‘Social Equity in Agricultural Land Protection’ 25 Years Later: A Revisitation in Light of New Social and Spatial Justice Frameworks

Harvey M. Jacobs, Ph.D.
Prof., University of Wisconsin-Madison, USA
Visiting Prof., Radboud University Nijmegen, Netherlands
Outline

• The 1989 Article
• Agricultural Land Protection – the issue today
• New Perspectives on Social Equity
  – Environmental Philosophy
  – Human Rights
  – Spatial Justice
• Implications
  – A Role for Social Impact Assessment?
  – Takings Impact Assessment
• Conclusion
The 1989 Article – premise

• Published in Landscape and Urban Planning (vol 17, no. 1)

• Premise:
  – Agricultural land protection policy alternatives are most often assessed on the basis of efficiency and effectiveness
    • And secondarily on political feasibility
  – Opposition to policy is most often on the basis of a perception of inequity (unfairness)
### Table 1: Social equity analysis framework

<table>
<thead>
<tr>
<th>Class impact</th>
<th>Type of equity</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Allocative</td>
</tr>
</tbody>
</table>

[1] Redistribution of resources among separate classes.
[3] Distribution of resources to a particular class.
[4] Restricted access to representation and administration.
TABLE 2

Summary social equity assessment of agricultural land protection policies

<table>
<thead>
<tr>
<th>Equity standards</th>
<th>Policy programs</th>
<th>Taxation (differential assessment)</th>
<th>Regulation (large-lot zoning)</th>
<th>Direct action (purchase of development rights)</th>
<th>Public–private (private land trust)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Intergenerational</td>
<td>P</td>
<td>P</td>
<td>E</td>
<td>E</td>
<td>E</td>
</tr>
<tr>
<td>Tenure</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Landowners</td>
<td>E</td>
<td>G</td>
<td>E</td>
<td>E</td>
<td>E</td>
</tr>
<tr>
<td>Prospective buyers</td>
<td>P</td>
<td>G</td>
<td>P/G</td>
<td>P/G</td>
<td>P/G</td>
</tr>
<tr>
<td>New farmers</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P/G</td>
<td>G/E</td>
</tr>
<tr>
<td>Process</td>
<td>E</td>
<td>E</td>
<td>E</td>
<td>E</td>
<td>G</td>
</tr>
<tr>
<td>“Total” equity¹</td>
<td>G⁻</td>
<td>G⁻</td>
<td>E⁻</td>
<td></td>
<td>G⁺</td>
</tr>
</tbody>
</table>

“P” denotes a poor fit between the program and the equity standard; “G” a good fit; “E” an excellent fit.  
¹A simple sum average which assumes equal weight among the five criteria in the column.
The 1989 Article – conclusion

• “. . . agricultural land protection policy . . . has significant social impacts. Certain interests, classes and groups in society will gain as a result of certain types of policy action, while others will lose.

• [Globally] land policy is recognized as being the crux of social, economic and political relations and power.

• Social equity assessment . . . can help planners and land resource managers to better understand the emotion[s] generated by proposed policy action, and to propose . . . solutions which best combine concerns for efficiency and equity”
Agricultural Land Protection – the issue today

- Concern is now global
- Focus has shifted
  - Within nation food security
  - Eco-system services impacts
  - Ability to (uncertainty about) substitute land loss with inputs that increase output per hectare
    - e.g.: fertilizers, pesticides, management innovations, biological innovations (GMOs)

---

**Who Will Feed Them?**

Nations most at risk of losing self-sufficiency

<table>
<thead>
<tr>
<th>Country</th>
<th>Projected for 2025</th>
<th>Projected decrease *</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kenya</td>
<td>0.04</td>
<td>60%</td>
</tr>
<tr>
<td>Bangladesh</td>
<td>0.05</td>
<td>45%</td>
</tr>
<tr>
<td>Vietnam</td>
<td>0.05</td>
<td>50%</td>
</tr>
<tr>
<td>Somalia</td>
<td>0.05</td>
<td>59%</td>
</tr>
<tr>
<td>Guinea</td>
<td>0.05</td>
<td>62%</td>
</tr>
<tr>
<td>Tanzania</td>
<td>0.05</td>
<td>62%</td>
</tr>
<tr>
<td>Jordan</td>
<td>0.05</td>
<td>65%</td>
</tr>
<tr>
<td>Yemen</td>
<td>0.05</td>
<td>65%</td>
</tr>
<tr>
<td>China</td>
<td>0.06</td>
<td>25%</td>
</tr>
<tr>
<td>Israel</td>
<td>0.06</td>
<td>34%</td>
</tr>
<tr>
<td>North Korea</td>
<td>0.06</td>
<td>34%</td>
</tr>
<tr>
<td>Saudi Arabia</td>
<td>0.06</td>
<td>60%</td>
</tr>
</tbody>
</table>

*since 1990, source: Population Action International

A country’s arable land is a measure of its ability to feed itself: 0.07 hectares per person is the minimum needed. Here are the dozen countries most at risk of falling below that level.

Reprint of an article that appeared in Newsweek (international edition), April 24, 1995 edition; pg. 2
Agricultural Land –
Ever-increasing Equity Focus
New Perspectives on Social Equity

- Environmental Philosophy
- Human Rights
- Spatial Justice
Environmental Philosophy: What Does Land Ownership Mean?

- *Cuius est solum eius est usque ad coelum et usque ad inferos*
  - Whoever owns the soil owns all the way to heaven and all the way to the depths
Whoever owns the soil owns all the way to heaven . . . ”
# Rights are of Two Types: Physical & Social

<table>
<thead>
<tr>
<th>Physical</th>
<th>Social</th>
</tr>
</thead>
<tbody>
<tr>
<td>Soil right</td>
<td>Right to control access</td>
</tr>
<tr>
<td>Water right</td>
<td>– Trespass</td>
</tr>
<tr>
<td>Air right</td>
<td>Right to use (abuse)</td>
</tr>
<tr>
<td>Mineral right</td>
<td>Right to sell</td>
</tr>
<tr>
<td>Tree right</td>
<td>Right to lease</td>
</tr>
<tr>
<td>Animal right</td>
<td>Right to gift</td>
</tr>
<tr>
<td></td>
<td>– Inheritance</td>
</tr>
</tbody>
</table>
Contemporary Property Form is an 18th Century Creation

- Property as we know it today is a 200+ year old invention
- But it emerged out of centuries long (800 years!) social conflict which today we label as a human rights conflict
Emerged Out of
17\textsuperscript{th} & 18\textsuperscript{th} Century Social Philosophy

- Focus on land
  - Because of landlessness
- Exposition about link between
  - land ownership and citizenship
  - land ownership and democracy
  - land ownership and markets
Garrett Hardin (1968) Re-Awakens Property Discourse

  - Perhaps the most read article in environmental studies

- Population biologist by training (not social scientist)

- Interested in issue of population growth – “over population”

- Examines issue of relationship between logic of individual decision making and logic of social outcomes
The Self-Interest – Social Interest Conflict

• Hardin argues:
  – Pursuit of individual self-interest does not result in the greater social self-interest
  • Just the opposite!

• Hardin makes an anti-Adam Smith argument
T-o-C – an example

- Agricultural land conversion choice
  - Individual owner can sell land for €2,500 per hectare to someone who will use the land for agriculture OR
  - Individual owner can sell land for €25,000 per hectare to someone who will convert land for housing
Use of Hardin’s Argument

• Hardin’s argument applied to wide variety of natural resources
  – Land
  – Water
  – Air
  – Minerals
  In urban, peri-urban and rural areas

• Hardin’s solution:
  “The tragedy of the commons . . . is averted by private property.” (pg. 1245)
19th C Counter-Narrative
Counter-Narrative – 19th Century

• In the 19th century there was significant (and widely popular) skepticism about 18th century property
  – Proudhoun (French Anarchist)
    • “What is property? . . . It is robbery!” (1840)
  – Karl Marx (German communist)
    • “The right of property, is, . . . the right to enjoy one’s fortunes . . . without regard for other men and independently of society... It leads every man to see in other men . . . the limitation of his own liberty” (1844)
  – Henry George (American tax reformer)
    • Why is there so much progress and so much poverty today – it is who owns the land! “We must make land common property” (1879)
  – Peter Kropotkin (Russian anarchist)
    • “Society . . . clamors loudly for a complete remodeling of the system of property ownership” (1880)
Mid-20th Century Property Skeptic – Aldo Leopold

• Pre-eminent 20th century environmentalist
• University of Wisconsin professor of wildlife ecology
• Author of *A Sand County Almanac* (1949)
• Inspiration for generations of students
“There is as yet no ethic dealing with man’s relation to land and the animals and plants which grow upon it. Land, like Odysseus’ slave-girls, is still property. The land relation is still strictly economic, entailing privileges but not obligations.” (Leopold 1968, 203)

“The land ethic . . . enlarges the boundaries of the community to include soils, waters, plants, and animals, or collectively: the land.”

“A land ethic . . . affirms . . . [the] right [of resources] to continued existence, and, at least in spots, their continued existence in a natural state.”

“. . . a land ethic changes the role of Homo sapiens from conqueror of the land-community to plain member and citizen of it.” (Leopold 1968, 204)
Just v. Marinette County

- Just v. Marinette County, 56 Wis.2d 7 (1972) was decided 44 years ago
  - Upheld state-initiated zoning for shorelands against “regulatory takings” claim
  - One of first legal decisions to uphold environmental-based zoning regulations
“An owner of land has no absolute and unlimited right to change the essential natural character of his land so as to use it for a purpose for which it was unsuited in its natural state and which injures the rights of others.”

• Early environmental movement hoped-expected to “nationalize” the ideas in Just, through a favorable U.S. Supreme Court decision; this did not happen
Should Trees Have Standing?
Christopher Stone (1974)

- An argument for Nature to have rights on its own terms
- A recognition that the property rights have changed over time
  - In response to changing technology
  - In response to changing social values
- Rights have been extended to
  - Animals
  - Children
  - Women
Why not Nature?
Ever Growing Demand for a New Perspective
A Human Rights Perspective
Universal Declaration of Human Rights 1948

• Article 17

1. Everyone has the right to own property alone as well as in association with others.

2. No one shall be arbitrarily deprived of his property.
Regional Declarations Followed with related (though not exact) wordings

• European Convention on Human Rights
  – Article 1, Protocol 1 (1952)

• (Latin) American Convention on Human Rights
  – Article 21 (1978)

• African Charter on Human and Peoples’ Rights
  – Article 14 (1981)
U.N. Conventions (Treaties) Followed

• With great ambiguity as to property’s place and role
    • No explicit mention of land or property; an implied and interpreted role vis-à-vis right to housing, as part of “the right of everyone to an adequate standard of living” (Article 11)
  – International Covenant on Civil and Political Rights (ICCPR) (1976; 167 parties)
    • No explicit or implied mention of land or property
(Private) Property in Global Context

- This is a period of history when private property is being actively promoted
  - By bi-lateral and multilateral international development organizations
    - e.g. – World Bank, UN, European Union, USAID, GTZ
- And actively sought after
  - By countries around the world
Land! – Dominant Part of 20th Century Social and Economic Reform

• Land reform!
  – Focus on breaking up large land estates, and getting land “to the people”
    • Central state, collectivist, models – Soviet Union, China, Cuba
    • Central state, decentralist, models – Taiwan, Mexico
Human Rights ↔ Property Rights

• Human rights without property rights are empty
• Property rights are central to civil and political rights
• Property rights are definitional for individuals and peoples

• Property rights correlate with the empowered and wealthy
• Property rights impede realization of other human rights
• Property rights pale in contrast to other human rights and needs
  – Hunger
  – Poverty
Property Rights – what do we know?

• Property *is* a social creation
  – Society (the state) decides what is private and what is public, and why
  – Society decides when and how property rights will be protected
    • Society decides the limits it will place on itself

• People yearn for property
  – Maybe not “ownership” in a narrow sense, but security and stability in an ownership sense
An Assertion

Article 17 vis-à-vis other Stated Rights

- (Private) Property *is* a human right

- The right to property in the UDHR must be understood in relation to other stated rights

- Article 25 promises “the right to a standard of living . . . including food . . . housing”

- According to one analysis:
  - “the link between property and housing is . . . so obvious that it requires little explanation.”
  - “there is an intrinsic link between property, land and food”
  - “the right to property is essential for the protection of human life and dignity of the right holder . . .”
The Context for Solution

• Globalization fosters an institutional environment conducive to private property
  – Private property furthers the interests of global market actors
• Individuals actively (even desperately) seek secure (predictable, defensible, investment compoundable) property relations
? Human Rights = Spatial Justice ?

• The right to property must be part of a global understanding of human rights

• Yet that does not make clear exactly what a right to land can or should mean in a particular cultural and country context
Spatial Justice

- Urban Renewal
- Environmental Justice
- “Right to the City”
- Space Matters!
Implications
Social Impact Assessment (SIA)?

- Developed in 1970s
  - Following from invention-growth of EISs-EIAs
- A model for how to do assessment
- Developed to be neutral
Takings Impact Assessment

• First proposed by anti-government, pro-property rights advocates in early 1990s
• Revised version of idea embraced in 2009 proposal by Jacobs and Paulsen
Conclusion

- 1989 article is still valid!
- Social equity issues about land, and especially agricultural land, are even (ever) more intense
- Our need – to further develop a social equity framework
  - Bottom up (from cases)
  - Top down (from social-political philosophy, and applied [environmental] economics
But, a caution (a warning) . . .

- Social equity issues are central, even crucial
- But what social equity issues for whom is not ever clear
- Part of the core debate is how to even define the matter
  - What interests
  - Over what time
  - Relative balance among interests (whose are more important?)
- Perhaps the best that can be achieved by us (researchers) is transparency
  - Making clear what we are looking at
  - Acknowledging limitations (and prejudices) in our perspective
- In so doing, providing a basis for clearer (sharper) policy and public discourse