



UNDERSTANDING PRIVATE PROPERTY RIGHTS

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(This fact sheet is one of three dedicated to property rights and landowner responsibilities)

A chief component of America's economic system is that of private property. Interest in land reflects competing values among and between landowners and the community. Yet what defines property is the legal system, and the legal system itself provides protection for property rights. This fact sheet explores, in a brief sense, the evolution of common law and property right protection, property considered as a "bundle of sticks", and concludes with a series of governmental actions that not only further community goals, but reflects a community's concerns regarding private property.

COMMON LAW OF PRIVATE PROPERTY RIGHTS

America's legal system is predicated upon English common law as a means of solving problems. Common law is best referred to as "judge made" law or interpretation of local traditions and customs. This is not the same as statutory law, which as the name implies, is the codified law passed by the legislature.

America obtained its basis in common law from England. In England, the law and the rule of government came from the monarch. Through the idea of "divine right" the sovereign, in this case the monarch, receives power from God. This power, in turn, flows from the top - down to the citizens below, such a system is hierarchical in organization.

In contrast, America's legal system runs just the reverse. America's system is built upon power from the people, upward through a representative government that is responsive to the citizens. In essence, the flow of power moves from the "grass roots" to government, moving through the various levels of government (local, state and federal).

However, whether power flows from the top to the bottom or from the bottom to the top, there are times when the government not only defines and protects property, but also protects competing values in property. Quite simply, the law recognizes the economic value of property and protects this property through the use of common law.

Property rights, as most people in the U.S. know, are based on the U.S. Constitution. Constitutional protections stem from the fifth and fourteenth amendments. The fifth amendment states in part;

"No person shall be ...deprived of life, liberty or property, without due process of law; nor shall private property be taken without just compensation."

It is the fifth amendment of the Constitution that is considered the "takings" clause. A "taking" is defined as a government action, which takes property without compensating the landowner. Such an action can be through denying a landowner due process or by denying the landowner all economic use of the property. The courts have ruled that the government, in such circumstances, must compensate the landowner for the loss in property right. Through recent U.S. Supreme Court decisions this interpretation has been upheld. Recent court cases, have said

that if a person's property is taken as a result of government action and the owner is denied due process; or the landowner is denied all economic use of the property, then the government must compensate the owner for this loss. [For further discussion of the "takings" concept, please refer to FORFS 99-5].

The Constitution's fourteenth amendment, insures that rights listed in the document are protected in the states. The fourteenth amendment states in part:

"... nor shall any state deprive any person of life, liberty or property; without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. "

Property is protected by the Constitution's fifth and fourteenth amendments. How the Constitution is interpreted determines the degree of protection or not, that a landowner can have regarding private property.

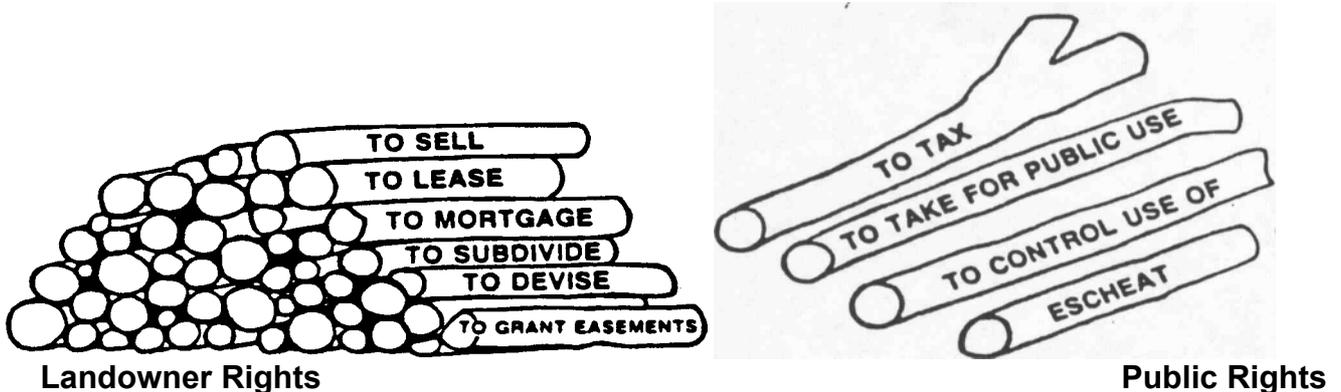
PROPERTY RIGHTS CONSIDERED AS A "BUNDLE OF STICKS"

It is often best to think of property rights as a "bundle of sticks." Each stick represents a use to which landowners can put their property. For example, one stick represents landowners' development rights, a second stick may represent the mineral rights, and a third stick may represent a right to mortgage. Additional sticks within the bundle include the right to sell, to lease, to subdivide, to devise, and to grant easements.

The single basis of land ownership is the "fee." Fee ownership is defined as the outright ownership of the physical property itself. As shown through the bundle of sticks example, certain rights, though, can be disposed of in a way the particular owner finds appropriate. If a use in land interferes with a neighbor's use and enjoyment of land, then conflict is managed by government action.

The government, though, also has public rights to property, but these sticks are not part of the landowner's "bundle of sticks". The government sticks include the power to tax, to take land for public use with just compensation through the use of eminent domain, to control the use of land through such things as the police power and zoning, and the power of 'escheat'. Escheat means property can go to the state if a person dies without a will.

THE BUNDLE OF RIGHTS IN LAND



Of the public "sticks," the police power grants government the authority to manage conflicts in land uses. The police power is defined as the right of government to protect the health, safety, welfare and morals of the citizenry. This is best accomplished through the power of "zoning." In a Supreme Court case decided early in the twentieth

century, *Euclid vs. Ambler Realty*, zoning was upheld as constitutional since it furthered the public interest.

CONCLUSION

It is evident that this nation's economic system is predicated on the use, exchange, and disposition of private property. It is also evident that landowners have fundamental rights in property and how they choose to exercise those rights not only impact their use and enjoyment of the land, but their neighbors use and enjoyment of land. In essence, all land use activities should require some forethought by landowners so as to minimize conflict. The bundle of sticks also represents economic interests in the land and varying values with the land resource, based on the multiple uses to which someone can put their land.

Additional Resources:

Edgens, Jefferson G. *Property Rights and Landowner Responsibilities*. FORFS 99-4, Department of Forestry, University of Kentucky Cooperative Extension Service.

Edgens, Jefferson G. *Understanding Property Rights and "Takings"* FORFS 99-5, Department of Forestry, University of Kentucky Cooperative Extension Service.

U.S. Constitution and the Fifth and Fourteenth Amendments.

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