

An Economic Theory of Property

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In a civil case, the court's judgement may be challenged by either the victor or the loser. The loser may appeal for the obvious reason that he believes he should have won; the winner may appeal because he feels he has not gotten all to which he is due. It's interesting to note that the appeal must be based on the fact that the lower court erred on the law pertinent to the case, the general principles it used, and the legal processes it followed, but not on the facts. The appellant the party making the appeal, for instance, might claim that the judge improperly instructed the jury regarding the applicable law, the facts they could and could not consider, or the improper exclusion of certain evidence or testimony from the jury's consideration.

No fresh facts or evidence will be presented at the appeal level. The appeal court accepts as true the facts that the trial court established. Only the solicitors for the appellant and appellee will be present before the appeal panel. After submitting written briefs to the appeal court, the lawyers will appear before the panel for oral argument. During this time, they may be questioned in-depth about the issues at hand. Amici curiae, or friends of the court, are parties who are not directly involved in the legal dispute but who believe that the legal issue raised affects their interests sufficiently that they would like the court to take their arguments into consideration in addition to those of the appellant and appellee. Additional briefs may be submitted by these parties[1]–[3]. After taking a break to think about the situation, the appeal panel returns with its conclusion. It's possible for the judges to reach consensus and express simply one viewpoint. A split in the panel, however, might produce dual opinions: a majority view and a minority or opposing opinion. The appeal panel has the option of upholding or overturning the decision of the lower court. Sometimes the panel remands the case that is, sends it back to the lower court for a specified course of correction, including a revision of the plaintiff's damages.

The Legal Concept of Property

Legally speaking, property is a collection of rights. The degree to which a person may hold, utilise, develop, enhance, change, consume, deplete, and destroy resources as well as sell, give away, bequeath, transfer, mortgage, lease, loan, and exclude others from their property are all covered by these rights. These rights may vary from one generation to the next; they are not unchangeable. But they always provide the whole legal response to the four above-mentioned basic concerns of property law. For us to properly comprehend the concept of property, we must first grasp three truths about the collection of legal rights that make up ownership. First, because they relate to property rather than people, these rights are impersonal. The rights belong to whomever owns the property. Property rights and contract rights vary in this way. Contractual obligations are personal in the sense that each party owes the other a debt. Second, the owner of the property is free to use his or her rights; by this, we mean that no legislation restricts or mandates the owner's use of those rights. In our scenario at the beginning of the chapter, Parsley has the option of farming his property or leaving it fallow, and the legal outcome is unaffected by his decision. Other, it is prohibited for other parties to obstruct the owner from exercising his rights. If others try to intervene, the court will issue an order for them to desist, or else they risk being punished for contempt of court. As a result, Potatoes cannot place stones in the route of the plough if Parsley chooses to cultivate his field. This defence is required against both private individuals and governmental intrusion[4]–[6].

Accordingly, the legal definition of property is a collection of rights over resources that the owner is free to exercise and whose use is shielded from outside intervention. Accordingly, as emphasised in the Blackstone statement before it, property affords a space of privacy where owners may exercise their will over things without having to account to anybody. The notion that property gives owners freedom over their possessions may occasionally be used to summarise these truths. Many diverse interpretations of what specific rights should be included in the protected bundle and how to preserve those rights are consistent with this broad concept of property. It also accords with other versions of the duties that a person takes on when they become an owner. When selecting which rights to include in the collection of property rights, the law has a tendency to go outside of itself, to philosophy. With the strategy used in this chapter, we concentrate on how various rights packages provide incentives for resource management. An effective utilisation of resources increases a country's prosperity.

Bargaining Theory

We must first create an economic theory of bargaining games before we can create an economic theory of property. At first, you may not realise how this theory relates to property law, but as time goes on, you'll see that it forms the basic basis of the economic theory of property. Selling a used automobile is a common trade that may be used as an example to illustrate the key concepts of bargaining theory. Think on these details: Adam has a 1957 Chevy convertible that is in excellent condition and resides in a small town. For Adam, the enjoyment of owning and operating the automobile is worth \$3000. Blair, who has been lusty over the automobile for years, decides to attempt to purchase it from Adam after inheriting \$5000. Blair examines the vehicle and determines that it is worth \$4000 to her for the enjoyment of having and driving it. The automobile will go from Adam, who values it at \$3000, to Blair, who values it at \$4000, based on these facts, if a sale agreement is reached. There is room for a deal since the possible seller places a lower value on the automobile than the potential buyer. In the event that swaps take place voluntarily, Adam won't accept less than \$3000 for the automobile and Blair won't pay more than \$4000, therefore the selling price will need to fall in the middle. \$3500 would be a fair selling price that divides the difference.

By restating the facts in terms of game theory, the situation's logic may be made clearer. This kind of game's participants may gain by working together to their mutual advantage. To be more precise, they have the ability to transfer a resource the automobile from Adam, who values it less, to Blair, who values it more. The resource in this scenario will gain \$1000 in value if it is transferred from Adam, who values it at \$3000, to Blair, who values it at \$4000. The value produced by putting a resource to a higher valued use is known as the cooperative surplus. Of course, the price at which the automobile is sold determines how much of this excess each partner gets. Each will get an equal portion of the value produced by the trade, or \$500, if the price is fixed at \$3500. When the price is set at \$3800, Adam will get 4/5 of the value, or \$800, and Blair will receive 1/5 of the value, or \$200. Alternatively, if the price is set at \$3200, Adam will get \$200, or one-fifth of the value produced, while Blair would receive \$800, or four-fifths [7]–[9].

Normally, the price is negotiated between the parties. The parties may make factual claims e.g., The motor is mechanically perfect. normative arguments e.g., \$3700 is an unfair price...., threats e.g., I won't take less than \$3500. and so forth throughout the negotiation process. These are the instruments of the art of negotiating. Games that allow for negotiation have an edge over other types of games referred to as noncooperative games, such the well-known Prisoner's Dilemma, which we looked at in Chapter 2. However, even when bargaining is an option, there is no assurance that it will be successful. The parties' effort to redirect resources to a more useful use will fail if the discussions break down and they don't collaborate, and they won't be able to add value. Therefore, in a bargaining game, the difficulty in producing value is that the parties must agree on how to distribute it. A rate based on the sale price of the automobile will be used to split value among them. talks are deemed successful when there is agreement on the car's price, whereas talks are deemed unsuccessful when there is dispute.

Let's categorise the potential outcomes as a cooperative solution and a noncooperative solution to apply game theory to this instance. The cooperative solution is when Adam and Blair successfully exchange

the automobile for money after agreeing on a price. The inflexible course of action is the one in which they refuse to settle on a price and refuse to trade the automobile for cash. We must first take into account the repercussions of noncooperation before we can analyse the logic of bargaining. If the parties don't work together, they will each eventually reach a certain degree of happiness on their own. The automobile, which Adam will retain and use and is worth \$3,000, is his. Blair will either retain her \$5,000 or use it for anything other than the automobile. For the sake of simplicity, let's say that the value she assigns to this use of her funds is \$5000, which is its face value. Thus, in the non-cooperative solution, the rewards for the parties, known as their threat values, are \$3000 for Adam the value of retaining the automobile to him and \$5000 for Blair the quantity of her cash. The non-cooperative solution is worth a total of \$8000 $\$3000 + \5000 .

The cooperative course of action, however, is for Adam to sell Blair the automobile. By working together, Blair will be the owner of the automobile, which is worth \$4000 to her, and the two parties will each get a portion of Blair's \$5000. Adam may agree to take \$3500 in return for the convertible, for instance. The automobile, which is worth \$4000 to Blair, and \$1500 of her \$5,000 are then hers. As a result, the value of the cooperative solution is \$4000 the automobile's worth to Blair + \$1500 the portion of her initial \$5000 that Blair keeps + \$3500 the amount Adam was paid for the car = \$9000. The value difference between collaboration and noncooperation is the surplus from cooperation.

An Economic Theory of Property

The universality and strength of the bargaining theory is shown by the fact that it can be used to sell a used automobile or build a civic society. In fact, bargaining theory is so influential that it forms the foundation for an economic theory of property and of property law, as this section will demonstrate. Let's quickly recap our destination. People typically settle on the conditions for interacting and collaborating through negotiating together. The conditions for interacting and working together, however, may sometimes be forced on individuals from outside, such as by the law. When everyone agrees on the parameters, they are often more effective than when a legislature or conqueror enforces them. It follows that when negotiating is successful, law is useless and unwanted, and where bargaining is unsuccessful, law is both essential and desirable.

These claims hold true for the four property-related queries we posed before. The four questions we presented at the beginning of this chapter may sometimes be answered without using property law. Private negotiating will instead be used in such unique situations to determine what is and is not property, who is entitled to it, what an owner may and may not do with it, and who may interfere with an owner's property. A remarkable theorem known as the Coase Theorem specifies the unique situations that establish the boundaries of law. This theorem, to which we will now turn, contributed to the development of the economic analysis of law and earned its creator the economics Nobel Prize.

The Elements of Transaction Costs

When information on the threat values and the joint solution is kept secret, negotiations can become complex and challenging. Negotiating is made more difficult since a lot of private information has to be made public before fair conditions of collaboration can be determined. In general, negotiation is expensive when it involves making a significant amount of private information public. As an example, talks for the sale of a home entail several financial, logistical, aesthetic, and financial concerns. The buyer is far more aware of his or her capacity to get finance than the seller is, and the seller is much more aware of any concealed flaws in the property. During the course of the discussions, each makes an effort to learn this information from the other. The parties could desire to share certain information to some extent. But they could be hesitant to reveal all. In order for each partner to get their fair share of the cooperative surplus, certain information must be kept secret. But in order to seal the deal, certain facts must be made public. It is challenging and could be expensive to balance these opposing forces.

There is a wealth of information available on bargaining games, including several well-designed experiments that test the Coase Theorem. One of these tests' strongest findings is that when bargainers'

rights are explicit, they are more likely to collaborate, and when their rights are uncertain, they are less likely to comply. Formally speaking, bargaining games are simpler to resolve when the threat values are known. In legal conflicts, the parties' rights establish their danger levels. This discovery has many implications, one of which is that clear and straightforward standards for identifying ownership should be preferred in property law. The simplest and clearest solution for effective property law is to simplify and clarify rights. For instance, a system for the open registration of property ownership claims prevents many disagreements and facilitates their resolution when they do emerge. Similar to this, it is simple to prove that someone owns or utilises a piece of property. Given this reality, the law considers use and possession when assessing ownership. On the other hand, ambiguous ownership rights are a significant barrier to collaboration and a significant source of resource waste. As a result, in developing nations, squatters who live on private property fail to upgrade their homes since it is unclear who would own the upgrades.

The majority of our instances of negotiating involve two participants. Usually, when two parties are close to one another, communication is inexpensive. But many agreements include three parties or more. With more parties involved, bargaining becomes more expensive and challenging, particularly if the parties are further apart from one another. This fact could help to explain why it's so challenging to finalise treaties involving several states. Finally, the parties may decide to craft an agreement, which may be expensive given how many potential scenarios would need to be taken into account should the value of the deal alter. A further barrier to negotiation is animosity. When a divorce is hotly litigated, for example, the parties to the disagreement may be emotionally distraught to the point that reasonable agreement is impossible. Despite the fact that everyone is aware of all the pertinent details, people who dislike one another sometimes dispute on how to divide the cooperative surplus. To provide an example, most countries have straightforward and predictable laws for allocating property upon a divorce for unions without children. However, a significant majority of these divorces are disputed in court as opposed to being resolved amicably. In certain situations, attorneys may aid in talks by standing in between adversarial parties. Negotiators may be unreasonable, for example by pushing their own advantage too far what lawyers refer to as overreaching, making negotiation expensive even in the absence of animosity. Making a plan is a crucial component of negotiation. Each side attempts to predict how much the rival will surrender when formulating a negotiation strategy. Negotiations may not succeed if the parties underestimate the other's resoluteness since one will be shocked to learn that the other refuses to surrender. When parties are unfamiliar with one another, communication is impeded by cultural differences, or parties are firmly devoted to opposing moral stances about fairness, errors in judgement are more likely to occur.

The third and last component of transaction costs, enforcement costs, appear when an agreement takes some time to complete. An instantaneous agreement has no expenses associated with its enforcement. In a simultaneous trade, for instance, you would offer me a watermelon and I would give you a dollar. Monitoring behaviour and enforcing the agreement may be expensive in complicated transactions. Consider Bloggs's intention to drain wetlands on his property in order to turn it into a residential area at the beginning of this chapter as an example. Let's say the city agrees to let him construct on a tiny portion of the wetlands as long as he doesn't damage the remainder. To make sure he follows his word, officials must keep an eye on him. Additionally, authorities could ask Bloggs to deposit a bond, which will be taken away if he damages the remaining wetlands and given back to him if construction is finished without causing damage. When infractions of the agreement are simple to see and punishment is inexpensive to deliver, enforcement costs are often modest.

Utilitarianism

According to utilitarians, the worth of a good or an action is determined by the overall happiness or satisfaction it produces. The goal of the institution of property, according to utilitarians, is to maximise the overall satisfaction or pleasure that may be derived from material and other resources. According to Bentham, Property is nothing but a basis of expectation; the expectation of deriving benefits from a thing, which we are said to possess, in consequence of the relation in which we stand towards it. A

benchmark by which property regulations might be judged is the goal of maximising overall utility. Each of the conflicts in the examples we used at the beginning of the chapter might be settled on a utilitarian basis by creating a legal norm that aims to maximise the total of the utility or pleasure of society as a whole. A person's claim to property is deemed provisional under the utilitarian viewpoint. In theory, it may be taken from him if the expropriation's recipients gained more benefit than the owner did.

Distributive Justice

Another philosophical perspective on property law places more emphasis on the capacity of property law to accomplish distributive justice than it does on pleasure or satisfaction. For instance, Aristotle believed that different types of social organisation come with an underlying idea of distributive justice. Aristotle believed that although each form of society should promote its own idea of distributive justice via its constitution and laws, including its view of property rights, the basis of justice differed for each style of society. He reasoned that an aristocracy, which was Aristotle's favourite form, would favour the allocation of riches in accordance with the qualities of distinct classes, as opposed to a democracy, which would favour an equal distribution of income. According to Aristotle, aristocracy only obtain an uneven share of money because they put it to better uses than ordinary people.

A strategy of redistributive justice, wherein the valuable assets of society are regularly redistributed in order to achieve a nearly equal distribution of that property, may be deduced from the Aristotelian idea of democratic equality. This kind of redistribution would often benefit the poor and penalise the rich. On the other hand, we may deduce the exact opposite redistributive justice policy, wherein the assets of society would be regularly transferred to the aristocracy, from the Aristotelian justification of aristocratic inequality. Since the aristocracy and the affluent are essentially the same group, this property transfer would benefit the wealthy and harm the poor. In either scenario, these theories of distributive justice render property claims just as flimsy and susceptible to the same objections as they were under utilitarianism.

There is a different school of philosophical thinking that emphasises a fair process for establishing and upholding property rights rather than a just conclusion or end result in the distribution of wealth from property when it comes to distributive justice and property. One interpretation of this idea is that any distribution of wealth is just as long as it begins with a fair beginning distribution of resources and comes to a fair end distribution via free trade. Thus, in a free market with perfect and unhindered competition, the process of voluntary market trade is fair, and ownership claims are most justly created and upheld. Marx was rephrased famously by Nozick as follows: From each as he chooses; to each as he is chosen. Whatever wealth distribution emerges from this fair procedure is also fair. Therefore, it is unfair to redistribute property in order to lessen the impacts of competition, according to this view. This distributive justice idea has come under a lot of fire. The competitive process may result in a variety of distributive outcomes, from one in which each person gets an equal part to one in which one person owns 99 percent of the property and everyone else distributes the remaining 1 percent, which is the most revealing complaint. The results are all effective. However, it is obvious that not all of them are fair or right. The idea of the competitive process as distributive fairness is insufficient to serve as a model for creating property law regulations. There must be at least one extra, independent criteria used to evaluate the different original endowments of property.

Liberty and Self-Expression

Another virtue that may underpin property law, in addition to utility and distributive justice, is liberty. Markets need private property, and markets are a decentralized system for distributing resources. Most markets can and do function without a lot of oversight or intervention from the government. Government planning is a workable substitute for markets in the contemporary economy. Government planning entails giving state leaders more control over economic issues. While private property affords a space of discretion where people are not answerable to government authorities, control over the economy gives politicians power they may use to control other facets of life. Thus, some thinkers have

seen private property as a defence against the autocratic rule of governments.³⁰ For instance, it has been said that capitalism was designed specifically to impede absolutism by robbing the monarch of economic authority. This concept was presumably considered while the U.S. Constitution was being written.

Regarding individual self-expression, property and liberty are related once again. Hegel emphasised the notion that individuals improve the natural world by transforming it into a reflection of their selves via their creative endeavours. An artist creates a piece of art by rearranging elements that are not in any specific sequence. The artist changes and personalises natural items by adding individuality to their creations. It is difficult to envision a system of property law that did not take this reality into account. Therefore, the state must acknowledge the artists' ownership rights in order to promote self-expression. Keep in mind that this statement applies to the majority of human creations, not only works of art.

Conservatism and the Origins of Property

According to the philosophical interpretations that have been addressed so far, the institution of property serves ultimate objectives like utility, distributive justice, or liberty. Another school of thought places more emphasis on the origins of property than its goals. As an example, the use and sale of real land was subject to several limitations and encumbrances throughout the mediaeval era. By eliminating these restrictions on the marketability of real estate, the common law of private property emerged from feudalism and took on its contemporary nature. Conservative political figures like Burke and Hayek idealise social structures that, like the common law of property, change with time much like the many species of life. According to this theory, social formations are subject to the same natural selection laws as other creatures. For similar reasons that environmentalists oppose acts that interfere with a region's ecology, conservative philosophers reject the institutions that planners, engineers, politicians, and other social decision-makers force upon us.

Economics of Property Law

People slept beneath grass roofs, wrapped themselves in skins, and tied sharp stones to sticks to hurl at animals five thousand years ago. My father lived in the stone age, I grew up in the iron age, and I'm dying in the computer age, observed an American Indian acquaintance of Professor Cooter. The technological advancements that sped up these transitions. Since the industrial revolution, innovation has led to a compound increase in wealth. A 2 percent annual growth rate raises wealth by more than six times, a 5 percent annual growth rate by more than 130 times, and a 10 percent annual growth rate by approximately 14,000 times when compounded over a century.

This section discusses a few rules that encourage creativity and compound development. We must first explain the fundamental economics of innovations, starting with their consequences on welfare, in order to comprehend how these rules influence growth. An economic innovation offers a better method of producing something or a better product to produce. When something is produced more cheaply, the supply curve moves right and downward. Consumers will pay less for the commodity as a result of this change. The rise in consumer surplus on the market for the less expensive commodity serves as a gauge for the size of their profit. In a similar vein, creating a new product that some buyers choose to purchase results in its creation.

Consumers profit when the price of a product they purchase drops or when a new product is introduced. In addition, innovations have the power to reorganise, vanish, or create whole new industries. The American Ice Trust, one of the greatest firms in 1900, is only remembered by historians. Innovation upends communities by altering salaries and jobs, leading some to flourish and others to wither. Early in the 20th century, the mechanisation of agriculture in the United States vacated the countryside and left abandoned houses in small communities boarded up. A ploughman with a team of horses who stayed in the countryside discovered few employers that respected his talent, despite the fact that many agricultural workers relocated to the city in search of greater income. The industrial revolution forced

European nobility with expansive estates away of the political epicenters. Innovation is well described by Joseph Schumpeter as creative destruction.

Most cultures place a higher emphasis on the benefits of quicker expansion than they do on the negative aspects. Rapid economic development may be ensured with the aid of property law. We must turn from customers and employees to businesses in order to comprehend why. When a business innovates, it acquires a competitive edge and right away makes remarkable profits. The inventor receives extraordinary rewards for the time and money invested in a highly hazardous venture. But over time, as a result of competition, the idea spreads and is adopted by several businesses. When an invention entirely dissipates, the inventor loses its competitive edge and sees a return to normal earnings. When diffusion is finished, the economy establishes a new equilibrium, the advantages of which spread even farther than the benefits of the invention.

In this stage of an invention's life cycle, the innovation creates an unbalance, and the inventor gains greatly as long as it endures. Therefore, the compensation for innovation is based on how long the disequilibrium lasts. The innovator receives minimal compensation for the resources it spent and the risk it took if the equilibrium is reached quickly. Without judicial action, competition may easily wipe out the gains from invention, leading to a lack of innovation. We need to comprehend certain aspects of information economy in order to understand why. Information is a commodity that everyone with access to a television or computer purchases, but it is different from other goods like oranges or razor blades. What unique issues arise when developing marketplaces for information and determining property rights? Information has two qualities that set transactions involving it apart from those involving more common private assets. Credibility is the first quality, which we go through in Chapter 9. Non-appropriability is the second quality, which we will now analyse. In general, it costs money to create information but pennies to send it. As one example, it is expensive to produce popular music yet inexpensive to replicate records. When a producer sells knowledge to a consumer, that consumer immediately becomes a potential rival of the original producer.

For instance, if someone purchases a compact disc recording from a music retailer, they are free to replicate it right away and sell it to others. In addition, the reseller is solely responsible for the cost of transmission not manufacturing. As a result, producers who pay for production are undercut by resellers who pay for transmission. The goal of consumers is to free ride by just paying the cost of gearbox. The issue of non-appropriability is the inability of information producers to sell their products for more than a small portion of their worth. For instance, American software is often resold in Hong Kong stores for the price of a diskette. Producers strive to prevent appropriation of their goods using a variety of strategies, such as designing difficult-to-copy computer programmes. This is referred to in the business as digital rights management. Think about the relationship between public goods and non-appropriability. Information includes concepts. The use of an idea by one person does not make it less useful to others. Use of information is non-rivalrous as a result. Because the dissemination of ideas is so inexpensive, it may be costly to keep certain individuals from learning about new concepts. Information cannot be excluded as a result. These two traits of public goods definition. Information non-appropriability is fundamentally the same issue as public goods non-excludability.

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