

APA Planning - Private Property in the 22nd Century

By Harvey M. Jacobs April 2009

Private property is foundational to the American experience. At the same time, it is a social and legal institution that has often frustrated the implementation of planning schemes. And since the U.S. Supreme Court's 2005 decision in *Kelo v. New London*, this tension has been much in the news, as state legislatures, often at the urging of property rights activists, move to restrict redevelopment options by state and local governments. One question to ponder is what will become of the sacred cow of private property in 100 years?

First, it is important to realize that my "private property" is not what my great-grandfather owned. Property has changed significantly; the sticks in the bundle are different than they were.

For example, since the invention of the airplane I no longer own "to the heavens above," since the rise of the late 19th century women's movement a husband no longer owns his wife or parents their children, and since the civil rights movement a commercial owner can no longer refuse service based on race or ethnicity.

Private property will endure. It is too central to the American story for it to disappear, and it shouldn't. Private property serves important social, economic, and political functions. But private property will change; it has to. Here are some speculations as to how it might evolve.

- In fundamental ways my home will remain my castle. I will still be able to keep you out, regardless of who you are or my reasons for it.
- Yet the ability to do the same in places like private clubs or colleges will disappear, and these will resemble businesses more than homes.
- Certain rights in the property bundle that are now "mine" will no longer be so, including the right to clear-cut trees, or plow virgin soil, or harvest minerals, or use toxic chemicals for land management, if doing so destroys the land.
- Wildlife on my land will gain stronger, independent rights (analogous to those gained by women and children).
- And centrally for planners, government's authority to manage privately owned land will grow, and an individual's ability to claim regulatory takings will vanish, in essence returning us to the legal situation of the early 20th century.

So will this then be the end of property's evolution? Certainly not. Private property is one of the lenses through which Americans come to understand what it means to be a citizen in a democracy. As our understandings of citizenship and democracy continue to change, so too will our understanding of private property (and thus its very form — those sticks in the bundle).

Harvey M. Jacobs is a professor in the Department of Urban and Regional Planning at the University of Wisconsin–Madison.