Property, Spring 2007

Class materials are available on my class website.
- You may access them by going to
  http://www.law.uh.edu/faculty/mburke
  and clinking on the class link for Property
  OR
- You may go directly to the page for the class
  http://www.law.uh.edu/faculty/mburke/Classes/Property_Current_Year/Property_Spring_2007_Homepage.htm

Property
What is it, how can I get some, and why do I care?

- What are property rights?
- What types of property are there?
- What are the purposes of property?
- What are the problems associated with different types of property?
- What are the indicia of ownership of property?
What Are Property Rights?

A method of allocating or distributing costs and benefits: resources, wealth, and/or power.

Types of Property?

- Communal
- Private
- Government
- Anti-communal
Types of Property cont’d

- Open-access
- Controlled access
- Personal
- Real (land)
- Marital
- Image/voice/persona
- Intellectual

Purposes of Property?

- To help form expectations which they can reasonably hold in their dealings with others
- Expressed in terms of—
  - laws,
  - customs,
  - and social mores
Purposes of Private Property cont’d

- To internalize externalities. 
  *To have more the costs of a person’s activities concentrated on that person.*

- To reduce the transaction costs of agreeing with the community. 

- To promote the efficient use of resources. 
  *Utilitarian view.*

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Purposes of Private Property cont’d

- To create, nourish, and preserve individuality, autonomy, and healthy diversity. 
  *Personhood.*

- To create zones that others must respect. 
  *Space.*

- To distribute or redistribute wealth.
Purposes of Private Property cont’d

- To adjust to new cost-benefit possibilities.
  *Fur trade.*
- To ensure political freedom.
  *Freed from the feudal hierarchy. Alienability.*

Indicia of Ownership of Property

- Markings
- Records
- Boundaries
- The way others perceive my use
Rights of Private Property Ownership?

- The right to use the property in any way you wish?  
  *What about land use restrictions such as zoning and nuisance law?*

- The unfettered right to leave it **idle**?  
  *To do nothing* with it?  
  *What about adverse possession or housing codes?*

Rights of Private Property Ownership cont’d

- The right to sell the property *(alienability)*?  
  *What about restrictive covenants or future interests in the transferor?*

- The right to leave it to your **heirs**?  
  *What about the rule against perpetuities?*

- The right to **exclude** others?  
  *What about easements?*
Problems with Property

- Fairness
- Efficiency
- Freeriders
- Holdouts
- Tragedy of the commons
- Transaction costs
- Externalities

Harold Demsetz,
*Toward a Theory of Property Rights,*
Casebook p. 35

- Demsetz offers us a theory, based upon anthropological evidence of why/how property rights developed.
- Researchers established among Native Americans the relationship between rights in land and the commercial fur trade.
Harold Demsetz, *Toward a Theory of Property Rights* Cont’d

- What was initial state of property in the society upon which he bases his theory?
- What are the other types of property according to Demsetz? What did he leave out? (Note 5, p. 48)

Cont’d

- What makes common property problematic?
- With private ownership, did externalities remain?
Garret Hardin
The Tragedy of the Commons
Perspectives, p. 119

• What is the tragedy? Contrast with Demsetz’s theory.
• What are the common resources at risk?
• What makes common resources tragic?
• How do you avoid the tragedy?