

Constructing a Progressive Position on Land

N.B. This essay was prepared for publication in [Progressive City: Radical Alternatives](http://progressivecity.net) (progressivecity.net); writing style, overall length, and citation format, are per their guidelines. It had been accepted and was due to be posted to the website on 10 July 2023. On the day of the posting a second member of the managing editor group informed me that the posting would not occur because of “certain parts of the article and its fit with our mandate.” What is that mandate? According to the editor it is “a magazine that is committed to anti-colonial and anti-capitalist orientations . . .” According to their website the magazine is “dedicated to ideas and practices that advance racial, economic, and social justice in cities.” I (and the editor who accepted the piece) felt it clearly met the published mandate.

Harvey M. Jacobs*

These should be heady times for progressive planners and progressive planning. Progressive issues are front and center in the national dialogue. There are active discussions about the lack of and need for affordable housing. And there is discussion of the need to link housing development to (mass) transportation access. These discussions are occurring at the national, state, and local levels, and among multiple community, civic, and professional associations. Much of this discussion centers on zoning – a core planning issue – and how zoning’s very structure affects the availability of housing options, housing location, and affordable housing.

But progressive planners are deeply confused about what to say in the current moment. And this confusion is not recent. Since the middle of the twentieth century progressive planners have found land use planning and land use policy an aspect of contemporary planning practice that challenges core progressive principles.

Nearly 40 years ago in *Progressive Planning Magazine* no. 55 (December 1985) I published a special feature titled ‘Progressive Land-Use Planning.’ In this piece I noted that approximately two-thirds of planning practitioners worked in land-use, environmental, or comprehensive planning, but progressive planners had little to offer them as guidelines for practice. What practitioners needed then, and need now, is to understand (in part) what a progressive

zoning ordinance looks like, how to conduct progressive zoning administrations, and how to formulate progressive positions with regard to a variety of land use and environmental issues (for example, urban fringe farmland protection). So, in the vein of the current times: is it a progressive position to support or oppose the elimination of single-family, single-use zoning?

In the intervening decades we have made substantial progress in understanding aspects of progressive land use planning and policy. Progressives are, on the whole, strongly supportive of programs for urban agriculture and community gardens, community land trusts, inclusionary zoning, the elimination of urban food deserts, safe streets, walkable neighborhoods and their connection to functional schools. But the pieces do not add up to a whole. What does not exist – and I think needs to exist – is a comprehensive, programmatic progressive position on land use planning and policy. Progressive planners have a dilemma. We stumble when asked about what we promote as an alternative to the current approaches. Can we develop such?

It is challenging. Key components of land use planning and policy are not easily addressed by progressives. Let me take up two of the most crucial.

The first is private property and private property rights. Are progressives in favor or against private property and private property

rights? This is actually too simple a question, but it is a good place to start. Nineteenth century radicals (anarchists and Marxists) largely saw private property as a problem, a social and legal institution that reinforced the position of those already empowered. But twentieth century experiments with the elimination of private property failed. And besides, private property has deep social and legal roots in the American psyche, history, and legal system.

But we also know that fully embracing private property isn't functional; land use planning and land use policy emerged from an early understanding that a form of tragedy of the commons develops if each individual can do with her property as she wishes, regardless of its impacts on others. So what form of private property is progressive? And what is progressive policy with regard to property?

Does it mean promoting widespread individual private ownership? Does it mean promoting alternate forms of ownership (a la community land trusts)? Does it mean respecting the rights of individual land owners, or are there limits on those rights? And if there are limits, who should set them and in whose interest? When and how much should individuals be compensated for public-interest action that negatively impacts their land? How should land use policy balance the rights and interests of the individual and that of the community? These and related questions are at the core of this issue.

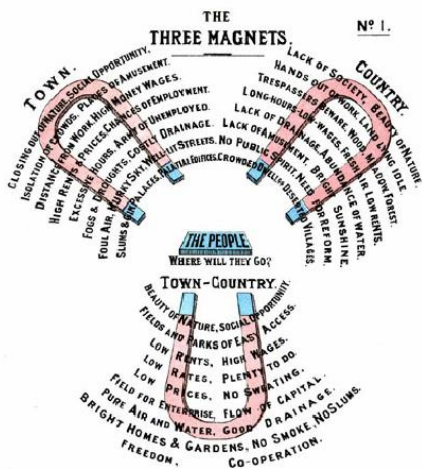
What we know is that the rights that make up the private property bundle are not static. What I own when I own property (e.g. a house and land) in 2023 is different than what an owner would have owned in 1953, and even more so than what she would have

had in 1903. Social values and technology have changed. The rights in the bundle of property have been reshaped by these changes.

A second matter progressive planners must engage is local government control of the land use planning and policy process. On the whole, progressives are in favor of local control, when it is community control, and when the community is a disadvantaged one. But local government control came about in the 1920s when state governments relinquished their reserved authority and passed it down to local governments. Most of these governments then used this authority to protect the property and social class interests of particular groups of residents. This is what is now under attack in proposed revisions to state enabling laws which it is hoped will result in more housing and thus more affordable housing. In general, progressives have taken the position of supporting these revisions. However this has generated a (largely suburban) backlash, and left progressives open to a critique of being elitists, and not trusting in local control.

What is well known is that the century-long system of land use planning has been highly problematic. Contemporary writing about wealth takes note of the stark racial difference in assets, and attributes much of that to access to housing ownership and its intergenerational benefits. While the lack of access to housing and eminent domain-based land loss was not necessarily created by land use planners, it was often reinforced by land use planning (R. Rothstein *The Color of Law*, 2017). So yes, zoning and comprehensive land use planning has been and is used to keep densities down, so as to keep real estate prices up, by preying on the most vulnerable, and in doing so by keeping 'them' out,

The irony is that from the end of the 19th century through the mid- twentieth century, land use was a central focus for progressives. Zoning and public health reforms for major cities and proposals for new garden cities were prominent among the progressive agenda of the era (E. Howard *Garden Cities for Tomorrow*; 1898; L. Mumford *The Culture of Cities*, 1938). These were understood as vehicles for addressing unsanitary, unhealthy, and even inhuman living conditions (they were the counterpoint to the exposes of J. Riis in *How the Other Half Lives*, 1890). E. Howard's *Garden Cities of Tomorrow* was fundamentally a call for social reform which used spatial planning elements to realize its goals. In this 50~ year period land and its use, including its ownership, was a key component of discussions about how to realize fundamental human rights.



E. Howard. *Garden Cities of Tomorrow*, 1898.

But after the end of the second world war and the explosion of suburbia in America, what was progressive with regard to land became confusing. Local communities used their state-delegated authority over land to exclude. Over the decades accusations accumulated that local land use was parochial and discriminatory.

At the same time in the second half of the 20th century progressives joined in promoting so-called land reform throughout the developing world. In places with concentrated land ownership the idea was that promoting widespread land ownership among the poor, the landless, and tenants promoted individual security, safety, stability, and social and economic development, and it was, at base, a human rights issue. What, if anything, did land reform mean in the U.S.?

Beginning in the 1960s there were proposals for major reforms for land use in the U.S. Some were community-based, a la Jane Jacobs (*Death and Life of Great American Cities*, 1961), and challenged the then-dominant idea of urban renewal and highway construction. Others proposed radical regional centralization as a way to break the power of parochial local interests, and to further social equity and environmental goals. But the regionalization proposals quickly garnered critiques from the left as being facilitative of conservative and developer interests.

Given this background, the experiences, the critiques, what can be said about progressive land use planning? Drawing from my examples, let me make two assertions.

Progressive land-use planning has to affirm the right to own land; in fact, I would argue that progressives should assert the primacy of owning land as a human right. But holding land should not mean that the owner is empowered to act in whatever way she or he pleases. There are always socially negotiated limitations on the rights in the ownership bundle. We need to debate which sticks are actually in the bundle, and what each particular stick means to the owner and for the community. (A suggested starting place could be the two page reflection by

Alexander et al. *A Statement of Progressive Property*, Cornell Law Review, 2009.)

Tactically it is an essential position to take. The ownership and control of property are deeply engrained into the American psyche and into its legal structures.

Morally it is also the right thing to do. The right to own land and the right to enjoy the rights commonly associated with land ownership is, at core, a human rights issue. It is about security, legacy, an ability to earn a living, to garner social respect. And it has been framed as such throughout the developing world. Excluding ‘the other’ (by race, class, religion, ethnicity, gender, age) from the right of ownership is recognized as a common way of de-powering that group vis-a-vis dominant groups.



Progressives can both affirm the right to property and the right of the community (which itself becomes a concept to be defined) to shape that property, to suggest what should or should not be in the bundle. So, for example, does ownership mean the right to ‘improve’ property, as defined by the owner, or are improvement rights

socially defined? In most parts of the U.S. the answer is ambiguous, but leans into strong property rights which are also socially defined. That is, local governments (through zoning and related rules) generally define the rights of improvement.

Likewise, progressive land use planning has to affirm its commitment to local control. This is tricky. Local control can go awry. But so can regional and super-regional control. And the latter are less accessible, which can mean that there is less participation, which can easily lead them to function less democratically. So in truth all levels of public sector control can be problematic. Rather than expending energy to wrench local control away, and reestablish a form of functional and socially responsive other-than-local-control, progressives should work on how to make local control more socially responsible.

These two elements – the nature of property and the level of public sector control – do not fully address what a progressive perspective on land use planning should look like. And in fact many of the questions raised – such as who sets the limits on individual rights, and how individuals are compensated for public action that negatively impacts their property – are not taken up. But I hope that I am contributing to what will be a robust conversation which will lead to progressive planners reaching a larger audience within the planning community, and in so doing become evermore relevant to contemporary planning practice.

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