
Handout #5: Property Limitations

Notice:

- My office hours next week have been moved to Tuesday 10/16 from 9:30-12:30 in Social Sciences 7218.
- There will be a review session on Tuesday 10/16 from 4:00-5:30 in Ingraham 22.
- There are no discussion sections next week.

Review

1. **Adverse Possession (“Squatter’s Rights”)**: If someone occupies another person’s property for long enough, that person becomes the legal owner, provided the following conditions are met:

- (a) Adversarial Use: The occupation was adverse to the owner’s interests.
- (b) Open Use: The occupation was not concealed or conducted in secret.
- (c) Uncontested Use: The owner did not object or take legal action.

Adverse possession observations:

- **Pro:** Reduces uncertainty over time, and allows land to be put to efficient use.
- **Con:** Owners must incur *monitoring costs* to protect property.

2. **Private Necessity:** The law need not enforce property rights via injunctive relief in the case of an emergency.

- We mentioned that the rules Calabresi and Melamed give for protecting property are not mutually exclusive. In this case, we often use injunctive relief to protect property (especially private possessions), but transition to damages relief in emergencies.
- In emergencies, many of the standard bargaining costs are amplified. Private information, uncertainty, and the threat of holdout may all become more severe in extreme circumstances, making efficient bargaining less likely to occur.

3. **Unbundling Restrictions:** Restrictions on how a property right can be subdivided.

- **Con:** To the extent that we buy the Principle of Maximum Liberty, efficiency favors more complete property rights, under the theory that people choose to unbundle when doing so benefits both parties.
- **Pro:** Unbundling might increase transaction costs, as it increases uncertainty about rights and may increase number of parties involved in future transactions (doing so increases search costs and risk of holdouts).

4. **Government Takings (Eminent Domain):** The right of the government to seize property for public use (at fair market value).

- Public goods tend to be underprovided in the market, but transaction costs may be too high for efficient bargaining between the government and (often numerous) property owners.
- Requiring compensation at fair market value encourages efficient behavior on the part of governments by fully internalizing the costs of land acquisition.
- Fair compensation is insufficient to guarantee efficiency, as property owners tend to value their property above market value (if not, they could sell when transaction costs are low).
- Normative Hobbes may support using eminent domain to transfer property between private parties when transaction costs are high, while Normative Coase suggests that this is inefficient when transaction costs are low.

5. **Regulation:** Exercising public control by imposing usage restrictions.

- Middle ground between *open access* and *unanimous consent*.
- Regulatory takings: When regulation exacts significant costs on property owners, the law may require the government to pay compensation as in a standard takings case.
- Zoning Laws: Cities and municipalities may place restrictions on construction in a given area to steer development.

Problems

1. (Assorted Questions from Problem Set 2)

- (a) (Question 2a) Explain why a rule which worked perfectly well in pre-industrial England might have been insufficient after the industrial revolution.
- (b) (Question 3) While adverse possession rules vary from place to place, two common features are that the property must be possessed openly, with no attempt to hide it; and that the possession must be against the interests of the owners. Explain the effects of these two conditions, and what would likely happen without them.
- (c) (Question 4b) Justice Ryan describes the area where the taking is to occur as a “tightly-knit residential enclave of first- and second-generation Americans, for many of whom their home was their most valuable and cherished asset and their stable ethnic neighborhood the unchanging symbol of the security and quality of their lives.” If this description is accurate, does it raise any special efficiency concerns about the government’s taking this property at fair market value? Specifically, is there a particular problem here in under-compensating the residents of Poletown for their large subjective valuation on their homes and community?
- (d) (Question 4e) What do decisions like Poletown and Kelo do to property rights? Would Hobbes support such decisions? Would Coase?

2. (From Practice Exam Questions) Consider the following interpretations of the Coase Theorem:

- (a) “The Coase Theorem implies that the boundaries of private property rights are irrelevant. If there are social gains to be had from me raising roosters on my land, then there is some price at which my next-door neighbor will agree to live with the noise.”
- (b) “The Coase Theorem implies that zoning laws are unnecessary. If there are social gains to a particular piece of property being a home rather a factory, then there is some price at which a new residential owner, along with his neighbors, would agree to buy the land from the factory owner.”
- (c) “The Coase Theorem implies that the details of intellectual property protection are irrelevant. If there are social gains to a patent expiring a year earlier, there is some price that competitors and customers could pay the patentholder to allow infringement. If there are social gains to innovation that might not occur in the absence of patent protection, there is some price society would agree to pay the innovator for the invention.”

Do you agree that each of these claims follow from the Coase Theorem?

3. (Property Limitations: Examples) Discuss the following situations from an efficiency perspective.

- (a) “Backyard Chickens”¹: Many cities have rules against keeping chickens (specifically roosters) in one’s backyard. Discuss the efficiency concerns that may be at play here. Think about both short- and long-term impacts of backyard chickens.
- (b) *Privately-Owned Public Open Spaces* (“POPOS”)²: Many cities have restrictions on building height. In exchange for additional floors, private companies often agree to provide “public space” within the building. Does this raise concerns about efficiency in the short run? How about the long-run? What sort of incentives would this create for municipal governments?
- (c) *Single-use* (or *Euclidean*)³ Zoning: Many cities are divided into zones which are exclusively commercial, exclusively residential, exclusively manufacturing, etc. What would efficiency have to say about this? Is it subject to change over time?
- (d) Squat-or-not?: 5Pointz was a popular large-scale graffiti project in New York, which existed in an unused building (with the owner’s approval). The owner eventually renovated the building and painted over the artwork unexpectedly. He was subsequently sued for about \$7 million, and the court cited rules about the proper use of works of art. Do you think the graffiti artists could have claimed squatters rights?
- (e) Regulatory Takings: In *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*, 535 U.S. 302 (2002), the court case “dealt with the question of whether a moratorium on construction of individual homes imposed by the Tahoe Regional Planning Agency fell under the Takings Clause of the United States Constitution and whether the landowners therefore should receive just compensation as required by that clause... Justice John Paul Stevens wrote the opinion of the Court, finding that the moratorium did not constitute a taking. It reasoned that there was an inherent difference between the acquisition of property for public use and the regulation of property from private use. The majority concluded that the moratorium at issue in this case should be classified as a regulation of property from private use and therefore no compensation was required.”⁴

¹I’m stealing this title from a Law Review article I like: Schindler, Sarah B. “Of backyard chickens and front yard gardens: The conflict between local governments and locavores.” *Tul. L. Rev.* 87 (2012)

²From the same author as the above: Schindler, Sarah. “The Publicization of Private Space.” *Iowa L. Rev.* 103 (2017)

³Nerd Alert: This type of zoning derives its name from a Supreme Court case, *Village of Euclid, Ohio v. Ambler Realty Co.* 272 U.S. 365, not because the zoning lines lie in Euclidean Space. However, if you look at a map of Euclidean zoning lines, they do create a bunch of funny geometric shapes, so that’s how I remember the name!

⁴My lazy ass just took this straight from Wikipedia:

https://en.wikipedia.org/wiki/Tahoe-Sierra_Preservation_Council,_Inc._v._Tahoe_Regional_Planning_Agency

4. (From Spring 2012 Handout) In Madison it is legal to own hens in residential neighborhoods, but it is not legal to own roosters. The reason that roosters are not allowed is that they create much more of a negative externality than hens do: Hens are relatively quiet and can provide families with eggs and meat, while roosters tend to be extremely loud, even at night, while they do not provide as much a benefit for families (no eggs).
- Suppose there are two neighbors, Roger and Joe. Roger wants to raise roosters instead of hens, and this right is worth \$700 to him. Joe is the only neighbor who would be affected by Roger's roosters, and he values a rooster free neighborhood at \$300. However, if Roger builds a sturdy coop to keep the roosters in then Joe's payoff is only \$100 less than if there were no roosters at all. Let the initial allocation be that there are no roosters and no coop. Let Joe's initial payoff be \$300 and Roger's be \$0.
- Suppose a coop costs Roger \$50 to build. What is the efficient allocation of rights?
 - Suppose the law is such that Joe has an injunctive right over Roger's ability to own roosters. If the two neighbors negotiate and decide to split any potential gains evenly, what would the final allocation and payoffs be (Assume that if the coop is built, then Roger pays for it)?
 - Suppose Roger can raise roosters if he pays Joe one time damages of \$300 if he does not have a coop, and \$100 if he does have a coop. What would the neighbors choose to do and what would the final allocation and payoffs be?
 - Suppose Roger has to pay Joe \$100 in damages regardless of whether or not he builds a coop. If transaction costs are low, what will the final allocation and payoffs be? What if transaction costs are high?
 - Suppose Joe has an inalienable right to a roosterless neighborhood. What would the neighbors choose to do and what would the final allocation and payoffs be?
5. (Challenge: Adapted from Wisconsin Micro Prelim July 2018) Consider the following two-player, alternating-move game: There is a pile containing N marbles. During a move, a player must take one or two marbles. The player who takes the last marble loses, and their opponent wins. Player 1 goes first.
- What is a pure strategy for player each player in this game?
 - For any $N > 0$, describe the set of subgame perfect equilibrium outcomes.
 - For any $N > 0$, describe the set of pure-strategy subgame perfect equilibria. To start, remember that when we use backwards induction, we always start from the smallest subgame. So we need to start by considering what each person would do if there were only one marble left, then only two, etc...