a day of pack-horses, bridle paths, home crafts and tofts. Today is a day of combine harvesters, diesel engines, motorways, foundries and multi-storeyed flats. And with it all the land pattern changes. No longer do we cultivate the soil in scattered strips, tramp over tortuous trackways and go to bed by candle light. Fields are compact, motorways broad and straight, and houses are lit, warmed and watered by a tracery of wires and ducts.

None of these achievements would have been attained if the men who set their hands to them had had to fend for themselves in a completely free property market. Consider the laying of a railway. The promoters require a proprietary interest in a ribbon of land coursing dead straight for miles on end. Nowhere would the property market offer such requirements tailor-made. To buy estates and interests in the path of the proposed track by chance negotiations would burden the hands of the promoters with useless land and lock vast sums of money away in hopeless uncertainty. To indicate what was needed and negotiate for the land segments bit by bit would be hardly less daunting, unless the

promoters could approach reluctant vendors knowing that as a last resort compulsory purchase powers could be used. Almost from the earliest days promoters were given statutory powers under private Acts of Parliament by which they acquired land compulsorily.

A case for compulsory purchase on the grounds of technological advance is made out whenever what needs to be promoted cannot be achieved by the technological competence of those who own interests in land at the time, and the working of a free property market is either incapable of effecting transfer to the technically competent or is too tardy in doing so.

Today among the principal needs are:

1. roads, rivers, public services and new towns;
2. urban renewal;
3. slum clearance and social facilities.

1. The case for roads is clear cut. Road engineers face problems similar to those which confronted the railway promoters. None would cavil at the powers of compulsory purchase now vested in the road authorities. Likewise, river boards would be gravely handicapped in the fulfilment of their public duties if they were not invested with powers of compulsory purchase to acquire interests in land in such odd pockets, parcels and riverside strips as would never find their way on to the property market on their own account. And so with the creation of a new town. This is a highly complex planning operation making demands for interests in land which must satisfy the most exacting specifications of area and geographical, economic and social setting.[1] Making a new town is clearly beyond the technical competence of a normal rural landowner and the chance that the free property market would satisfy the discriminating demand for land is remote.

2. Urban renewal is the latest comer. A case can be made out but it does not stand so firmly on the ground of technological necessity as that for roads and other activities. Cities and towns have been renewed in the past. What is novel in the modern process is the planning and execution of comprehensive redevelopment schemes over wide areas. Individual land proprietors are frequently impotent. Renewal needs a concerted effort by many or the transfer of existing separate proprietorships to a

[1] See *South East Study, 1961–1981*, Ministry of Housing and Local Government, HMSO, 1964, p. 65.

single hand to hold the land in an entire estate large enough for comprehensive planning. A swift way of doing this is compulsory purchase by developers or local authorities. The case would be as clear cut as it is with roads, if the dislocation of the property market were an insurmountable obstacle. But it is not. Developers and property investors can bring the two sides of the market together and accomplish urban renewal. Progress is slow, often abortive, but it takes place at the dictates of buyers and sellers in a free market. The case for compulsory purchase rests mainly on an urgency that will not brook the hit-and-miss adjustments of the market. Whether there is urgency today sufficient to warrant the powers of compulsory land acquisition now available to local authorities with Ministerial consent[1] for comprehensive development is open to debate.

3. Compulsory purchase of property for slum clearance and social facilities such as schools, hospitals and so on, has a longer history. With slum clearance the case runs more or less parallel with that for compulsory purchase for urban renewal. Property interests in slums are usually quite inadequate to meet the requirements of modern rehousing policies and the transfer to larger proprietary units is essential. Transfer to larger units would in many places be within the competence of a free property market to achieve. But because slum clearance often means the rehousing of families that cannot afford to pay purchase prices or rents commensurate with the open market value of new residential property in central areas, private developers shy off this kind of investment. Housing authorities, therefore, have to take it on. The landowners are well aware of the contemplated action and of a housing authority's need to acquire specific proprietary interests to meet the technical requirements of rehousing. Compulsory powers are thus necessary against any who otherwise would stand out against the housing authority and take advantage of the inelastic demand.

With schools, hospitals and similar social facilities, technical and economic factors also justify compulsory purchase but the emphasis is on the former because the normal run of landowner or developer is not likely to build a hospital or school or acquire land for doing so.

[1] Town and Country Planning Act, 1962, Section 68.

Compulsory purchase to acquire land for housing which is not slum replacement cannot be supported on a simple technological argument. After all, a free property market has provided for hundreds of thousands of houses since 1945. The case for compulsory purchase is unique and rests entirely on economic and social assumptions – the call to provide subsidised houses at rents which would bankrupt private builders.

'They all shall equal be'

In the opening years of the present century many theories were advanced for the redistribution of property in land. By devious routes they all reached back to a common source – the right of each man to own the products of his labour. This is not the same as saying that each man should have an equality of goods, for one man's labour can produce double the output of another's. Henry George's version of the general theme, however, claimed an equal right of all men to land. Land for him was land in a state of nature, an economist's not a lawyer's conception of it:

> 'if we are all here by the equal permission of the Creator, we are all here with an equal title to the enjoyment of his bounty – with an equal right to the use of all that nature so impartially offers.'[1]

For Henry George and those who followed him, like Joseph Hyder of the Land Nationalisation Society, the logical outcome was an attempt to make a practical distinction between land in its natural state and the improvements made upon it by man's labour, and, having made the distinction, to transfer by direct or indirect intervention in the property market nature's part to a common pool, leaving the works of man as the subject of private property rights.

Karl Marx went further. All private property which involves the employment of labour retains for the property owner the product of that labour.

> 'At the outset,' he wrote in *Capital*,[2] 'the right of ownership seemed to be based upon the owner's personal labour . . . Nowadays, however, property appears to mean as far as the capitalist is concerned the right to appropriate others' unpaid labour or the product thereof and as far as the worker is con-

[1] *Progress and Poverty*, Hogarth Press, new abridged edition, 1953, p. 157.
[2] Everyman's Edition, Vol. 2, 1962, p. 641.

cerned the impossibility of appropriating the product of his own labour.'

The Marxist in consequence invades the property market to acquire all property rights for the state but is willing, as now happens universally in Poland and elsewhere, to allow the retention in private ownership of small peasant interests no larger than can be worked by a man and his family.

These theories are dormant in modern Britain. Land nationalisation is argued from an economic premise.[1] Social theories may, however, revive. Modern theory in the main moves in an opposite direction. No division is advocated between land in a state of nature and property in man's improvements. Opinion calls for compulsory transfer of reversionary freeholds to the owners of the leases upon which they are contingent. Since it appears as leasehold enfranchisement,[2] we do not immediately recognise this compulsory merger of leasehold and freehold for what it is – a direct intervention in the property market. It is a live and current issue today. The present Government included leasehold enfranchisement in their General Election programme for a new Britain:

'Labour will change leasehold law to enable householders with an original lease of more than 21 years to buy their own houses at fair terms.'[3]

The subject has moved in and out of public ken ever since the Select Committee of the House of Commons reported upon it in 1886.[4] A Parliamentary Committee under Lord Jenkins reviewed the matter again as recently as 1950.[5] Both Committees found against leasehold enfranchisement on a number of counts and the Report of the Reith Committee on New Towns[6] added its support in denunciation of enfranchisement by praising the leasehold system in these words:

'The positive covenants in a lease are a far more effective control over use than the negative covenants imposed on the purchaser of the fee simple, and the arrangement of leases so

[1] For example, see J. Mackie and Henry Walston, *Land Nationalisation: For and Against*, Fabian Tract 312, 1958.
[2] See Note (iii), p. 61.
[3] *The New Britain*, 1964, p. 15.
[4] *Select Committee on Town Holdings: Reports from Committees*, 1889, Vol. 7.
[5] *Leasehold Committee Report* (1962 Reprint), Cmd. 7982.
[6] *Committee on New Towns*, 2nd Interim Report, 1946, Cmd. 6794.

that they fall in at about the same time affords the only certain way of ensuring that any given areas can be redeveloped as a whole in due course.'

Perhaps the most obvious point in the case for leasehold enfranchisement is the desire to rid tenants whose leases are expiring of the worry of having to move elsewhere. The measure of the hardship depends upon the age, resourcefulness and wealth of the tenant, the state of the property market and the extent to which habit has woven a web of personal attachment and business goodwill around the leasehold premises.

There would seem to be a good case for trying to alleviate the anxiety in the minds of tenants of houses and business premises whose long leases are drawing to a close. But it is questionable if leasehold enfranchisement is the best way of doing it. After all, it requires a tenant to raise a purchase consideration which may be as distasteful to and disturbing for him as seeking a full new lease at a premium, and more undesirable than procuring a new lease without a premium at a rack rent.[1] The Leasehold Committee made the point that only a minority of tenants whose opinion they were able to ascertain, either directly or indirectly, desired leasehold enfranchisement. Tenants, especially those of business premises, were predominantly and primarily interested in security of tenure.[2] The argument for leasehold enfranchisement from the need to relieve anxiety engendered by the prospect of dispossession is answered by giving the tenant a statutory right to claim renewal of his lease. This was the conclusion of the Leasehold Committee concerning business premises. They recommended a measure making renewal the principal relief and compensation for improvements and disturbance a secondary remedy.[3]

To people who do not understand the true nature of a leasehold interest, it always appears as if hard cash has been paid for something which continually depreciates in value. As the lease runs out the impression is gained that money has been paid for nothing; the long years of benefit that have passed are forgotten. Inevitably a leasehold interest is limited in time, but the market value of a leasehold takes account of its limited nature. The purchase price

[1] See Note (iv), p. 61.
[2] *Report* (1962 Reprint), para. 58.
[3] The recommendation was eventually accepted by the government and issued in the Landlord and Tenant Act, 1954.

allows for this. The extra money which the purchaser would have to find for a freehold estate (fee simple) can be invested to accummulate at compound interest to a sum which at the time the lease runs out equals the original purchase price of the lease – a process known as leasehold redemption.

Advocates of leasehold enfranchisement used to argue that leasehold tenure is detrimental to the best interests of the country because it fosters jerry building and fails to maintain the stock of houses subject to it in a sound condition. Whatever substance there might be in this argument, it is not for leasehold enfranchisement but against leasehold as a system of tenure. The argument that occupying tenants do not take the same pride in the condition of their houses as the owners of freehold interests (fee simple) is more relevant, although there is very little evidence to substantiate it.

On social grounds exception is taken to the leasehold system because it makes the lessee subservient to the lessor where the lease is laced with conditions prohibiting change of use, alteration, assignment and sub-letting. It is argued that it is socially undesirable that these powers should be exercised by a private individual or corporation.[1] Those who use this argument present it as a self-obvious fact, undeniable and accepted by all. Objection is apparently taken only against landlords who are private persons or private corporations. For some inexplicable reason, the advocates of leasehold enfranchisement are quite prepared for lessees to be subservient to public corporations and government departments where leases are taken from these institutions. The argument is entirely a political one and is not based on economic considerations.

Another argument in defence of leasehold enfranchisement maintains that a tenant in the course of his lease will 'buy' the property. The aggregate of his rent payments over the period of lease will equal, or more than equal, the freehold value of the house or shop and therefore he should be given a freehold in it at the end of the lease.

Complaints are often heard that leasehold enfranchisement cannot be left to voluntary negotiations. Landlords would demand extortionate sums for the freehold. The Leasehold Committee quotes specific instances of these complaints which they point

[1] Arthur Skeffington, *Leasehold Enfranchisement*, Fabian Society, 1956, p. 24.

out confuse ground rent and a fair rack rent. The Committee goes on to say that the demands of the landlords in these cases were not extortionate at all, but were based on the current rack rents of the premises while the lessees were making their calculations on a ground rent basis.

One of the major planks in the platform of the advocates of enfranchisement is that the buildings and other improvements fall, at the end of the lease, into the hands of the landlord who has made no contribution to their cost. The argument is a specious one because the landlord has forgone his right to receive the full rack rent from the developed property for the whole period of the lease.

The like sentiment which clamours for leasehold enfranchisement and impugns landlords on the ground that they render no service to the community and never make the slightest contribution financially or otherwise clearly contradicts the facts. A man who puts his money into a freehold reversion contingent upon a long lease is placing the money at the service of the national economy in exactly the same way as one who buys shares in a company. The freeholder faces the risks of investment; we so readily forget in these days the rows of unlettable houses and shops of the inter-war years when private fortunes were lost by the owners of property, both freehold and leasehold alike. Investors in freehold property contribute to the economy by putting land at the disposal of the entrepreneur, the manufacturer and the tenant who does not wish to use capital to acquire freehold land. The Leasehold Committee cited evidence of 'the proved utility of the leasehold system and its convenience to the community as a whole as a means of financing development'.[1]

Price control

At no time do we need to keep more clearly in mind the essential distinction between land and property than when we consider policies for the control of so-called 'land prices'. Prices on the property market can be directly interfered with by:

(i) forced selling;
(ii) forcibly altering the nature of interests in land to make them less attractive to the market;
(iii) creating new interests and under-selling them.

[1] *Report* (1962 Reprint), para. 63.

Here in Britain we have had some experience of methods (i) and (ii). Compulsory purchase at prices which discount the future potentialities of the land was an example of method (i) under the Town and Country Planning Act, 1947. Rent restriction of houses, first imposed in 1915, is a glaring instance of method (ii). Rents were pegged with little regard to landlords' outgoings,[1] net income suffered grievously in consequence and the values of the reversionary interests on the property market were seriously depressed. The restrictions altered the nature of the landlord's reversionary interest, depriving him of his right freely to negotiate rent revisions with his tenants.

Restraints imposed on the development of land under the Town and Country Planning Acts are of this order also and have a widespread effect upon prices on the property market. Planning restrictions limit property rights. Fee simple estates and other interests are shrunken versions of what they would be were the owners free to use their property as they pleased. The difference in price between the shrunken version and the favoured version is at times startling, a cause of much resentment and sense of injustice.

Compulsory purchase, rent restriction and planning restraints control the selling price of estates and interests in land by, as it were, a side wind. Market control as such is not the primary purpose of these activities. The present Government, however, has announced its intention to set up a Crown Lands Commission under the Minister of Land and Natural Resources to acquire land compulsorily in an attempt to control rising 'land prices'.

How this will operate is uncertain. One thing, however, is crystal clear: it is not the price of land *per se* that will be controlled. Land is not priced on the market; there is no market in it. The Lands Commission can do no more than attempt to control the price of what in practice is offered on the market, namely property interests in land. The distinction is fundamental: to act as a clearing house, buying cheap and selling cheap and passing on to the new owners a property interest *identical* to what has been acquired is one thing; to create *new* interests in land (method (iii) above), inferior interests, something other than and *less* than what the Commission acquires, will leave vested in a government

[1] Cf. N. Macrae, *To Let?*, Hobart Paper No. 2, 1960, and J. Carmichael, *Vacant Possession,* Hobart Paper No. 28, 1964.

institution a perpetual proprietary interest in all building land throughout the country. The proprietary investment is significant quite apart from price control. The emphasis, in public utterances, on price control can obscure this aspect of deep political consequence which lies behind it.

The control policy is an attempt to reduce the price of houses by controlling the price of proprietary interests in land on which the houses stand. We examine this in section IV. At this juncture we merely raise our eyebrows at the unreflective disregard of elementary economic principles in supposing that the final selling price of an article when governed by demand can be reduced by pegging the supply price of one of the factors used in its production. Furthermore, although the so-called land price control is aimed at the market price of house property no attempt is to be made to control the price of houses existing at the time when the Lands Commission is set up. And, so it is said, the price control machinery will only begin to whirl when a landowner intimates his intention to develop land by applying for planning permission to build or to alter existing premises. Lest alarm and despondency should spread at the prospect of a water closet added to a private dwelling house being cause for the house to become Lands Commission property, the intention is not to permit the Lands Commission to acquire small sites on which the owner will build for his own occupation.[1] It is by no means clear what will happen if the owner moves elsewhere. It would appear that if a man builds himself a freehold house to live in he will retain the freehold, but if he subsequently moves and offers the place to rent, the freehold would at once be acquired by the Lands Commission.

Reaping unearned increment

Land in the economist's sense, a free gift of nature's bounty, is a notion that has led reformers to draw a distinction between 'unearned increments' in the value of proprietary interests due to the general growth in wealth of a community and increments in value arising immediately from the landowner's own efforts. The modern stream of radical thought finds its origin in the writings of the classical economists, notably J. S. Mill. Mill in a famous passage says:

[1] Mr Harold Wilson, 28 September, 1964.

'The ordinary progress of a society, which increases in wealth, is at all times to augment the incomes of landlords – to give them a greater amount and a greater proportion of the wealth of the community, independently of any trouble or outlay incurred by themselves. They grow richer as it were in their sleep, without working, risking or economising.'[1]

Here is cause to control the property market, to see to it that a landowner's interest has no higher value on the market than the value of his duly earned increment and to appropriate unearned increment to the common stock of the community. Many devices have been proposed to this end and some tried out. All are variations on two alternative general courses – taxation and expropriation. Henry George's single tax scheme was perhaps the most ambitious proposal of the tax variety. Rents and rent equivalents as sources of income would be taxed to the full, proceeds would go into the common treasury and landlords would be forced eventually to sell out and take land into their own possession to work it with their own labour. A modern version was the development charge under the Town and Country Planning Act, 1947.[2] It did not have the refinements of Henry George's scheme. No attempt was made to divide economists' land from lawyers' land. All increases in the value of a proprietary interest in land arising from development of the land for whatever purpose were taxed as a charge on the property, payable by the owner in consideration for permission from the government to develop his land.

Particular forms which some of these devices took are described later on. Let us first look at the credentials of the thesis itself.

When, as in post-war Britain, society increases in wealth, landlords, according to Mill, get the lion's share in the form of augmented rental incomes. Now he was not thinking of rental increases arising from expenditure on improvements by the landlord – the unearned increases *ex hypothesi* are independent of any outlay incurred by the landlord. A survey of rural estate finances published in 1957[3] makes Mill's words unconvincing reading. On 133 estates covering 1,403,528 acres, the cost of improvements made over the 10 years 1945-55 was compared with estate incomes from

[1] *Principles of Political Economy*, Book V, Ch. 2, para. 5, 1848.

[2] Section 69.

[3] D. R. Denman, *Estate Capital*, Allen and Unwin, 1957.

rent. Table VI shows the result: 74 per cent of the estates, the equivalent of 85 per cent of the acreage, were incapable of financing the annual cost of actual improvements from rental income. If interest is charged at 5 per cent on the landlord's expenditure and the equivalent annual cost of outstanding improvements added to the outlay already made, then not one of the estates over 1,000 acres was capable of meeting as much as 50 per cent of the cost from rents. These figures call in question Mill's claim that landlords reap unearned rental income as the wealth of society rises. Landowners at the time could not eject their tenants by serving notices to quit unless the notices were upheld by the Minister of Agriculture.[1] This imposed a kind of indirect control on farm rents, not a direct control as under the Rent Acts. Neither the security of tenure nor the rent control is sufficient explanation of the landowners' failure to share in the rising prosperity of the country and to improve their rents to meet the increasing annual outlays. Rents were voluntarily kept low for social reasons[2] while relatively generous expenditures were made on improvements and repairs.

Leaving the general case aside, is there not substance in the argument that where a local authority has constructed a road at public expense, incidentally improving access to a particular parcel of land and increasing the market value of the owner's interest in the land, the increment in value should be appropriated by the road authority for the community? At first sight, this suggestion appears to stand on firmer ground than does the general case. But we should ask why the road was built. It was built to facilitate the passage of people wishing to go where it leads. And this has been done. They have what they paid for – an improved access. In what, then, have they been deprived? On what grounds is there a claim to a cash payment equivalent to the value increment in the property of the private landowner in addition to the enjoyment of the road facilities?

More questionable still is the claim in the name of the community to such increases in the value of interests in land as arise from the granting of permission by a town planning authority to develop a particular parcel of land ('betterment'). Town and Country Planning controls are instruments designed to canalise the de-

[1] Agricultural Holdings Act, 1948, Section 24.

[2] D. R. Denman, *op. cit.*, p. 101.

TABLE VI

ABILITY OF ESTATE INCOMES TO MEET ACTUAL COSTS OF IMPROVEMENTS

Ability class	Size: 100-249 acres	250-499 acres	500-999 acres	1,000-2,499 acres	2,500-9,999 acres	10,000+ acres	% of total numbers	% of total acreage
	per cent of class							
100%	18	—	4	31	48	22	21	14
50%+	14	4	18	10	4	5	9	2
50%—	5	14	14	18	4	5	10	5
Nil	31	59	42	31	40	68	45	78
Unknown	—	—	4	—	—	—	—	
Tenant sole contributor	23	9	14	10	4	—	10	1
No expenditure	9	14	4	—	—	—	5	
Number of estates	22	22	22	22	23	22	—	—
Acreage	3,731	7,887	16,424	32,275	123,583	1,219,628	—	1,403,528

mands for proprietary interests in land in certain preconceived directions, in the interests of orderly development. Order is required to preserve or augment amenity, and prevent misuse and disarray. To the extent that these ends are achieved each citizen gets his just due – what he pays for in financing the planning authority. What just claim has he to cash bonuses in addition? We do not say of merchants and farmers whose fortunes are made by the public excise service that the increment should be paid to the community who provide the service. The landowner's decision is parallel.

Incidence of demand in most markets is unpredictable. Public services and planning decisions may go one way or the other. The landowner takes the risk. What is meat to one is poison to another. A road can open land or sterilise it and so indeed can a planning decision. If specific increments in value emanating from road construction are ascribed to and gathered by the community, the community in turn should be ready to recompense landowners whose interests are damaged as a result of public activities and planning decisions.

III. CONTROLLING THE PROPERTY MARKET: MEANS

In this section we are not concerned with monetary policy, fiscal manoeuvres, investment growth and other aspects of the economy which indirectly influence the property market, nor with policies which act directly but are too remote to be recognised as deliberate attempts at intervention. The threat of rent restriction on house property, for example, over the past 50 years and more especially since the Second World War has, in Professor P. F. Wendt's words,[1] exerted 'the most important restraint upon private house building in post-war Britain'. Private builders were not prepared to bid for freeholds on which to erect houses to rent, and in this way the Rent Restriction Acts directly affected the property market, albeit from a remote position.

We are concerned here rather with the means by which deliberate intervention in the working of the property market is made or proposed. A useful classification is:

[1] *Housing Policy—the Search for Solutions*, University of California Press, 1962, p. 240.

i) sanctions;
ii) levies;
iii) prescribed maxima;
iv) forced sales;
v) land nationalisation;
vi) compulsory reallotment.

Sanctions

The property market is controlled by laws which impose restrictions on land use. An owner's interest in the land which he can offer on the market is cut down. A man may own a fee simple estate in a ten-acre field within the green belt. No planning authority will give him permission to construct buildings or works but, apart from this inhibition, he has all the powers of enjoyment and disposal available to the owner of a fee simple estate. In effect, he has an estate whose bundle of property rights has been depleted. The depleted bundle of rights and the estate it comprises is all he has now to offer on the market.

There are three ways in which restrictions can be imposed so as to deplete owners' property rights. One is the zonal method of American and early British town planning. Land areas are zoned for housing, industry, recreation and agriculture, and landowners are free to use the land within the zones for these selected purposes and to sell interests in it to others who will so use the land. Buyers are not likely to come forward who wish to use the land for purposes prohibited by the zoning restrictions. Providing the use complies with the zonal pattern no further planning permission is required. The expectation that the zoning pattern might change is not a potent factor depressing the market because one of the primary purposes of zoning in America is to protect property values, and zoning requirements are flexible in the long term, yielding to the pressures of change in market demands.[1]

The second method, and now the accepted form in Britain, zones the land, not with the intention of giving blanket sanction for its use as zoned, but merely as a guide to probable future land use. If a landowner wishes to change the use of his land he must make an *ad hoc* application to the planning authority for per-

[1] Cf. John Delafons, *Land use controls in the United States*, Report of the Joint Center for Urban Studies, Massachusetts Institute of Technology and Harvard University, 1962.

mission to do so. The outcome rests in the discretion of the authority. The new use is more likely to be sanctioned if it complies with the zoning pattern; but, and this is the significant point, only the decision of the planning authority determines the issue. Zoning maps in Britain are called development plans. A development plan is prepared for each county and county borough whose councils are the planning authorities with arbitrary powers of decision under the Town and Country Planning Act, 1962.[1] A right of appeal against the decision of the planning authority lies to the Minister of Housing and Local Government. Under this system, arbitrary decisions of planning authorities immediately affect the number and type of estates and interests offered on the property market.

A third method is also arbitrary and somewhat primitive. A government department or local authority is given power to issue licences for development of land. Without a licence a landowner cannot act. During and after the last war building licences were issued under Defence Regulations. A more sophisticated form survives today in the certificates to erect industrial premises issued by the Board of Trade under Section 38 of the Town and Country Planning Act, 1962. And on 4 November, 1964 the Minister for Economic Affairs announced the Government's intention to extend this form of control to the erection of offices in London and the Home Counties.

Levies

Rates and taxes which are the variants of general taxes and take a form peculiar to taxed land wealth (e.g. the late Schedule A of income tax) are not levies within the special meaning attached to the word in this context.

A levy in the sense used here is aimed at the so-called unearned increment in the value of proprietary interests in land. It can be raised as a charge on:

i) rents as such;
ii) the difference between existing use value and estimated alternative use value;
iii) the difference between existing use value and estimated previous use value;
iv) profit after sale.

[1] Section 2.

Of these four ways the first was Henry George's expedient. Rent is equated with the surplus which private property in land gathers to itself to the impoverishment of all citizens:

> 'rent expresses the exact amount which the individual should pay to the community to satisfy the equal rights of all other members of the community'.[1]

The second method is the principle of the development charge under the Town and Country Planning Act, 1947 and the betterment payment proposed by the Uthwatt Committee in 1942.[2] The development charge rested on the assumption that all increments in value, whether arising from the foresight, initiative and energies of the landowner or from the mounting pressure of community demands, should be appropriated to the state. The authors of the development charge probably quietened their consciences with the illusion that the grant of planning permission was wholly responsible for the difference between the existing use value and the value of the land fully developed under planning sanction.

The third method has not been tried out. It was the subject of a recent proposal by Sir Colin Thornton Kemsley.[3] A betterment tax would be assessed on a before-and-after principle, the assessment to show the difference between the calculated value of the property fully developed and the estimated value of it immediately before development and subject to planning restriction. As a hostage to justice and as an admission of the difficulty (openly acknowledged) of telling what contribution the landowner himself makes to the increased site value, the levy would be no more than 50 per cent of the estimated difference between the two values. The 50 per cent would be a percentage adjustable downwards at the instance of Parliament 'so that development could be encouraged in some parts and discouraged in others'. Local authorities, it was further suggested, might have power to raise or lower the percentage at their discretion. Recovery would not be a lump sum payment but annual instalments redeemable by a capital sum if and when the property were sold.

A levy on profit after sale embodies the capital gains tax principle. A man buys cheap, sells dear, and is taxed on the proceeds

[1] *Op. cit.*, p. 159.

[2] *Expert Committee on Compensation and Betterment*, Report 1942, Cmd. 6386.

[3] 'One Way to Fair Dealing in Land', *The Times*, 29 July, 1964.

of his bargain. No attempt is made to render sacrifice to the community, the sacred cow of the other methods. Gain has been made and here is a way to tax it at source. By comparison the method looks simple. Certainly it is less speculative and does not rest on estimates of value, either of the past or the future. It works with actual prices. Difficulty, however, arises over timing. It is a before-and-after procedure and cannot avoid the vexed question, how far in the past is 'before'?

Prescribed maxima

Where the legislature goes bull-headed at price control some way must be found of prescribing statutory maximum prices beyond which sales shall be invalid and illegal. There are two alternatives:

a) the prescription of a universal maximum price calculated in particular cases according to a standard formula; or
b) the arbitrary fixing of price limits in particular cases.

In Britain considerable experience has been gained of the first method under the Rent and Mortgage Interest Restriction Acts. Maximum permissible rents were determined by time and rent criteria. Rents were pegged to basic maxima (standard rents). An early form of the standard rent was the rent reserved under a tenancy on 3 August, 1914.[1] Later, increments were permitted as specified percentages of the basic maximum.

We have also had a short, sharp spell of the second method under Defence Regulations and the Building Materials and Housing Act, 1945. Local authorities were empowered to issue building licences for houses on the condition that specified maximum rents and sale prices were adhered to.

Undoubtedly, for practical reasons, it is easier to control rents than to control sale prices of houses and other premises. The amount of rent payable is specified by a continuing contract between landlord and tenant. The parties are thus in communication with each other; what the lawyers call a privity of contract and of estate[2] exists and one can bring the other to account if need be. A sale is a once and for all affair. The parties disperse, perhaps to far distant places. If one should sell at a price above the legal maximum, who shall know of it, and who will make redress and how? Admittedly, it would be for the conveyancers and legal

[1] The Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915.

[2] See Note (v), p. 61.

advisers to see that the law is complied with and, as a form of formal conveyancing, checks could be introduced. The efficacy of these procedures would depend upon the disclosure of facts.

One of the purposes of the promised Crown Lands Commission is to control the price of property interests in building land. As the Commission would have a superior interest in all building land, it would be able to create and sell inferior interests on condition that the purchasers do not resell them above stated prices or additions to those prices. The additions would be linked either to prescribed prices or to price movements in the open market or other indices, such as retail prices and wages. Obviously, if the market is to function at all, some adjustment in prices must be sanctioned and here we face the tiresome question of timing. For how long should a prescribed maximum continue? Temporary controls are easily dealt with as under the Building Materials and Housing Act, 1945, when control was limited to four years.

Forced sales

Circumstances in which landowners are compelled to sell their proprietary interests fall into two categories: those where they are confronted with an imperative demand from a government department, local authority, public utility undertaking, national board or private statutory undertaking; and those where a privity of estate exists between two owners of proprietary rights in the same land parcel and one has a statutory option to buy out the other; the classical example is the purchase of the landlord's reversion[1] by a contractual tenant under a scheme of leasehold enfranchisement.

Either way, two big questions always loom up. One concerns transfer or conveyancing procedure and the other the assessment of compensation and sale price. At the present time a public authority or statutorily empowered undertaking wishing to acquire land by compulsory acquisition opens fire by issuing a compulsory purchase order in accordance with the Acquisition of Land (Authorisation Procedure) Act, 1946. The owner is always at liberty to treat with the authority and come to terms. In the event of dispute the Lands Tribunal set up under the Lands Tribunal Act, 1949 adjudicates.

Leasehold enfranchisement, apart from a limited reform in

[1] See Note (vi), p. 61.

Scotland,[1] is still in the realms of speculative policy-making. The assumption is that autonomy in the matter would rest solely with the tenant, who would be given an option to buy the reversion at a price to be determined by negotiation or settled by arbitration according to a statutory compensation formula. A question of supreme importance is: when should the tenant be given the right of action? Should he be permitted to act within the period of the lease or must he wait until the lease expires before he can secure the reversion?

Bases of compensation have had a checkered career. Throughout the 19th century judicial decisions interpreted the Land Clauses (Consolidation) Act, 1845 as giving authority for compensation on the basis of value to the owner, a highly subjective measurement that could be far more than the value in the open market. Immediately after the First World War, the measure was related to open market value under the Acquisition of Land (Assessment and Compensation) Act, 1919, which applied only to purchase by public authorities. Another war, and we were experimenting again, this time dramatically and disastrously. A Canutish procedure tried to hold back the tide of rising prices by giving public authorities power to acquire land at pre-war prices.[2] Memories were short. As time ran on, few could remember '1939 values' and the practical difficulties multiplied. Still seeking questionable advantages for public bodies, the government introduced the controversial 'existing use value' measurement of compensation under the Town and Country Planning Act, 1947. Owners were compensated on the hypothesis that their property interests were burdened with a perpetual obligation not to use their land for purposes other than its existing use. The measure was abandoned by stages. First, by the Town and Country Planning Act, 1954 and finally when the 1959 Town and Country Planning Act restored open market value. The law was consolidated in 1961[3] with refinements safeguarding an acquiring authority from having to pay prices which were entirely the result of pre-knowledge of the public body's intentions.

[1] Long Leases (Scotland) Act, 1954, gives the right to lessees of 50-years leases or longer granted before 10 August, 1914, to require a feu right of the property from the landlord.

[2] Town and Country Planning Act, 1944.

[3] Land Compensation Act, 1961.

One big issue divides the debate on leasehold enfranchisement. Should the tenant exercising his option be required to pay the landlord the market value of the reversionary interest in the land according to the lawyer's definition of land, that is to say with the buildings, roads, pavings and all other fixed improvements made to it? Or should the consideration for the reversion be no more than the site value, something approaching the reversionary interest in the land according to the economist's notion of land? Some thoughts are expressed in Section IV on the implications of these alternatives.

Land nationalisation

Land nationalisation is in one sense a misnomer. The state can acquire only a proprietary interest in the land. Whenever land nationalisation is practised or mooted, the first and cardinal question to ask concerns the nature of the proprietary interest in the land that the state intends to hold. Whatever interest or estate vests in the state, it cannot be other than the paramount superior interest from which all other interests and estates derive.

This, in a general way, is what in theory and in fact has obtained in England since the days of the Conqueror. The greatest estate any person or body corporate can hold in land is the fee simple absolute in possession in free and common socage, that is, a derivative interest held in free tenure of the Crown. Land in this sense has been nationalised for nearly a thousand years. Some years ago the Land Nationalisation Society was pleading for a practical expression of the conventional and traditional foundations of our landownership system. Joseph Hyder, the Secretary of the Society, argued that, because the sovereignity of the state (nominally the Crown) was much more than a legal fiction, the dispossession of all landlords and the consequent nationalisation of all land could be accomplished equitably by means of the central principle of the feudal system itself which had never been abolished.[1]

The feudal superiority (and that is what it is) which in land law theory vests in the Crown today is notional and occupies one extreme of the possibilities for land nationalisation. No central government department can occupy all the land, to own it absolutely. Inferior interests must be carved out of the state pro-

[1] *The Case for Land Nationalisation,* Simpkin, Marshall, 1913, p. 19.

prietorship, which then becomes a superior estate with obligations to the inferior interests. This is obvious even in Russia and other countries which have thorough-going land nationalisation. State farms, collectives, housing co-operatives, municipal authorities and the like, to say nothing of individual householders and shopkeepers, have to be given interests in the land they occupy, interests of varying degrees of autocracy. Proprietary interests in land are thus created and stand separate from the 'nationalised land' as landed property in private and independent hands.

Compulsory reallocation

Under the enclosure movements of the 18th and 19th centuries, the compulsory exchange of some 6½ million acres took place in the rural parishes of England and Wales. Private proprietary rights were not relinquished, nor vast sums paid to acquire land compulsorily, yet a radical realignment of boundaries and a thorough-going reallotment of parcels was achieved as an essential step in the transition from a medieval to a modern agriculture.

We have a pattern here which might well be followed in our modern cities where the burden of compulsory acquisition raises serious problems of finance and expropriation.

Admittedly the exercise would tax the ingenuities of lawyers and surveyors. Each scheme would need a reallocation authority with compulsory powers to carry through a rearrangement of the property structure and layout of the area to be renewed, set up at the instance of a majority of the landowners. At the outset, two schedules and accompanying plans would be prepared, one showing the physical extent and value of each proprietary land unit – values would be current market prices for the respective proprietary interests absolutely and as proportionate shares of the total value. A second schedule would be based upon the approved plan for the rebuilt area and would show the allocation of the property interests in the area among the present property owners according to their proportionate shares.

New values arising from the scheme could be taxed to pay for the services of the reallocation authority and as part-security if need be for raising loans under a statutory *ad hoc* credit scheme for rebuilding the new premises. One or more of the property owners might have to take a larger proportionate share than was pre-

viously held by them. If funds were short, the special credit facilities would be available to meet the need. A disproportionate proprietary interest might arise from the voluntary consolidation of smaller interests or the reduction of the shares of others; in this latter event compensation should be paid to redress the loss.

Where redevelopment could not be achieved by a proprietor taking the initiative to build on the new site allotted to him and tying his activities into a common authoritatively prescribed programme, the reallocation authority itself would undertake the redevelopment. Each unit would be developed according to the general plan for the area and the reallocation authority would acquire a mortgage interest in each unit as security for the cost of rebuilding.

Property owners should be given the right to opt out in circumstances of proven hardship. At all times they would be free to sell out. The reallocation authority could, perhaps, with advantage act as a broker encouraging the purchasers who would best fit into the new arrangements. If the physical dimensions of the new proprietary land units were larger proportionately than those of the properties surrendered, or the costs of execution and equipment proportionately higher, companies, joint tenancies, or some form of co-operative could be established. The value of the individual interests in these corporate or joint concerns would reflect the proportionate values of the proprietary interests formerly held.

IV. CONTROLLING THE PROPERTY MARKET: ENDS

Causes and means lead to ends. We may intend to control prices in land by compulsory acquisition and other means, but whether success can or will attend our efforts and methods is another question. We have glanced at the moods in men that move them to interfere with the property market and at the means by which it is done. What is the upshot? Compulsory purchase is expropriation: is this an end which social justice can condone? Levies and price pegging disturb the market mechanism: what of the results? Property is power: state acquisition of property rights, therefore, cannot avoid political consequences. In this present

section our attention is turned to the social, economic and political ends to which some of the causes and means just described lead us. We start with some thoughts on social justice.

Suum cuique

The endless debate in search of social justice has never come nearer to the heart of the matter than the *suum cuique* of the ancients:[1] that is just which renders to each man his due.

Today we have come perilously near substituting an abstraction – the good of the community – for the concrete reality of the just due of each man as a member of society in community with his neighbours. The community is set over against the individual person as if the person himself were external to it and not a member of it. We see this clearly in the all too familiar claims to take over land, especially the so-called unearned increment in land value, 'for the good of the community'. The pertinent and human question is not whether this or that policy is for the good of the community, but whether the policy is necessary in order to secure to each man his due.

And in this context landowners and landlords are along with every other member of society rightful petitioners for justice. The point needs to be emphasised. Today, 'landlord', a technical term, is for some people set among the moral categories, an epitome of immorality. In 1912 Lord Ernle could write:

> 'Financially crippled by recent taxation, landlords are assailed with increasing vehemence. The attack upon the system of land-tenure which they represent derives fresh strength from the poverty to which they are reduced by increased taxes. They have not the command of money necessary either to give fair play to the system or to supplement it by creating small tenancies. At the same time, the attack is no longer aimed at them only as representatives of a system or as members of a class. The personal element is introduced; venomous tongues attempt to poison the crowd against them as individuals . . . Today it is a peril to stand where many envy and few sympathise.'[2]

[1] '. . . justicia est perpetua et constans, voluntas suum cuique tribuendi' (Ulpian), see E. Brunner, *Justice and the Social Order*, Lutterworth Press, 1945, p. 23.

[2] *English Farming, Past and Present*, 4th Edition, 1927, p. 396.

Right to private property is one of the fundamental human rights to which all member nations of the United Nations subscribe. The property right embodies the liberty to enjoy and dispose of the owned possession – '*le droit de jouir et de disposser*' as the French Civil Code has it. Our social philosophy is broadly one of economic liberalism, which admits private property in land and in doing so implies an obligation of first instance upon the state to secure to each property owner the quiet enjoyment of his own, the present and future expectations which it engenders, and the right freely to dispose of it. The obligation upon the state is *prima facie*. If by upholding a man's private property in land his neighbours are deprived of their just due, then it may be encumbent upon the state to interfere with the rights of property in a manner which will occasion the least deprivation to the greatest number.

When living standards advance

When genius invents new means of improving the living standards of mankind, those who are capable of benefitting by the novel ideas will surely expect to participate sooner or later in the advantages they bring. After Telford, Macadam and Stevenson, the facilities of modern roads and railways were the *suum cuique* of each man who could use them or benefit from their use by others. Property rights, as we have seen, can be obstacles to technological advance, in which case compulsory acquisition is justified. And so it would be with modern urban renewal, once it was shown that the benefits of urban renewal could not be made available without the compulsory acquisition of property. The case is not a weak one but its advocates frequently blur the issue by arguing for compulsory acquisition as a means whereby the community may acquire or share in the profitable business of land development. On technical grounds the case is weakened wherever the activities of property investors and developers are competent to undertake renewal. It is also weakened by the possibilities of compulsory reallocation schemes. If government authorities in the name of the community wish to take the profits of land development by acquiring land and undertaking urban renewal, notwithstanding the competence of private enterprise to do so, the case for the government no longer stands on the technological postulate but upon social and political theories.

Compulsory purchase always disturbs the quiet enjoyment of the property right. Whatever is taken away by coercion should be restored as nearly as possible to the owner. Society owes him this as his due, *suum cuique*. The value of a particular property to its owner can be so highly charged with subjective satisfaction as to make replacement or substitution impossible. Compulsory acquisition then works a hurt none can heal. For instance, urban renewal in city centres sometimes means the compulsory purchase of houses whose open market value is less than the price the expropriated householders will have to pay for substitute houses. Compensation on the principle of reinstatement or the cost of replacement is difficult but not impossible to apply in practice. It is difficult because where, as so often happens, the premises acquired are old-fashioned or obsolete a replacement as an exact replica would be senseless and pointless; and the simple provision of a modern house or the cost of acquiring one would involve replacing the acquired premises by a property of higher value. The difficulty could, and in cases of hardship should, be overcome by paying the owner of the acquired premises their market value and advancing to him what is necessary over and above this figure to enable him to acquire a new house. This advance could be left as a mortgage charge on the new premises, outstanding indefinitely and perhaps with little or no interest.

Payment of monetary consideration of less than the current market price of the property in its present use is a disavowal of the property owner's right to be compensated for loss of his right to present enjoyment. Landowners who, in 1945, were paid only 1939 prices for their property suffered an injustice. To limit compensation to the market value of the acquired property if used as at present in perpetuity deprives the property owner of the value of his rightful expectation of future use. Dispossession on this principle was practised under the Town and Country Planning Act, 1947, and at the time of writing we are promised a further visitation. The Labour Party's policy is to invest the Crown Lands Commission with power to acquire property in building land at 'existing use value' plus a small unspecified extra payment as inducement money.[1]

When a public authority acquires land for a purpose which is beyond the normal expectations of the free property market there

[1] *The New Britain*, p. 14.

is substance in the view that the expectation should not be imputed to the landowner and that he should not be compensated for the resulting loss. To this extent, the open market measure of compensation now embodied in the Land Compensation Act, 1961 is wholly just.

When land prices rise

Compulsory acquisition to control prices in land is defensible only if it can be shown that the prices are in some way depriving men of their just due. Three tests are suggested:

i) the distribution of wealth in society;
ii) the provision of necessities, e.g. houses;
iii) the incidence of control.

When the value of one form of the wealth in which people invest personal fortunes increases more rapidly than the values of other forms, a process is set afoot which in the long run alters the distribution of wealth in society. Property prices are no exception. They may rise more rapidly than prices of other resources and forms of wealth, and one type of property may reap a price advantage over other types. The effect upon the distribution of wealth in general will depend upon the proportion of the population who are property owners. To see the picture in perspective we must remember that the property market deals in property rights and not in land. The distinction is important here because the case for compulsory acquisition of land to control prices is usually argued from the premise that the incidence of control will only fall on a relatively small number of people, the lucky few who own the 'land'. Control of any kind will of course be a control of the market prices of property interests and not of land prices. And property interests are very widely spread among the populace: every freeholder, every tenant, every owner of common rights and easements is an owner of property, and will be affected in some way by market controls.

The scanty evidence available – and it is scanty – suggests that prices for some types of property (e.g. freehold houses) have not raced far ahead of upward changes in value of other forms of wealth; while the prices of other types of property, especially freehold land ripe for building, have accelerated extraordinarily. Whether this will eventually and permanently affect the distribution of wealth depends upon the pattern of landownership, the

movements of the prices in land and the length of time the prevailing state of affairs continues. That it could disturb the distribution of wealth is a real possibility, but even if it did so the case for the control of property prices would not have been made. It would be more satisfactory and equitable to meet the problem by suitable adjustments in the taxation of wealth in general.

The argument for control of prices in land is used also by those who maintain that high prices curtail the supply of houses and withhold homes from people who desperately need them. If this were so, rows of houses and blocks of flats would be standing empty, too costly to buy. With few exceptions houses are taken up as soon as they come on the market.[1] The argument is usually sustained by citing instances where prices in freehold land have defeated the hopes of housing authorities who wanted the land at less than market price. Mr Skeffington has quoted as an example[2] 2¼ acres which were sold at just under £80,000 per acre, too high a price for the local authority that wanted it for housing. In his eyes this was cheating the housing demand. But was it? Presumably the land had been scheduled for residential purposes under the development plan, otherwise the local authority would not have had their eyes on it for housing. Whoever bought it, therefore, must with planning permission have developed it for houses and thus contributed to supply; the land price had not prevented the 2¼ acres from making its contribution to the national stock of houses.

If the object of controlling property prices is simply to give local authorities an advantageous bargaining position over other competitors for land, then patently it is unjust. Admittedly the purpose of local authority housing is to provide subsidised houses at less than market prices. There would be some element of justice in this if they catered in this way only for people who cannot afford houses at open market prices. Discrimination between those who can afford to buy on the general market and those who cannot is, however, not a universal practice. Housing subsidies are doubtless a just social provision, but it is neither sense nor justice to provide them where they are not needed. To apply them indiscriminately is wasteful and unjust to those in real need. Subsidies should be universally available in some form that will

[1] The few exceptionally highly priced houses and flats will stand empty until the market forces the owners to reduce their prices.
[2] *Hansard*, 5 June, 1964, col. 1479.

enable people who are financially straightened to buy anywhere on the property market and not administered in such a way as to confine choice to council-controlled tenancies.

British experience of price pegging in the property market provides a salutary lesson in inequity which can result from discriminating against a particular class of property owner. Under the Rent Restriction Acts, landowners who by chance happened to own property let at or below arbitrarily stated maxima were made the victims of controlled prices while all others were free to take advantage of the open market. Rent restriction was a necessary war-time control in 1915, but there was no justification whatever to discriminate for two generations against landowners who quite fortuitously happened to own house property of a particular type on a particular day. The bitterest irony of all was the manner in which the Rent Restriction Acts penalised landlords who had kept their rents low voluntarily before the freeze was enforced. There are elements in the proposals for a new Britain that, by the reimposition of rent controls, might work a like injustice.

When leases fall in

Contenders for the right of tenants to purchase compulsorily the reversions to their leases at site value proceed on the assumption that the tenant has paid for the building, house, office or shop when the lease was first purchased. The assumption is wholly false and arises from a common error which confounds land and property. Leaseholders buy leaseholds, interests in property limited in time, and have to pay for them accordingly. Landowners who buy freeholds subject to leases pay prices which reflect the value of their expectations to enter into vacant possession of the premises (buildings and land) at the end of the lease. To force them to sell out to their tenants at site value deprives them of their expectation without adequate recompense and is clearly arbitrary and unjust.

The obvious answer to the complaint that the purchaser of a leasehold sees the value of his purchased possession gradually diminish is some form of leasehold redemption policy. The Leasehold Committee was impressed by the widespread ignorance of and apathy towards leasehold redemption among leaseholders, especially those of residential property. The Committee

considered seriously the idea of recommending compulsory redemption policies for building leases. Universal redemption would, besides disseminating knowledge of the merits of the practice, overcome the difficulty at present faced by a leaseholder with a redemption policy who wishes to sell out to someone who does not want the policy or who cannot understand it. Under a compulsory system

> 'each successive holder of the lease by meeting the annual contribution or premium during his tenure of it would at once be preserving his own capital and safeguarding the interest of the landlord and on selling would receive from the purchaser the residual value, if any, then attaching to the lease plus the current value of the sinking fund or policy, which would automatically increase as the value of the lease diminished.'[1]

The Committee turned down this tempting proposal on the ground that a compulsory redemption policy would be a form of compulsory thrift imposed on people who might wish to spend their money in other ways. Leasehold redemption policies were, however, highly commended by the Committee, which recommended that favourable consideration should be given to the possibility of allowing a measure of income tax relief for premiums on leasehold redemption policies.[2]

The argument that the practical merit of leasehold redemption is reduced through a decline in the value of money over a period of time appears to-day as a cogent argument because we have lived for 25 years in an inflationary economy. We have forgotten, certainly discounted, the possibility of a contracting economy and deflation. Leasehold redemption takes on an altogether more cheerful mien in a deflationary economy. The redemption money will then buy better premises or a longer lease than was originally bargained for.

Whether a tenant contributes in rent during the course of a tenancy the value of the freehold property once, twice or more times over is a question which cannot be answered in a general way. The answer depends upon the amount of rent and the market value of the property. The likelihood of its being true in a particular case is remote. People who make this allegation are usually confused in their mind between rent, income and interest rates.

[1] *Report* (1962 Reprint), para. 94.

[2] *Ibid.*, p. 44.

If the amount of rent is no more than the current market yield on the capital risked by the landlord in the freehold, no matter how long the lease, the tenant has no more paid for the freehold than a freeholder will have redeemed a mortgage by paying interest on the loan over a number of years. A householder who pays 6 per cent on a £3,000 loan to a mortgagee will have paid in interest a sum equal to the loan in the course of 16 years and at compound interest in 12 years. Even so, we do not hear shouts for the abolition of building societies and mortgagees because mortgagors are paying interest which in a short space of time compounds to the sum of the mortgage debt.

Advocates of leasehold enfranchisement are guilty of arguing in a circle when they object to the exercise by private landlords of control over the use, treatment and management of demised premises [1] and at the same time blame them for an

> 'indisposition to avail themselves stringently of the provisos in their leases for re-entry and for the troublesome and costly process of ejectment of tenants in cases of breach of covenant.' [2]

Reformers who press for legislation to protect lessees from the oppressive use of covenants, when they obtain it, turn upon the landlords whose hands they have bound and blame them for doing nothing to force their tenants to maintain leaseholds and to preserve the amenities of let premises. [3] Often it is forgotten that the terms of a lease including the rent reserved and the repair obligations of both parties are the fruit of a comprehensive bargain. To enforce modifications of some terms which from a political or other particular point of view give offence and not to modify other terms of the agreement is in essence inequitable.

This leads to the argument against leasehold enfranchisement which stands on simple justice and human relationships. Lessor and lessee are parties to a negotiated contract which recognises a form of private property in each party. It is unjust that powers should be given to one party only to break the contract and deprive the other of his property. If the lessee is given statutory power to disclaim, the lessor should be given an equal right of rejection. To quote the *Report of the Leasehold Committee*:

[1] Arthur Skeffington, *op. cit.*, p. 22.

[2] *Royal Commission on Housing of the Working Classes,* 1884.

[3] *The Future of Leasehold,* PEP, 28 January, 1952, p. 205.

> 'While freedom of contract should certainly be subject always to public policy, private property should only be taken for the benefit of the community as a whole – never for private advantage – and on terms of full compensation to the freeholder.' [1]

Price and prejudice

Municipal authorities acting as middlemen (speculators!) armed with powers of compulsory acquisition of property are recent phenomena in our civic life. Leaving aside the questions of justice and expropriation, there is economic wisdom in their entry into leasing arrangements with builders to share the profits of redevelopment. Gains in one place offset losses in another. But for the local authority integrating individual proprietorships in a comprehensive scheme, the profitless units would probably be stranded by the tide of free market preferences. Municipal finance can be overstrained and seriously incapacitated by elaborate schemes of urban renewal involving compensation to property owners at open market prices. In these circumstances, rather than leave things to the mercies of a more or less dislocated property market, some form of compulsory reallocation on the lines set out in Section III would be preferable.

Market value compensation has not prevented local authorities acquiring land for renewal where they had the finance to do so. On the contrary, it seems to have encouraged participation in renewal schemes; the embarrassment of taking land unjustly from private people has been removed. [2]

More heat is generated over buying interests in land for housing and open spaces at market value. Housing pressures upon municipal authorities would be eased and their problems mitigated if larger inducements were given to private builders to acquire land and build houses to rent. The new emphasis on housing associations will certainly help. [3] If price considerations and not prejudice ruled housing policy, ways could be found by using subsidies and other aids to make it financially worthwhile for private enterprise to build houses to rent on land which would otherwise carry owner-occupied dwellings.

[1] Para. 52.

[2] See Lord Broughshane, 'Dangers of a Land Commission,' *The Times,* 13 July, 1964.

[3] Cf. Housing Act, 1964.

An open space is a problem only where the local authority wishes to acquire it for a public open space or park. Building land prices have to be paid where the planning authority is prepared to give planning permission for the land to be developed. Because the land is open space and designated so on a development plan is no argument for compensating an owner on existing use value.[1] The planning authority's decision is the decisive factor and where it is favourable to development, existing use value is inequitable.

Of the economic consequences of leasehold enfranchisement the most serious is the proliferation of freeholds in possession, the encouragement of the kind of land tenure that so greatly aggravates the problem of urban renewal. The majority of radicals are contradictory – they want both leasehold enfranchisement and leasehold control. There are some, however, who see that they cannot have it both ways. In *Socialism: True and False,* Sidney and Beatrice Webb said that Fabianism had no desire to see the Duke of Bedford replaced by 500 little dukes of Bedford under the guise of enfranchised leaseholders, but preferred to press the claim of the community of the land.[2]

Some of the most attractive urban areas today are those which remain in the hands of competent and conscientious landlords who have voluntarily foregone vast fortunes in the interests of sound planning, social amenity and unity of their estates. The Grosvenor Estates of Mayfair and Belgravia which – it is no exaggeration to say – have made the West End of London, are an outstanding example. Leasehold enfranchisement would undo the exemplary work of generations.

All leasehold enfranchisement policies envisage the tenant as having authority to take coercive action against the landlord. There is never any suggestion that the tenants themselves will be compelled by government directive to enfranchise their leases. The extent to which leasehold enfranchisement will be taken and large estates broken up will depend upon the terms of compensation. The easier it is made for tenants the stronger and quicker will be the tendency to enfranchise. If tenants are required to pay their landlords the market value of the freeholds they compulsorily acquire, the concept of the market envisaged for the purpose of compensation will be of cardinal importance. If it is wide enough

[1] See remarks by Mr Peter Doig, MP, *Hansard,* 5 June, 1964, Col. 1433.

[2] Fabian Tract 51, 1894.

to include the landlord himself and the owners of contiguous properties and the landlord or the neighbours or both have physically extensive estates, the value to them in the market of the particular freehold which the enfranchised leaseholder will purchase will (other things being equal) be much higher than it will be to other bidders in the market. The influence of such exceptional purchasers upon market price should perhaps be eliminated in defining the measure of compensation payable by the tenant. This will not prevent the landlord offering to buy back the enfranchised leasehold at the price paid by way of compensation, plus the whole or a proportion of the value to him of retaining the particular freehold in his ownership and thus preventing the disruption of his entire estate. The object of leasehold enfranchisement would not be frustrated if the landlord who had repurchased a freehold subsequently relet it to the erstwhile leaseholder or to a new lessee.

Taxes, levies and betterment charges aimed at tapping increased increments in the value of land interests will in an expanding economy tend to make the values higher than they otherwise would be. One of the causes is the method of assessment. Inevitably assessments must be estimates, not actualities. No one in the real world can tell the measure of the theorist's unearned income. Henry George's astute plan to equate it with rent only holds good while the landlords are being taxed out of existence. When they have gone to be replaced by owner-occupiers, the rental element is eclipsed and there is no obvious monetary identification of the unearned increment. When an economy is expanding the pressure of demand for land resources continually increases. What was a sound estimate of increment value by past standards – and valuers can only look backwards – soon falls behind actualities. Under the Town and Country Planning Act, 1947, the development charge was supposed to reap the increase in the value of the proprietary interest arising from the change in use. Landowners eventually were able to get prices high enough to cover the development charge and a worthwhile profit margin. Prices rose accordingly. In the early stages the market marked time. While prices waited for demand to bank up, the owners of landed interests withheld them from the market. And there is no reason to suppose future experience will be different.

Betterment taxes, such as the tax proposed by Sir Colin Thornton Kemsley, are not imposed to tap the hypothetical increment in

the value of virgin land but aim at taxing the increase in value of a proprietary interest consequent upon the grant of planning permission to develop the land. Their tendency is to raise prices in land more quickly and steeply than a tax on actual sale profits would do. A betterment tax, like a development charge, is dependent upon professional estimates of value. A landowner who would develop his land cannot prepare precise financial budgets including the prices at which he can afford to sell the houses, shops and other premises he builds because he can only surmise what his betterment tax might be. To guard his position he will ask prices high enough to give him a wide safety margin. Prices will tend, therefore, to be higher than those which would have contented him by yielding a calculated profit after a known tax levy. Betterment taxes are likely for this reason to inflate the supply price of houses and other forms of developed property. A developer who knew he had to pay a prescribed proportion of all actual profits as a result of property sales could plan his finances with a surer touch. A tax on sales profits would only be practical and equitable on the proceeds of purchases and resales taking place after the legal imposition of the tax. Sales of property bought before the imposition of the tax would become less and less with the passage of time and the proceeds could be left to be taxed under a system of duties on capital wealth passing at death.

Nationalisation of interests in building land in the hope of reducing house prices and creaming off unearned increment for the community would lead to unexpected and undesirable ends.

In the first place, the two aims are incompatible. If high house prices are due to inflated prices in land, to maintain high prices so as to reap the value increment for the community is not going to reduce prices on the house market. If the Crown Lands Commission, after acquiring freeholds at existing use value plus is to sell building land interests at prices which will pass on to the house purchaser the benefit of its under-buying, there will be no increment value for the community. One cannot have it both ways.

Secondly, house prices are determined in the last analysis by demand. And, as *The Times* first leader of 24 September, 1964 pointed out:

> 'The price of land (sic) for house building is a function of the demand for houses and controlling the price of land will not reduce the price of houses unless the control is carried to the houses themselves.'[1]

If this were possible, two markets would arise. One would deal in houses with controlled selling prices – the 'crownholds' under the proposed Crown Lands Commission; the other with the houses erected before the nationalisation of building land and hence uncontrolled. Demand would focus on the vintage houses because an owner of such would be free to benefit from the rising market values which would soar to even greater heights. Owners of the controlled houses would be loath to sell for fear of having to exchange a fixed price house for a highly priced one on the free market. The population would, as under the Rent Restrictions Acts, tend to stagnate where houses were controlled and the economy in general would suffer from immobility of labour. If the benefit of the Crown Lands Commission's low price compulsory purchase was passed only to the first generation of the owners of 'crownholds', these privileged people would have assigned to them the unearned increment coveted by the community and, in the bargain, house prices in general would not drop a single penny.

Failure of the Crown Lands Commission's hopes will ensue from the sheer impracticality of buying 'for the community land on which building or rebuilding is to take place.'[2] As already pointed out, a Lands Commission can do no more than acquire a proprietary interest in the land. The community (if it means anything at all) can only denote all citizens *en masse,* an amorphous conglomeration wholly incapable of being in possession of proprietary rights in land in any real sense. The new and real owners will be the land commissioners, not the community. If land nationalisation is not to lead directly to totalitarianism under an oligarchy exercising nigh absolute rights of ownership in the appropriated land, inferior interests must be created with a high degree of autonomy, including freedom of sale. And in the end, there will be precious little to distinguish these interests from our familiar freeholds when it comes to selling them on the property market.

[1] 'Down to Earth,' *The Times,* 24 September, 1964.

[2] *The New Britain,* p. 14.

V. SUMMARY AND RECOMMENDATIONS

The property market deals in rights. To understand the significance of what at times appear to be exorbitant prices we must know something of the proprietary interests in land owned by the bidders and purchasers on the market.

Because property in land is a bundle of rights it is closely associated with personal relationships, and government prevention of voluntary exchange between buyers and sellers in the free working of the market raises profound questions touching public and private interests and in particular the responsibility of the state for the protection of private property. Compulsory purchase is seldom justifiable except to promote technological advance and even for this purpose it can work an injustice unless the terms of compensation are adequate. The case for compulsory purchase and the control of land use is weakened when, as is the vogue of today, it is based upon nebulous notions of the good of the community and is not argued from the first axiom of justice that each man should have his just due. We have been led to think too much of the community and too little of the needs, rights and aspirations of the individual citizen and in particular of the just due of the landowner, large or small, in town or country, rich or relatively poor.

This general analysis of the property market and the consequences of certain forms of government interference with it has been built upon particular observations and has led to specific recommendations. Both are summarised in the following paragraphs.

1. The distinction between 'land' and 'property' is fundamental for an intelligent grasp of the functions of the property market. Property in land in Britain is held by millions of people. Land policies should never be framed as if the property market were controlled by a few wealthy 'bull' speculators.
2. Detailed information of the ownership of property is woefully lacking and a new Domesday Survey is urgently required.
3. The machinery of the property market needs to be overhauled so that it may serve buyers and sellers better and overcome the

present dislocation; the Stock Exchange could be a useful pattern.
4. Rents have little, if any, bearing upon the price of freehold property in farmland.
5. Prices of building land per acre have risen much faster than prices of house plots. More research is needed into the relationship between the two.
6. There is little merit in leasehold enfranchisement, but if it were to be adopted tenants should be required to compensate landlords by paying the current market value of the developed freehold site, on the assumption that the landlord and the freeholders of extensive contiguous estates were not among the bidders in the market.
7. Ways and means should be explored of providing financial inducements to the private developer for the erection of houses to let.
8. Compulsory purchase of land should be used only when to refrain would work an injustice. The purchase price should, as near as possible, compensate the expropriated landowner for loss of present enjoyment and future expectation.
9. Controlling prices in land will have no effect in holding down rising house prices.
10. Controlling house prices in general would be extremely difficult, if not impossible, to supervise, and the control of the prices of 'crownhold' houses only would set up an unhealthy dichotomy in the property market between vintage and new houses.
11. Soaring prices in land can only effectively and swiftly be checked by lifting planning restrictions (for example, in green belts) where at present they curtail the right of property owners to develop land.
12. The community cannot expect to appropriate value increments from rising prices in land and at the same time prevent the prices from rising. Value increments from rising prices in land cannot be retained for the community if the benefit of buying cheap through a Crown Lands Commission is passed to individual house buyers.
13. Profits from property dealing should be taxed in the general course of taxation. Levies *ad hoc* on whatever pretext will in the long run aggravate the spiral of rising property prices and temporarily cause the supply of property for development to contract.

14. If levies for betterment were practicable they would be unjust without compensation for detriment. Unearned value of increments generated by rising demand are not peculiar to property in land and landowners should not be discriminated against by the imposition of development charges, betterment taxes and so on, on account of it.

15. The contribution of 'the community' to the value of property in land apart from the influence upon value of general market demand is an assumption difficult to establish.

16. 'Buying land for the community' and 'land nationalisation' are misleading terms and convey an entirely false idea to the lay mind. They are capable of denoting no more than the investment in the Crown of a nominal superiority over land at one extreme or the establishment of a thoroughgoing bureaucratic autocracy at the other. Between the two extremes is a wide range of possible variations.

17. Compulsory reallocation of proprietary units could facilitate urban renewal, meet the just due of property owners, avoid the financial and ethical problems of compulsory purchase without losing or forfeiting flexibility in the future replanning of cities and urban areas. A number of pilot experiments should be made.

NOTES

(i) Words like 'freehold', 'fee' and to a lesser extent 'leasehold' come to us from the distant past, charged with precise meanings in law. 'Freehold' embraces all estates that were held in free tenure, a privilege of status in medieval times. A 'fee' is an estate of inheritance continuing after death for the benefit of the deceased owner's heirs; if for the owner's *general* heirs, the fee is said to be 'simple'; if for a special line of heirs, a fee would probably be referred to as 'entailed'. A 'fee simple absolute' is an estate of inheritance which is not liable to end upon the happening of a certain event, e.g. marriage of the owner. A leasehold estate is created by a lease (itself a legal term of precise meaning) and may be for life or more usually for a specified period of time or for a series of periods. When a lease is for a specified period of time or a series of periods and is liable to end only by a process peculiar to the normal conditions of a lease and not prematurely upon the happening of a specified event, the

interest, created by the lease, is said to be 'a term of years absolute'.

(ii) London's green belt is a girdle of comparatively open country ringing the Metropolis and was first conceived in the planning proposals of Professor Patrick Abercrombie. Six to ten miles in width, it covers 840 square miles. Segments of the green belt are integral features of the development plans of the county planning authorities of the home counties and along with the development plans themselves are 'approved' by the Minister of Housing and Local Government. Other places have similar green belts modelled on London's.

(iii) Leasehold enfranchisement is a term used exclusively of a process which enables the lessee to free himself of the restrictions of a lease by purchasing the estate of the landlord in the premises which are subject to the lease. The words used in the Labour Party's Manifesto, *The New Britain,* are misleading (see page 17): leasehold enfranchisement does not 'enable householders . . . to buy their own houses . . . '. It forces the owners of freeholds, out of which leases have been created, to sell the freeholds against their will; the freeholds are not the leaseholders' 'own houses' as the Manifesto puts it.

(iv) Rack rent is the full rent of land and buildings. By contrast a ground rent is the rent of a site on which a building stands and not the rent of the land and buildings together. Where a lessee pays a premium for a new lease, the rent under the lease would be either a ground rent proper or a rent less than a rack rent.

(v) Privity is a word by lawyers to denote a relationship between two parties. A relationship of tenure between a landlord and tenant in the same parcel of land establishes a 'privity of estate' between them. Similarly, the relationship between the parties to a contract establishes a 'privity of contract' between them.

(vi) A freeholder who grants a lease to his tenant does not give up his freehold estate. He retains it subject to the lease and is said to hold a freehold reversion contingent upon the lease. He is a reversioner, one who comes into full occupation of the reversion when the lease ends.

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SUGGESTED QUESTIONS FOR DISCUSSION

1. How far is it possible and desirable to control the market price in land without obstructing its economic role in matching supply with demand?
2. Distinguish between the economist's and the lawyer's concept of land. If public policy takes account of both, what conflicts are likely to arise between them?
3. What legal and institutional reforms seem desirable to improve the working of the market in land?
4. How would you define the scope and limits of compulsory purchase of land for 'community purposes'?
5. What are the pros and cons of leasehold enfranchisement? Is there an alternative method of meeting the grievances of leaseholders?
6. How would a tax on the increases in land values affect the market price in land?
7. What are the arguments for and against a Crown Lands Commission to reduce the cost of houses to owner-occupiers? Are there alternatives that would present fewer practical difficulties?
8. Consider the economic, legal and other principles involved in distinguishing between the relative 'rights' or 'interests' in land of individuals and the community.
9. Does 'betterment' in land differ from 'betterment' in other commodities or services? Can a tax on 'betterment' be justified if there is compensation for 'detriment'?
10. Evaluate the proposal for experimental schemes for the compulsory re-allocation of property rights to facilitate urban redevelopment.