

22. Property Rights and the State

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1. INTRODUCTION

Property rights determine the incentives for resource use. Property rights consist of the set of formal and informal rights to use and transfer resources. Property rights range from open access to a fully specified set of private rights. By open access we mean that anyone can use the asset regardless of how their use affects the use of others. A full set of private rights consists of the following: 1) the right to use the asset in any manner that the user wishes, generally with the *caveat* that such use does not interfere with someone else's property right; 2) the right to exclude others from the use of the same asset; 3) the right to derive income from the asset; 4) the right to sell the asset; and 5) the right to bequeath the asset to someone of your choice. In between open access and private property rights are a host of commons arrangements. Commons arrangements differ from open access in several respects. Under a commons arrangement only a select group is allowed access to the asset and the use rights of individuals using the asset may be circumscribed. For example, a societal group, e.g., a village, tribe or homeowner's association, may allow its members to place cattle in a common pasture but limit the number of cattle that any member may put on the commons.

One role of the state is to define, interpret and enforce property rights. Definition of property rights is a legislative function of the state. Interpretation of property rights is a judicial function of the state. Enforcement of property rights is a police function of the state. All three functions entail costs and for this reason some rights may be left by the state as open access. Moreover, many assets have multiple dimensions and it is costly for the state to define property rights over all valuable dimensions and costly for the state to enforce property rights over all dimensions. As such, some attributes may be either *de jure* or *de facto* left as open access. Individuals and groups have incentives to expropriate the use rights over attributes that the state leaves as open access.

In many situations individuals or groups use violence as a strategy to capture property rights. From the vantage point of societies, violence is wasteful and can be a motivating force for the state to enforce property rights. Violence or threats of violence may also result when the state attempts to redistribute property rights.

In Sections 2 and 3 we briefly discuss the role that property rights play in resource use and provide some background on the determinants of property rights. In Sections 4 and 5 we develop an analytical framework for understanding the evolution of property rights, with special emphasis on the difficulties in changing property rights. In Section 6 we explore the development of property rights in the Brazilian Amazon through the lens of our analytical framework. In Section 7 we present some concluding remarks.

2. THE ROLE OF PROPERTY RIGHTS

Property rights matter because they determine resource use. The more exclusive are property rights to the individual or group the greater the incentive to maintain the value of the asset. Furthermore, more exclusive rights increase the incentive to improve the value of the asset by investment, e.g. in the case of land this may entail the removal of rocks and stumps or using fertilizers. Having the incentive to invest may not be sufficient to induce investment if individuals or groups are “cash poor.” In this situation, the ability to invest is aided if assets can be used as collateral to secure a loan. In developed countries land has served as collateral for centuries. Unfortunately, in many parts of the world mortgage markets are not well-developed and investment suffers.

Allowing sales as a property right may improve resource allocation in two ways: 1) allowing sales help signal scarcity value; and 2) markets enable those who value the asset most the ability to purchase the asset. Of course we need to be careful to note that by value economists include the ability to pay which historically and today is limited by the degree of development of mortgage markets.

To be meaningful, property rights need to be enforced. One of the critical roles of the state is to enforce property rights. Enforcement by the state typically lowers self-enforcement costs which raises the value of the asset directly but also via the incentive for increased investment. A further impact of state enforcement is that asset holders can reallocate their labor from defending their asset to household or market production.¹

3. THE DETERMINANTS OF PROPERTY RIGHTS: SOME BACKGROUND

So far we have discussed the role of property rights in a static world. But, over time several factors affect the scarcity of resources. Scholars studying property rights have typically looked at cases where changes in technology, population, or preferences alter scarcity value. When resources become more or less scarce, the current property rights regime may entail dissipation of the rental stream

¹Field (2003) found that the largest gains from titling projects in urban Peru came from increased labor force participation.