

The Evolution of Property Rights

BY AARON STEELMAN

Property rights are the cornerstone of a market economy. They enable people to trade with each other and live together harmoniously. But where do they come from? How do property rights emerge?

Not all cultures have embraced formal property rights. For instance, the native peoples of the American Southwest, according to most ethnographic studies, did not recognize private property. Is property, then, a new concept, one known only to the modern, industrialized world? That's unlikely.

In a 1967 *American Economic Review* article titled "Toward a Theory of Property Rights," economist Harold Demsetz argued that property rights develop "to internalize externalities" and usually emerge when new technology arises or new markets open. Consider, for example, the case of the Indian tribes of modern-day Quebec. Before the fur trade developed, they did not recognize property rights. In this way, they were much like the tribes of the American Southwest.

"[H]unting was carried on primarily for purposes of food and the relatively few furs that were required for the hunter's family," Demsetz wrote. "The externality was clearly present. Hunting could be practiced freely and was carried on without assessing its impact on other hunters. But these external effects were of such small significance that it did not pay for anyone to take them into account. There did not exist anything resembling private ownership in land."

But the fur trade changed that. "First, the value of the furs to the Indians was increased considerably. Second, and as a result, the scale of hunting activity rose sharply." So the tribes developed territorial hunting and trapping rights to make sure that the resources were cared for prudently and to enhance long-term efficiency.

Why didn't the native peoples of the American Southwest develop similar institutions? Demsetz cites two reasons. First, in that area there were no animals of commercial importance comparable to the fur-bearing animals of the North. Second, those animals that did populate the Southwest were primarily grazing species that tended to wander over large tracts of land, making it difficult to prevent them from moving from one parcel to another. "Hence both the value and cost of establishing private hunting lands in the Southwest are such that we would expect little development along

these lines. The externality was just not worth taking into account," wrote Demsetz.

Demsetz's article has spawned a massive amount of research in the 35 years since its publication. Recently, the Northwestern University School of Law hosted a conference to discuss the implications of his work, and the papers presented there were later published in the *Journal of Legal Studies*. One of the more interesting is Richard Epstein's analysis of parking on Chicago's public streets.

Chicago, of course, receives a great deal of snow each winter. This requires people to shovel the area in front of their houses where they normally park their cars. Such labor gives one a "curb right," meaning you can continue to use that space until the street is cleared or the snow melts. What if an interloper takes the spot? If it's a first offense, he may receive a simple warning placed on his windshield by the "owner" of that spot or by a neighbor with a strong interest in seeing the system succeed. If it's a habitual offense, he can expect to have doors dented or mirrors shattered.

Season-long access to parking spots may not be the most desirable outcome. One could argue for a more limited right, such as a week, after which the space returns to the public domain. But that kind of fine-tuning is a hallmark of patent and copyright law, for example, not of informal social norms enforced by watchful community members. "In a world of second best, there is no need to set these [shorter] limits because everyone can easily understand that the right ends when the space disappears. So the obvious focal point dominates over lesser solutions that, however efficient, are also unattainable," writes Epstein of the University of Chicago Law School.

An even better arrangement, Epstein argues, would be to "move from a system of initial occupation to one of metered parking or parking permits" sold by auction. But many residents prefer the current system and will lobby against one that requires payment for parking spots. The "transition from one regime of property rights to another is often quite bumpy" and the "choices in question often result in odd distributional patterns that are better explained if Demsetz's basic efficiency story is tempered with a healthy dose of public choice theory," writes Epstein. In short, Demsetz's paper is likely to fuel another 35 years of interesting research. **RF**

"The Allocation of the Commons:
Parking on Public Roads," by Richard
A. Epstein. *Journal of Legal Studies*,
June 2002, vol. 31, no. 2, pp. 515-544.