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Jonathon J. Booth*

In the 180 years between the publication of Blackstone's Commentaries on the Laws of England and the end of the Second World War, the American economy grew immeasurably, powered by the exploitation of fossil fuels and the development of heavy industry. The increasingly massive factories required large numbers of workers without alternative means of subsistence and were therefore located in Northern cities, propelling the growth of the urban population and urban property values. Beginning around 1950, however, American factories began to leave cities, first for suburbs, then for union-free Southern states, and finally for foreign nations. This deindustrialization led to a novel phenomenon, the post-industrial city. People (primarily white people) followed the movement of jobs out of the Northern cities; this migration resulted in depopulated cities that were increasingly filled with abandoned homes and factories.¹

Property law has never caught up to the realities of deindustrialization. Our common law property rules were formed in times of rising property values and function best in those circumstances. Most importantly the system is based on the assumption that land will maintain (or increase) its

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¹ See THOMAS J. SUGRUE, *THE ORIGINS OF THE URBAN CRISIS: RACE AND INEQUALITY IN POSTWAR DETROIT* (1996); JEFFERSON COWIE, *CAPITAL MOVES: RCA'S SEVENTY-YEAR QUEST FOR CHEAP LABOR* (1999).

value over time and that owners will therefore make use of their property, keep it in good condition, and call on the government to enforce their property rights by abating nuisances, evicting squatters, and arresting trespassers.² When land values drop rapidly, however, these assumptions no longer apply. Land ownership, with its duties and tax assessments, can become a liability and land use becomes decoupled from land ownership.

Claire Herbert, a professor of sociology at the University of Oregon, sets out to investigate how urban decline affects how urbanites relate to their cities' property in her book *A Detroit Story: Urban Decline and the Rise of Property Informality*. In essence, the book asks what happens to property when, as her informants repeatedly note, "nobody cares."³

Although Hebert could have studied the same issues in many different cities in what is now known as the Rust Belt, Detroit stands out as the city that had the highest economic and cultural peak, and therefore had the furthest to fall. In 1900, before the creation of the Ford Model T, Detroit was already the thirteenth largest city in the country with 285,704 residents. After fifty years of rapid industrial growth, concentrated in the automobile industry, Detroit's population had reached 1,849,568. Thereafter, however, it began to decline rapidly. The 2020 census recorded its population as only 639,111—well below that of a century earlier. Along with the population decline, Herbert notes that property values fell a staggering 78.76% between 1958 and 2013.⁴

Population decline caused numerous problems—declining tax receipts most obviously—but Herbert focuses primarily on the rapid increase of abandoned buildings. Detroit, even at its peak population, was never particularly dense. A sprawling city of single-family homes, its borders could easily accommodate the geographic areas of Boston, San Francisco, and Manhattan, which today have a combined population approximately

² Blackstone, for example, discusses at great length the various actions that a property owner can take to remedy injuries to real property. William Blackstone, COMMENTARIES ON THE LAWS OF ENGLAND, Vol. 3, Ch. 10 (1765),

³ CLAIRE W. HERBERT, A DETROIT STORY: URBAN DECLINE AND THE RISE OF PROPERTY INFORMALITY 122, 141, 151, 177 (2021)

⁴ *Id.* at 38.

five times larger than Detroit's.⁵ With the population declining roughly equally across the city, most neighborhoods feature both abandoned and occupied homes, as well as empty lots resulting from arson and other demolition of derelict houses.

Despite its economic decline, the city remains home to hundreds of thousands of people. Herbert shows how the lives of Detroit's remaining residents are shaped by the informal use of the property that they do not own.

Although Herbert has a great deal to say about property law, her primary focus is on people. The book, which grew out of her doctoral dissertation in sociology, is based largely on the sixty-five interviews she conducted with Detroit residents who use property informally.⁶ Her interviewees do three things with property that they don't own: squat, scrap, and farm. The meaning assigned to these activities, however, varies greatly from person to person. Consequently, she groups her interlocutors into three loose categories: necessity appropriators, routine appropriators, and lifestyle appropriators.

There are significant divisions among the three groups, particularly along the lines of race and class. Lifestyle appropriators are perhaps the group that is most familiar to people outside Detroit. They are almost exclusively white, often college-educated, and rarely from Detroit proper (though several are from nearby suburbs). They came to Detroit searching for personal fulfillment and an alternative to the contemporary middle-class grind. In Detroit, they found what they consider empty land to settle and farm, as well as a plethora of materials to turn into art.⁷

Necessity appropriators should also be somewhat familiar, at least to those who have studied poverty in the United States. The people Herbert interviews are some of the very poorest Americans, who use property they do not own to meet their most basic needs. They squat for shelter after being

⁵ Herbert provides a helpful map demonstrating this. *Id.* at 20. Manhattan's current population is roughly the same as Detroit's was in 1960s, but Detroit is more than six times larger physically.

⁶ *Id.* at 243.

⁷ *Id.* at 116-38.

evicted and scrap metals to sell for cash now that the factories that once provided jobs have been shuttered.⁸ They rarely, if ever, farm, not least because they may be forced to move before the harvest.⁹

The people who Herbert calls routine appropriators are less familiar. They often have a degree of economic stability, if not prosperity. They might scrap for a bit of extra money, salvage to furnish their homes, or take over an empty lot next door for parking or growing vegetables. Herbert includes in this group “holdover squatters” such as former renters whose landlords abandon their property to be seized by the city for unpaid taxes.¹⁰ Their refusal to leave Detroit, even as capital and people do, demonstrates their deep commitment to the community. Herbert describes routine appropriators as frequently doing what they can to keep their neighborhoods safe and livable, for example by demolishing dangerous abandoned houses.¹¹ Both routine and necessity appropriators are much more likely to be Black and to be natives or longtime residents of Detroit.¹²

All of the “informal” uses of property that Herbert describes are illegal, but Herbert demonstrates that under certain conditions, illegal property use is accepted and even celebrated by community members. She argues that illegal property use is accepted by the community if it is undertaken with an “ethos of care” and that neighbors will often take affirmative steps to enforce such an ethos.¹³ Herbert contrasts the ethos of care present in informal property use in Detroit with the “ownership-care nexus” — i.e., the assumption that owners will care for their properties that grew out of an era of rising land values and no longer applies to Detroit.¹⁴ When the ethos

⁸ *Id.* at 111.

⁹ *Id.* at 91–115.

¹⁰ *Id.* at 144–45.

¹¹ *Id.* at 139–58.

¹² Herbert provides a table, *id.* at 84, that helpfully summarizes the informal property uses of the three categories of informants. Notably, no necessity appropriators engaged in agriculture and no lifestyle appropriator engaged in scrapping, though fourteen lifestyle appropriators did engage in salvaging.

¹³ *Id.* at 59–61.

¹⁴ *Id.* at 55–56.

of care is present, Herbert argues, informal property uses have gained a level of legitimacy that has "altered the social relations of real property."¹⁵

Generally, an informal property use that helps to stabilize the neighborhood is considered in line with the ethos of care, whether these steps are constructive or destructive. Demolishing or boarding up a dangerous derelict house or mowing the grass on an empty lot is undeniably within the ethos of care. Similarly taking responsibility for an empty lot and using it to park cars or grow vegetables is generally unobjectionable. Even squatting in an empty house is accepted so long as the squatters take care of the house and do not engage in drug dealing or violence.¹⁶ Scrapping from a house that is no longer fit for habitation is accepted, but stripping the pipes and wiring from a house that could be sold or rented unquestionably violates the ethos of care.¹⁷ In short, Herbert shows convincingly that the acceptability of informal property relates less to the formal law than to community norms and concrete conceptions of harm. Throughout the book, however, the voices of those who violate the ethos of care, such as drug dealers and aggressive scrappers, are entirely absent – they are spoken about but never speak.

The government, in its role as law enforcer, is also mostly absent from Herbert's account.¹⁸ There is little enforcement of property regulations, such as building codes, and the city appears to take no independent action against squatters except in the rare instance that owners, often those who purchase houses unseen at foreclosure auctions, demand their eviction.¹⁹ One police commander told Herbert that he wasn't going to waste police resources "to tear down urban farms and gardens on a technical violation of ownership."²⁰ This statement cuts to the core of how declining land values have transformed property law in Detroit. The land has almost no value, so neither property owners nor the government bother to intervene

¹⁵ *Id.* at 6.

¹⁶ *See id.* at 62–63.

¹⁷ *Id.* at 65–68.

¹⁸ The one exception is the city's practice of foreclosing on homes for unpaid taxes relatively quickly.

¹⁹ *Id.* at 225–28.

²⁰ *Id.* at 50.

if a resident deconstructs a rundown property or takes over the abandoned lot next door to grow vegetables.

Herbert spends a large chunk of the book discussing the taking of materials from abandoned buildings.²¹ Many of her interviewees practice “scrapping,” which involves gathering metals such as copper that can be sold to scrap yards for quick cash.²² As the most valuable and most easily accessible metals have already been gathered, the work has become increasingly dangerous and injuries are common.²³ Herbert describes one scrapper who suffered femur, pelvis, and skull fractures, as well as permanent nerve damage after a large piece of machinery fell on him and crushed his hand.²⁴ Scrapping is often undertaken by drug users, which has led to the development of a parasitic business of off-hours scrap purchasers who pay pennies on the dollar to scrappers who can’t wait until the scrapyards open on Monday morning.²⁵

Scrapers and salvagers survive by extracting the last remaining value from the capitalist ruins of post-industrial Detroit.²⁶ Although their practices run afoul of property law, neither their neighbors nor the city has any incentive to care. At worst the scrappers will continue to scrape by, at best they help abate dangerous nuisances and prepare the land for potential future uses.

Herbert’s book is primarily descriptive rather than prescriptive and her policy suggestions are confined to a brief conclusion.²⁷ Given the often bleak picture Herbert has painted of Detroit, it is difficult at this point to

²¹ Herbert distinguishes scrapping from salvaging. Salvagers are more likely to be lifestyle or routine appropriators who take materials for personal use, whether to furnish a home or make art, and which sometimes develops into a hobby. In fact, Detroit has so many abandoned buildings that salvaging has become a profitable business for some salvage warehouses that sell reused and recycled materials. *Id.* at 86, 132–37, 207–09.

²² *Id.* at 179.

²³ *Id.* at 108.

²⁴ *Id.* at 109.

²⁵ *Id.* at 107–08, 181.

²⁶ See ANNA LOWENHAUPT TSING, *THE MUSHROOM AT THE END OF THE WORLD: ON THE POSSIBILITY OF LIFE IN CAPITALIST RUINS* (2015).

²⁷ In the conclusion, she briefly recommends giving regulatory exceptions, pursuing incremental formalization, and expanding notions of property rights. Herbert, *supra* note 2, at 227–33.

envision a prosperous future for Detroit, especially one that benefits the city's current residents.²⁸ Herbert points out that many of the plans to formalize the appropriators' informal practices will simply increase inequality. While white lifestyle appropriators will often be able to purchase the homes in which they squat, poorer necessity appropriators will be stymied by the same problem of poverty that forced them to squat in the first place. Even if they were simply gifted the title to a home, they would likely be unable to pay the home's utilities and property taxes.²⁹ Moreover, if such a program successfully stabilized neighborhoods and led to an influx of richer people – as the cash-strapped city doubtlessly hopes – that would likely drive rents and property assessments up for longer-time residents. In short, the economic issues Herbert describes seem intractable outside a broader economic transformation, and she can hardly be expected to solve all of the problems of post-industrial America.

Herbert's method also limits the scope of her conclusions. Her qualitative method of in-depth interviews gives readers a textured and nuanced description of the lives and worldviews of Detroit's variety of appropriators. At times, however, I wished for a bit more quantitative data. For example, I wondered how widespread the practices Herbert describes are. How many squatted houses are there in Detroit? Are there 1,000 lifestyle appropriators or 10,000? How much profit do the city's scrapyards make? Hopefully future researchers will build on her work and attempt to answer these questions.

Herbert's book has a great deal to offer scholars of property law. First and foremost, it provides a powerful example of how the law in action

²⁸ It was also difficult to imagine a prosperous future for New York City in 1980, but the city's economic growth over the last forty years has led to the displacement of many of the city's poorer residents. In recent years, critics have sought new terms to capture the extent of New York's gentrification. See Ginia Bellafante, *Tracking the Hyper-Gentrification of New York, One Lost Knish Place at a Time*, N.Y. TIMES, Sept. 27, 2017, <https://www.nytimes.com/2017/09/27/books/review/vanishing-new-york-jeremiah-moss.html>; Report: Nation's Gentrified Neighborhoods Threatened By Aristocratization, THE ONION, Mar. 31, 2008, <https://www.theonion.com/report-nations-gentrified-neighborhoods-threatened-by-1819569723>.

²⁹ Herbert, *supra* note 2, at 204.

departs from the law in the books.³⁰ She shows how the economic situation of post-industrial Detroit leads both the government and property owners to decline to enforce property laws, giving the city's residents free rein to use property as they see fit, so long as they abide by the ethos of care and do not harm their neighbors or neighborhoods. In short, she demonstrates how our property rules, developed with the assumption that property will hold or increase its value over time, no longer function as expected in Detroit and many other American cities. In the long run, it is possible to imagine the practices of Detroit's residents being formalized into a new legal regime that is a better fit to the political economy of the post-industrial city. For now, however, Detroiters are left to make their own property rules, leaving both outdated laws and an uncaring city government behind.

³⁰ Roscoe Pound, *Law in Books and Law in Action*, AM. L. REV. 44 (1910): 12-36.