

THE MYTH OF PLANNING MEETS THE COMFORT OF PROPERTY

Benjamin Davy

Paper presented at the 25th AESOP Conference in Ankara, Turkey (July 2012). The text draws from the final chapter of my latest book Land Policy. Planning and the spatial consequences of property, published by Ashgate (2012).

Abstract

Land uses are what land users do. When spatial planners and other policymakers promote or preclude certain land uses, they interfere with the rights of the users of land, most notably with property. The technical term for what connects land uses, planning, and property is land policy. My paper has a simple message: Good land policy provides a diversity of land uses with plural property relations. No single kind of property rules fits the purposes of all types of land uses.

Neither is a detached single family house like a community garden, nor a highway like a retail chain. Each land use needs its own property “fingerprint.” Property fits the needs of all users of land, if property rules promote desirable land uses and inhibit undesirable land uses. If planners observe that the current property rules suit their goals not at all, they need to understand in how far property obstructs the implementation of their plans. Quite often, property rules are much more helpful than planners initially expect. The purpose of land policy analysis is a better understanding of the comforts that well-adjusted property relations can bring to spatial planning.

PLPR NEWSLETTER SUMMER 2012

Property and the diversity of land uses

One of the advantages of AESOP conference is that a presenter can make a mistake and then come back years later and set it right. At the ACSP-AESOP conference 2008 in Chicago, I presented my first ideas for a book that Ashgate has published in May. I called the book *Land Policy* (Davy 2012). I cannot know, of course, what I shall think about *Land Policy* in a couple of years. But I know that I got it wrong in Chicago and am very happy that I set it right in Ankara. What I got wrong in Chicago was the nature of the space in front of and between buildings, a typical example of a space that planners create through defining building land, setting floor-area-ratios, or designating public parks. I called the space in front of and between buildings an urban common. In fact, this space is a poly-rational land use based upon both private and common property relations. This paper explains why.

Property relations have a spatial impact on the local neighborhood as well as on the city or regional level. The real estate adage, attributed to a 1926 classified ad in the Chicago Tribune (Safire 2009), emphasizes the significance of the spatial functions of property: “Location, location, location!” Location is more than a geo-reference to the exchange value of land. Location is the result of a

huge variety of spatial qualities that include, but are not limited to, economic activities. Spatial planners and other policy-makers influence, and sometimes create, location (Bökemann 1982). In order to do this effectively, planners need to understand property.

Consider a land policy for farms and highways, homes and parks. Planners wish to satisfy the needs of farmers, car drivers, homeowners, the general public. Hardin (1968: coercion / hierarchist approach), Demsetz (1967: privatization / individualist approach), or Barnes (2006: communal property / egalitarian approach) make entirely different suggestions about the best way to assemble such a land policy, yet probably each of them would not rely on merely one instrument. Monorationality does not imply blindness to a variety of instruments. In

fact, amalgamating instruments (or institutions) into a policy mix is commonplace in policymaking. No one expects that one size fits all. Polyrationality reaches beyond a (monorational) combination of instruments or policies. A way of testing a policy for its polyrationality is to examine each of its components for its underlying rationality. A monorational policy most likely considers basic concepts of land policy—such as land, land value, costs and benefits, inclusion and exclusion, allocation and distribution, efficiency and justice—in the same fashion. An egalitarian land policy presumably emphasizes spaces of identity, use val-

Planners influence, and sometimes create, locations.

PLPR NEWSLETTER SUMMER 2012

ues, capabilities, common property, and social justice. In quite a different fashion, an individualist land policy focuses on land as

commodity, exchange values, private property, market efficiency, and libertarian justice.



The inevitable connection between private and common property (view from my study in Dortmund)

© Benjamin Davy

A policy would be less monorational if it combines, let us say, use values with the

land market or social justice with market efficiency. The “blind spot” test delivers even

PLPR NEWSLETTER SUMMER 2012

better results. The test looks for the blind spots in a policy. A blind spot can be anything that features prominently in other land policies, but remains completely neglected in the policy under examination. An egalitarian policy most likely will have a blind spot for market efficiency (it is not interested in a land use that harms community values, even if it is good for market competition). A hierarchical land policy also will have a blind spot for market efficiency (it is not interested in markets unless this means better control). Poly-rational policies often comprise as core elements the blind spots of monorational policies. If some components of a policy do not fit with other components or even seem to be very unfitting, yet work together smoothly, the policy is poly-rational.

Acknowledging the impact of poly-rational property relations, planners can draft and implement their plans successfully. Negotiating the spatiality of property means for planners and other policymakers to respond with their spatial plans to the wide variety of ownership practices and land use rationalities. Von Justi's notion of governance, land use control, and property entails a sensibility for a viable mix of property relations and leads up to the most important question of land policy: How can planners and other policymakers promote a viable pattern of plural land uses through private and common property relations? Planners rarely determine the shared or restricted use of a piece of land without regard to the context of other land uses in the neighborhood, city, and region. Accordingly, spatial planners

cannot conceive of urban land uses only as restricted uses or of urban land only as private land. A *mix* of restricted and shared uses is a prerequisite of successful spatial development. Examining the relationship between private and common property in land, I find the deliberation of two incidents helpful. The first incident is isolated private land, the second the nameless space in front of and between buildings. In both incidents, the connection between private and common property relations becomes obvious.

The inevitable connection between private and common property

Isolated private land is emblematic for a weakness of conventional representations of property merely as private property. Isolated private property does not, and cannot, exist. Assume a cadastral parcel, fully protected from trespassers, that is completely isolated. Complete isolation has little to do with a remote location. Complete isolation means that the use of a cadastral parcel is limited precisely to its owner's private property rights. Neither has the land access to public services (e.g., water, sewage, electricity, fiber optic cable), nor is it connected to a public street and accessible to others. Moreover, the cadastral parcel is disconnected from environmental commons that are not subject to private property relations. Among such commons are, depending on the legal system, ambient air, the wind, sunlight, rainwater, surface water, groundwater, min-

PLPR NEWSLETTER SUMMER 2012

erals, the view, the neighborhood. Finally, air pollution, waste and sewage produced on this private land remains and has to be processed there because the isolation prevents anything—including harmful substances—to leave the land in question.

The completely isolated plot has little or no economic value. In fact, no potential buyer could even inspect the completely isolated plot, but would only buy a piece of land that she will never set a foot on. Private property in land only makes sense if private land is connected to the rest of the world. Private property may enable the landowner to exclude “any other individual in the universe” (Blackstone 1766: 2 [Book II, Chapter 1]). Private property grants no joy, however, if it also excludes its owner from the universe. A secure title or the protection of private property *do not connect* a landowner with the rest of the world. The features assigned to “the ‘liberal’ concept of ‘full’ individual ownership” (Honoré 1961: 107) do not comprise the right to use spatial commons in the proximity of private property. In a popular reaction to the need of access to spatial commons—in this context often called amenities—private landowners use political clout to make the local community render public services indispensable for the use of private land. Based on Tiebout (1956), the “home-voter hypothesis” examines how home values influence local government taxation, land policy, and zoning (Fischel 2001). As

Private property grants no joy
if it excludes its owner
from the universe.

many factors determine the quality of location which are well beyond the reach and rights of individual landowners, homevoters demand the public production and private appropriation of spatial values outside their property line (Fennell 2009; Fischel 2010).

If we conceive of a tract of private land as an isolated object that its owner has the right to use exclusively, yet only as far as her private property rights are reaching, we must imagine an utterly miserable situation. The owner, blind to the world which she has no right to look at or have any exchange with, would be imprisoned on her land while no fresh air is coming in and no wastewater is going out. Such property is reminiscent of Mary Douglas’ (1966: 163) description of the men of the Chagga tribe, who “used to pretend at initiation their anus was blocked for life.” Landowners and property theorists who believe Blackstone are in for a surprise

not dissimilar to the discomfort of Chagga men. In fact, private property must be embedded in an environment of mutual accessibility and exchange.

Private property does not by itself create such an environment, it needs to be supplemented by common property and shared uses of land (Rose 1986). As a technical term, the word commons (or: common pool resource, communal property, open access, public domain) is used with various meanings. Commons are not merely village pastures or community forests (Ostrom 1990: 3).

PLPR NEWSLETTER SUMMER 2012

Commons occur frequently in land use situations and often they occur inevitably. An example in point is urban infrastructure (Frischmann 2005).

Common property and shared land uses are particularly vulnerable in the absence of effective use rules. Hardin (1968) calls the vulnerability the tragedy of the commons. Commons need management (Ostrom 2009). Yet, the four monorational types of shared land uses—opportunistic, collaborative, structural, environmental—require that common property relations with different use rules be established. If a park bench, a community garden, a highway, and the catchment area of a large river are used under the same set of rules by many, liminal dysfunctions are inevitable. Common property includes a number of use rights that legislators sometimes not even call property. From the perspective of land policy, legal terminology is not always helpful, and common property and the right to shared land uses do not depend on the legal usage of the word “property.” What matters in land policy is whether land uses are (or are supposed to be) restricted to a few or shared by many users. Consider the site-street nexus, a typical example of the interdependency between insular and opportunistic land uses, set up by private and common property relations. It would be inefficient if every landowner bought her own street. Soon no space would be left for insular uses, residential or commercial. The problem of isolated private land cannot—and is not—resolved by *more* isolated private land. Rather, as the space in front

of and between buildings illustrates, a combination of private and common property relations is unavoidable.

The space in front of and between buildings is the result of the drawing of a building line in a zoning ordinance or binding land use plan: one of the most mundane activities of spatial planners. The space in front of and between buildings is the 3D manifestation of the impact that building lines have on urban design, land markets, and property developments. Building lines are boundaries that determine where the buildings sit on each plot. Such lines also designate the transition from private to semi-public and public spaces. Frequently underestimated even by planners, these boundaries manage private and common property relations. When planners draw a building line, they delimit the future building land and determine the shape and size of private properties. They create units that can be owned individually. The use of such units is restricted to individuals or small groups. By drawing a building line, planners also designate space for front gardens, backyards, pedestrian walkways, streets, squares, and parks. Planners also create a space that puts restricted and shared land uses into balance: the space in front of and between buildings. Once each plot has been developed and the grid of blocks has begun a life of its own, most people hardly ever remember the planners’ effort. Without the effort, however, neither private nor common land would be available.

PLPR NEWSLETTER SUMMER 2012

The space in front of and between buildings is neither a good in the economic sense nor a

thing in the legal sense. It is difficult to capture the nature of this space.



The space in front of and between buildings (Midtown Manhattan) © Benjamin Davy

The difficulty is quite typical of spatial planning and land policy which constantly deal with combinations of restricted and shared uses of spatial resources. One of the

key objectives of land policy is the establishing of private and common property relations suitable for a diversity of land uses. Land policy often pursues this objective

PLPR NEWSLETTER SUMMER 2012

through spatial planning, but planners are not always aware of how their work affects property relations. After all, the cartographic representation of the space in front of and between buildings is limited to land use plans which do not show property lines. If we superimpose a land use plan on a cadastral map, we see that the space in front of and between buildings is not an object owned by one proprietor only. The space in front of and between buildings assembles fractions of many properties. The cartographic overlay does not show the towering emptiness of the space in front of and between buildings, yet the emptiness is not void of property rights. Property in land often entails air rights (Gray 1991), not only surface rights. Each plot of private land contributes some airspace—above the yard, the garden, the roof, and between privately owned buildings. Confusingly, the private landowner has no better right to the air actually flowing through the airspace than everybody else. Ambient air, in most legal systems, does not belong to the landowner, but is an environmental common (Clarke & Kohler 2005: 371). Huge chunks of the space in front of and between buildings arise from the network of public streets and squares, the public parks, and other common land. Presumably, these chunks are subject to common property relations. But what about the *entirety* of the space in front of and between

Polyrational land uses require that spatial planning and land policy employ private and common property relations.

buildings—is it a private or common space? The space in front of and between buildings is a remarkable resource: We all use it. Each of us can spoil it. None of us owns it exclusively. Shaping the physical pattern of the city, this space connects private properties with the rest of the world, but it also facilitates exchange, envelops neighborhoods, and takes the edge off density. All city dwellers enjoy this space, yet it does not even have a name (Gehl 2006). We refer to its components,

for example, to a row of front gardens or the network of streets. In its entirety, the city space in front of and between buildings—created through regulatory planning and the establishing of building lines—is nameless. Without this space, cities would be rows of impenetrable building blocks stacked next to each other like tombs. The space in front of and between buildings makes cities tolerable, even desirable.

The space in front of and between buildings and other “indistinct” spaces which planners care about epitomize polyrational land uses that emerge from a combination of some or all of the eight monorational types of land uses. Polyrational land uses comprise a diversity of monorational land uses. Polyrational land uses, however, do not merely add, accumulate, collect, or combine monorational land uses. We must conceive of polyrational land uses as something quite distinct from each monorational land use.

PLPR NEWSLETTER SUMMER 2012

The space in front of and between buildings contains ambient air and light, pollution from smokestacks and laughter from playgrounds, flower pots and car traffic, power lines and avenues, pedestrians and stunning views of the skyline. Provided that polyrational property relations are in place, the interaction of plural land uses, and also their frequent disregard for each other, are unremarkable. A grid of building blocks and streets does not appear spontaneously, however, and neither do parks, gardens, market squares, or other spaces open to the public. Without planning and infrastructure, no viable relationship between private and common property and the diversity of land uses emerges. This is the cornerstone of the myth of planning: Only a careful mix of private, semi-public, and public spaces which combines private and common property creates habitable cities and scenic landscapes. Larger-than-life city planners such as Baron Haussmann in Paris, Daniel H. Burnham in Chicago, or Walter Burley Griffin in Canberra, who have vigorously insisted on generous open spaces in their plans, have founded the myth of planning. The list would include James Hobrecht and Berlin, but due to a lack of building regulation, real estate developers exploited Hobrecht's building lines and created the excessively dense grid of building blocks known as "petrified Berlin" (*steinernes Berlin*). The failure of Hobrecht's plan for Berlin makes the myth of planning even more credible. Invoking the memory of grand plans, the myth of planning supposes that the space in front of and between build-

ings and other spatial resources are created by regulatory planning and public expenditure. Polyrational land uses do not emerge merely from regulatory planning, however. Without the comforts of property, planners and other policymakers could not regulate the polyrational land uses (like the space in front of and between buildings or landscapes) into existence. Polyrational land uses, in fact, require that spatial planning and land policy employ private and common property relations.

Polyrationality and the spatial consequences of property

Considered from the perspective of a polyrational theory of planning and property, cities comprise eight types of land uses: insular, opportunistic, kinship, collaborative, corporate, structural, container, and environmental uses of land (Davy 2012: 87). On a different scale, this is also true for neighborhoods and regions. These land uses, shaped by various social constructions of land and property relations, reflect one of four rationalities: hierarchical, individualist, egalitarian, fatalistic. The rationality-based approach to land uses and land policy draws from Mary Douglas' grid/group theory (Douglas 1966 and 1982: 183–254) used in policy analysis. A "rationality" characterizes a complex social situation, not separate persons. Nobody is egalitarian all by herself (we need others to be egalitarian). Polyrationality implies that monorational land uses

PLPR NEWSLETTER SUMMER 2012

do not exist by themselves, but only as elements in a land use pattern where each of these rationalities is present. Why (only) eight types of land uses? Mary Douglas' grid/group theory (or cultural theory) considers *plural* rationalities, it is not adamant whether "four, or five or fifty" rationalities exist (Douglas 1982: 185). A polyrational theory of planning and property also does not insist on numbers, but seeks to avoid both over-simplification (too few rationalities) and over-specialization (too many rationalities). Common and private property relations envelop and pervade the diversity of land uses. Regarding the spatiality of property, policy analysis is not so much concerned with *who* owns the land, but with *how* property relations and land uses produce viable urban patterns. Above all, property rules need to fit the needs of many users of land. Property cannot always accommodate everybody's wishes and it limits the scope of individual or collective action. Property fits the needs of many users of land, if property rules promote desirable land uses and inhibit undesirable land uses. If planners observe that the current property rules suit their goals not at all, they need to know in how far property obstructs the implementation of their plans. Quite often, property rules are much more helpful than planners initially expect. The purpose of policy analysis is a better understanding of the comforts that well-adjusted property relations can bring to spatial planning.

Restricted land uses need private property rules

Land uses restricted to individual landowners direct the benefit stream of land use towards the holders of private property rights, including joint ownership, condominium property, corporate property, and users authorized by the owner (e.g., tenants). The restriction of the use of land often follows from law, but also from political clout, the local property culture, or social conventions. The following examples of four types of restricted land uses includes examples of agrarian uses, retail, and housing.

Insular uses of land do not depend on regular interactions with adjacent uses and do not need exchanges with particular other uses (e.g., neighbors or business partners). Also, users determine for themselves how they want to use their land. Insular uses of land are the paradigm of private property as an expression of liberty, personhood, and self-sufficiency ("My home is my castle!"). Insular uses follow the individualist rationality. Users make their decisions autonomously and with their own benefit in mind. In exchange as well as in competition, they have to negotiate for and take care of themselves. Typical examples are a remote homestead (agrarian), the grocery on the corner (retail), a single family house occupied by its owner (housing). Insular uses require property rules which support individual liberty and autonomy, but also limit harm (nuisance) to adjacent land uses.

PLPR NEWSLETTER SUMMER 2012

Kinship uses of land combine similar or corresponding uses in spatial proximity to each other. The interaction of users within kinship uses creates mutual gain. Kinship uses reflect the egalitarian rationality, are based on trust, and accumulate social capital. This does not mean that there is no competition between the uses, but ultimately a sense of community prevails. Kinship uses need each other and the use value of land used in kinship includes a neighborhood premium. Typical examples are a farming cooperation (agrarian), high street shops (retail), a group home or shared apartment (housing). Kinship uses require property rules which promote the inclusion of similarity, often with a fair sense of group informality, yet also the exclusion of incompatible uses. Also, property rules must help the kinship users to restrain free riders.

Corporate uses of land connect single uses with a view to profits that exceed the utility of each single use. The corporation establishes a hierarchy of land uses, frequently distant from each other, to profit from economics of scale, accumulation, or a network of locations. Corporate uses are hierarchical. The use value of the corporate land depends on its utility for the hierarchy established by the corporation. Typical examples are a company that operates cattle farms, transport, abattoirs, and butcher's outlets (agrarian), a chain of supermarkets (retail), an investor owning real estate at many locations in several cities (housing). Corporate uses require property rules which help the corporation to control closely all in-

ferior uses by superior management. Control is particularly sensitive in transboundary settings where land uses are vulnerable to local influences.

Container uses of land bring together unrelated (and in this sense insular) uses "under one roof." Single uses within the container are not connected to each other, but through the owner's interest in an expedient and cost-saving operation of the container. The container comprises many unconnected uses, the users relate to each other in a rather fatalistic fashion. The use value of container uses depends on the quality and management of the container. Typical examples are a silo or storehouse owned by a company that buys all crops from farmers in an area (agrarian), a shopping mall with individual shops mostly benefiting from services provided by the mall management (retail), high-rises for social housing, a hotel, or a refugee camp (housing). Container uses require property rules which facilitate multiple uses with little or no mutual exchange or transaction cost.

Shared land uses need common property rules

Shared land uses direct the benefit stream of land use towards the members of the use community or the general public. Common property comprises formal use rights or membership as well as traditional group rights or tacit permission. Common property scholars often point out that Hardin (1968)

PLPR NEWSLETTER SUMMER 2012

does not analyze the tragedy of common pool resources, but the consequences of opportunistic behavior in open access situations (Ostrom 2009: 26–27). If the variety of common uses remains unclear, it makes little sense to distinguish between commons, common pool resources, or open access. A polyrational theory of land policy, instead of splitting words, distinguishes four types of shared uses of land. In common property relations in land or other environmental resources, all members of a use community have a right to share the use of the common (without regard to the legal owner of the land or environmental resource). The use value of spatial commons depends on their availability to their members, yet also on the wear and tear of the accumulated use activities. The following examples of four types of shared land uses (spatial commons) includes examples of public streets, infrastructure, and public parks.

Opportunistic uses of land exercise the freedom of use in a spatial common. The users are free in determining the time, location, kind, and intensity of their uses (open access). Opportunistic uses follow from the individualist rationality. The free appropriation from the commons, as described by John Locke, is a good example of opportunistic uses of land, but also prone to the tragedy of the commons (Hardin 1968). The use value of opportunistic uses reflects the variety and number of happy users. Typical examples are car traffic, street vendors, shoppers (public streets), using a public toilet or drinking fountain (infrastructure), wander-

ing around, meeting friends, or flying a kite on the municipal green (public parks). Congestion often results from unmanaged opportunistic uses, but urban dwellers expect a city to make shared spaces available that they are free to use without fees, prior booking, or complex social arrangements. Opportunistic uses require property rules which allow the flexible and possibly temporary appropriation and use of spatial commons. In order to prevent the tragedy of the commons, the property rules must limit excessive uses, exploitation and congestion.

Collaborative uses of land create or improve a spatial common through collective action. The members of the use community coordinate their efforts in an egalitarian fashion (e.g., consensus, shared identity). Collaborative uses are manifestations of the egalitarian rationality. Ostrom (1990) emphasizes that collaborative uses of common pool resources (CPR) can prevent the tragedy of the commons. The use value of collaborative uses includes a premium on the trust between the members of the use community, their success in excluding outsiders, and the accumulation of social capital. Typical examples are a neighborhood watch on traffic and strangers (public streets), a communal irrigation scheme in a rural village (infrastructure), community gardens with active involvement of citizens in the cultivation and maintenance of plants (public parks). Collaborative uses require property rules which promote collective action and help the use community establish and operate a suitable resource management.

PLPR NEWSLETTER SUMMER 2012

Structural uses of land establish hierarchies by distributing spatial common goods and services according to their centrality. Structural uses represent the hierarchical rationality. Most notably, a network of streets includes highways and motorways, major arteries and through roads, high streets and cul-de-sacs. Boundaries are structural uses of land that define the size and shape of cadastral parcels and building blocks, cities and districts, regions and countries. Many public services establish spatial hierarchies through the structural use of land (e.g., police headquarter, police stations, patrol cars, officers on the beat). The use value of structural uses indicates the successful implementation of the hierarchical purposes. Typical examples are a network of streets (public streets), a sewage system (infrastructure), a municipal department operating a variety of large and small parks throughout the city (public parks). Structural uses require property rules which let the supplier control whether shared uses conform with the purpose of the spatial common. Accordingly, property rules often establish a monopoly in favor of a supplier. In this case, the supplier of structural uses have to offer their services regardless of personal preferences and must not discriminate against persons who meet the general criteria for service. In public transport, this duty is called common carrier principle; in other areas of infrastructure, the suppliers have a legal duty to make a contract with all willing customers.

Environmental uses of land range from the uses of natural resources such as air, water, biodiversity, sunshine and nocturnal darkness, silence, or the climate, to the pollution of the environment. As users can hardly choose who breathes the same air or enjoys the same sunshine, they succumb to the fatalistic rationality. Users are exposed to effects they cannot influence. Environmental economists call such effects negative or positive externalities or social cost and social benefits. Environmental commons can be harmed, but not preserved, by single users. Moreover, everybody cherishes environmental commons beyond their mere existence. We prefer pristine air to breathable air or pure water to potable water. The use value of environmental uses reflects the degree of purity. Typical examples are ambient air polluted by car exhausts (public streets), the operation of a desalination plant (infrastructure), enjoying sunlight and fresh air while sitting on a park bench (public parks). Territorial airspace, in the absence of air, is a lethal void. Airspace can be, to some degree, privately owned, but not ambient air. Also, it would be rather grim to privatize ambient air. Environmental uses require property rules which open up access to environmental commons as much as possible, yet prevent the annihilation and degradation of the environment.

PLPR NEWSLETTER SUMMER 2012

The value of plural property relations

The eight types of restricted or shared land uses and their needs for certain property rules remind us of the fact that planners shape property relations within a *spatial* context. The spatiality of property raises questions different from a functional examination: What kind of property has to be established, limited, or abandoned in order to facilitate use X or use Y? Spatial planners manage restricted and shared land uses by mixing—and sometimes mixing up—private and common property relations.

The oversimplification of property discourses, emphasizing either private *or* common property, worsens the planners' discomfort with the ownership question. Planners and other policymakers benefit from understanding that the spatial world is enveloped by layers of private *and* common property relations. Speaking of private land means substantially different things if contextualized with single family homes or corporate real estate. Speaking of club goods or open access—instead of commons—supports the illusion of delineated property regimes which can be mapped out precisely. This is not the case, however. Another popular mistake about property and the private-commons-debate is to believe that most spaces are privately owned. In terms of size, the larger part of

The purpose of land policy is to make sure that desirable land uses are enveloped by the most appropriate framework of property relations.

the Earth is owned as “common heritage of mankind.” Perhaps, one might object, at least cities are owned individually. This takes us back to the space in front of and between buildings. Cities comprise public and private spaces, governed by common and private property relations. Cities are a spatial consequence of polyrational property relations.

Private and common property are not opposite, not even competing property relations. A mixture of private and common property relations is essential for each property system. It is, of course, possible to privatize space to a very high degree and extract fees for many uses of privately owned and publicly used land. But policymakers will quickly discover that extracting fees for all land uses pushes transaction costs over the top. It is also possible to make a wide array of land uses commonly accessible. Yet, overemphasizing common property frequently puts a stop to private investments and encourages free riders (Bromley 1991: 28–29). And if an urban common is overused, as occurs when peddlers and pawnbrokers occupy a public street, it turns into “contested space” (Brown 2006). Pitting private against common property (Demsetz 2002) leaves planners and other policymakers with the wrong impression of the true choices they can make when

PLPR NEWSLETTER SUMMER 2012

managing land uses and property relations. Their choices are not really about choosing either private or common property. Rather, planners can choose from the rich variety of comforts that plural property relations offer. Land uses are what land users do. When spatial planners and other policymakers promote or preclude certain land uses, they

increase or diminish the rights of the users of land, most notably property rights. The purpose of land policy is to make sure that desirable land uses are enveloped by the most appropriate framework of property relations (Davy 2012). Good land policy provides a diversity of land uses with plural property relations.

Bibliography

- Barnes, Peter (2006) *Capitalism 3.0: a guide to reclaiming the commons*. San Francisco: Berrett-Koehler Publishers.
- Blackstone, William (1766/1797) *Commentaries on the laws of England II*. Chicago & London: University of Chicago Press.
- Bökemann, Dieter (1982) *Theorie der Raumplanung*. München & Wien: Oldenbourg.
- Bromley, Daniel W. (1991) *Environment and economy. Property rights and public policy*. Oxford & Cambridge, MA: Blackwell.
- Brown, Alison (editor) (2006) *Contested space. Street trading, public space, and livelihoods in developing cities*. Burton on Dunsmore: ITDG.
- Clarke, Alison & Paul Kohler (2005) *Property law*. Cambridge: Cambridge University Press.
- Davy, Benjamin (2012) *Land policy. Planning and the spatial consequences of property*. Farnham, Surrey & Burlington, Vermont: Ashgate.
- Demsetz, Harold (1967) *Toward a theory of property rights*. *American Economic Review* 57 (2) 347–359.
- Demsetz, Harold (2002). *Toward a theory of property rights II: the competition between private and collective ownership*. *Journal of Legal Studies* 31 (2) 653–672.
- Douglas, Mary (1966/1992) *Purity and danger. An analysis of the concepts of pollution and taboo*. London & New York: Routledge.
- Douglas, Mary (1982) *In the active voice*. London, Boston, & Henley: Routledge & Kegan Paul.
- Fennell, Lee Anne (2009) *The unbounded home. Property values beyond property lines*. New Haven & London: Yale University Press.
- Fischel, William A. (2001) *The homevoter hypothesis. How home values influence local government taxation, school finance, and land-use policies*. Cambridge, MA & London: Harvard University Press.
- Fischel, William A. (2010) *The evolution of homeownership*. *Chicago Law Review* 77: 1503–1530.
- Frischmann, Brett M. (2005) *Infrastructure commons*. *Michigan State Law Review* 121 (1) 121–136.
- Gehl, Jan (2006) *Life between buildings. Using public space*. København: Arkitektens Forlag.
- Gray, Kevin (1991) *Property in thin air*. *Cambridge Law Journal* 50 (2) 252–307.
- Hardin, Garrett (1968) *The tragedy of the commons*. *Science, New Series*, 162 (3859) 1243–1248.
- Honoré, A. M. (Tony) (1961) *Ownership*. In: A. G. Guest (editor) *Oxford essays on jurisprudence*. Oxford: Oxford University Press: 106–147.
- Ostrom, Elinor (1990) *Governing the commons. The evolution of institutions for collective action*. Cambridge: Cambridge University Press.
- Ostrom, Elinor (2009) *Design principles of robust property rights institutions: What have we learned?* In: Ingram, Gregory K. & Yu-Hung Hong (editors) (2009) *Property rights and land policies*. Cambridge, MA: Lincoln Institute of Land Policy: 25–51.
- Rose, Carol M. (1986) *The comedy of the commons: custom, commerce, and inherently public property*. *University of Chicago Law Review* 53 (3) 711–781.
- Safre, William (2009) *On Language: Location, location, location*. *The New York Times*, 28 June 2009.
- Tiebout, Charles M. (1956) *A pure theory of local expenditures*. *Journal of Political Economy* 64 (5) 416–424.

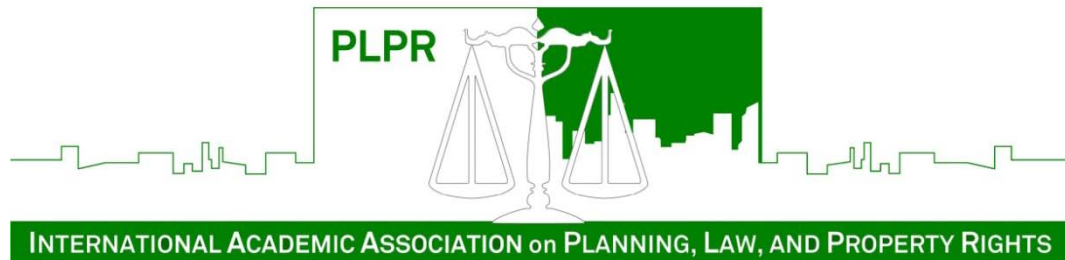
PLPR NEWSLETTER SUMMER 2012

SEVENTH INTERNATIONAL CONFERENCE

13–15 FEBRUARY 2013

PORTLAND STATE UNIVERSITY

PORTLAND/OREGON, USA



DON'T FORGET TO SUBMIT AN ABSTRACT!

DEADLINE: 15 AUGUST 2012

**INTERNATIONAL ACADEMIC ASSOCIATION ON
PLANNING, LAW, AND PROPERTY RIGHTS**

PLPR NEWSLETTER SUMMER 2012

IMPRESSUM

PLPR Newsletter Summer 2012

edited by Ben Davy

in cooperation with
Thomas Hartmann, Deborah Peel, Fennie van Straalen

Visit www.plpr-association.org

Dortmund 2012

© 2012 by the authors