

LAW AND ECONOMICS

2003

Outline:

A) Introduction:

The author in his book titled: " Toward a Theory of Property Rights" has focused on various issues related to the emergence of property rights.

The salient observations that were assimilated from the article are the approaches to deal with difficulties associated with property rights and primarily to weigh the impact of internalization and externalities. Also, it discusses at length the reasons with facts that lead to the evolution of various forms of property right in different regions and how the society adapted to this framework.

B) General Discussion:

1. A brief over view on what constitutes property rights?
2. To explain the author's view on the gradual development in property rights
3. Substantiate the authors perspective on evaluating the internalization and externalities that forms the core issues while formulating property rights
4. Correlate the import of this finding to another topic namely – Copyright

C) Conclusion

Foreword:

The cognitive transition has influenced ambitions, commercial esteems and production parameters.

These alterations have resulted in a judicious mix of both beneficial and harmful influence on the society. This has warranted the evolution of modified property rights to accommodate the adjustments in the profit-price ratios.

Freedom and property rights are closely related. Freedom indicates what we want to do rather than what someone else instructs us to do. The right to do as we please with our own property constitutes a major part of our freedom. On the other hand, other people's property rights confine our freedom. Hence each person's freedom ends where another person's freedom starts. A free nation would be a place where each individual is free to acquire property and do whatever he wants with it without

interference, as long as he does not intrude on the rights of others. Freedom of the press, freedom of religion, freedom of assembly, and freedom of speech cannot be totally accomplished without private property (Rothbard 120).

Thesis Statement:

This research paper will focus on corroborating the author's perspective on the factors that needs to be considered with regards to property rights encompassing communal owner ship, private ownership and state ownership. Also an attempt is made to extend its implication in another related issue namely copyright.

The debate and recordings of this paper will be limited to the scope of the article under discussion and the literature assessed.

Enhanced internalization is effected by emerging technologies, opening up of new markets and ultimately to the inadequate coverage of the existing property rights which tend to prioritize and balance the gains and costs of internalization. In this context, it is of paramount significance to consider the community's inclination for private ownership ("Civil Law and Economics"). Apparently the emergence of property rights will be tuned to the modifications in technology and relative costs. The adjustments have predominantly been recognized in the western communities owing to gradual revisions in social patterns and in common legal precedents. However, it is a moot question that during the process of adaptation whether the intrinsic externalities were consciously linked with the issues to be resolved. The utility of legal and moral attempts was largely experimental and its import will have to be measured in the long run. The evidence proposed by Speck and Leacock on private ownership of land transparently reveals the crucial involvement of property right adjustments in terms of externality. For example, the issue of hunting and fur explains the link in business costs, benefits to the society and its link to private ownership. The advent of fur trade has two major fallouts; one was the value of fur to the American Indians and the other was the magnitude of hunting. Investigations throw light that both the consequences spelt out were due to the externalities associated with free hunting. With the passage of time territories for hunting were evolved based on seasonal allotment arrangement. Also, there is concrete proof that there was an absence of these rights among the Indian's of the southwest plains. To substantiate the above claims there was an extension of the property rights, which included inheritance that was prevalent among the Northwest Indians.

It is logical that property rights emerge owing to a section of people affected by the externalities and to internalize the advantages and costs. Different forms of ownerships developed- communal ownership, private ownership and state ownership aimed to counter and balance its influence (Mavrodes 185).

Community ownership entitles right to all members of a particular populace. For example to drive a vehicle on a road is a communal right. Hence it transparent that this stipulation precludes any state or individuals to interfere with any person's communally owned rights.

Private ownership infers sole authority to the owner and recognizes his right and prevents others from exercising control over it. A land or a property owned by an individual reflects this situation.

State ownership indicates the rights conferred on it and prevents infringements in any form. It is indeed very much relevant in our current scenario. The functioning of any state is under this purview and the society is expected to adhere to its policies.

I will be commenting on the author's view on the broad guidelines regulating the development for property rights in communities oriented private property. Consider a case where a land is communally owned. A glaring loophole in this scenario is that it fails to condense the costs associated with any individual's exercise of his communal right. To balance this effect each member can concur to abridge his rights, which will lead to an agreement albeit at cost. Also, practically speaking these negotiation costs might not be justified because uncertainty prevails whether this consensus will usher in real benefits to the current and future generation. This is very much relevant to us and many a parallel can be drawn to a real life situation. Suppose an individual owns a property and it quite natural that the owner will act as broker taking into consideration the present and future claims. On the contrary communal ownership will support the claims of the present generation In short, the future generation is expected to speak for themselves. There are also relevant records that estimates involved to span this gap don't exist.

Some lessons that can be learnt from the above example are discussed here. Communal property results in externalities- the total costs of such an owner is not directly borne by him nor it can be collected from others who are willing to pay an suitable amount (Sadowsky 95). To sum up it rules out a "pay-to-use-the-property" system and coupled with exorbitant negotiating and implementing costs makes it an arduous proposition to bring in "pay-him-not-to-use-property "system.

The next issue to be contended is the externalities. The maximization of value of communal property rights will occur regardless of costs because the owner cannot exclude others from gaining from their efforts and because the negotiation costs are high to arrive at an optimal behavior. In this context, development of private rights provides leverage to the owner to optimize the use of resources from which he has the claim to exclude others. One of the most remarkable factor of this strategy is an enormous reduction in negotiation cost .The influence of scale economics, negotiation costs, externalization and the modification of property rights negates the belief that ownership tends to be an individual affair and has resulted in the formation of public held corporation. It is a candid manifestation of the emergence of property right in a constantly altering ambience.

I am extending this concept to another intellectual property issue- confidential information and its transformation to meet the current challenges. Any confidential information may contain oral disclosure; information that is not public knowledge or it may be an individual's obligation to keep it as a secret. There are obvious flaws in protection of confidential information- time and value. This has warranted a more comprehensive legislation – Copyright protection. This envisages the right to prevent copying of an original work (Literary, artistic, dramatic, etc). Also, it protects form and appearance not general notions or underlying concepts (Bainbridge 25). Notably, copying does not have to be exact replica or comprehensive to infringe copyright. It has addressed key issues like the time frame, geographical boundaries, registration process, moral obligations and infringements.

To conclude the property rights has evolved in a mature fashion taking into consideration the current and future needs of the society. The free market that philosophers champion consists of people buying, selling, and trading property rights. The economic contention for the free market is that the market is the most efficient manner to gratify the demonstrated preferences of consumers. So, if we want the most efficient economy, we need a free market. And if we desire a free market, we need a private property system. The legal decrees pertaining to property rights are crucial. The initial distribution of property titles might not matter to a value-free economist, but it certainly affects

immensely to a person who finds himself born as a serf or a peasant in a country where all the developed land is owned by a privileged class and the undeveloped land is possessed by the state or the king.

Works Cited

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Civil Law and Economics. Encyclopedia of Law and Economics. Volume II

Mavrodes, George I. Property.

Rothbard, Murray. Justice and Property Rights.

Sadowsky, James A. Private Property and Collective Ownership.