

INTRODUCTION

Consider the prospect of investing in land. In the United States, we take the security of such an investment for granted, but in other countries that security is not always available. For example, though Zimbabwe has a constitution forbidding the confiscation of land without compensation, so-called land reform is taking land from people who thought they had secure title and giving it to others. As a result of this land redistribution, productivity is down and people are starving. Furthermore, citizens are being persecuted and killed. This is not to say that the distribution of land ownership is necessarily just in countries such as Zimbabwe, but it does emphasize that security of property rights is crucial to freedom and prosperity.

This book argues that property rights are central to freedom and prosperity. It is easy to see this in the case of title to land as contrasted between the United States and Zimbabwe. The same point holds for all property rights. Be it property rights to one's self (human capital), one's investments (physical capital), or one's ideas (intellectual capital), secure claims to assets give people the ability to make their own decisions, reaping the benefits of good choices and bearing the costs of bad ones.

The necessary link between freedom and prosperity is perhaps well illustrated with slavery, which necessarily eliminates the possibility of freedom for those in bondage. If individuals do not own

themselves, they cannot be free. The same holds for assets other than one's self. When individuals invest in goods and those investments are threatened by takings, freedom is diminished and prosperity will decline.

The idea that property rights provide the foundation for a free society has long been understood. Protection of private property was of utmost importance to the people of England who penned the Magna Carta and to the Founding Fathers of the United States who drafted the Declaration of Independence and the Constitution. In the latter case, they had just fought the Revolutionary War, which resulted from the Crown's abuse of colonial property rights, as evidenced in the original slogan of the revolution: "Liberty, property, and no stamps!" (See Bowen 1966.)

Since the American Revolution, the United States has experienced economic growth and individual freedoms unsurpassed in world history. We have seen per capita incomes approximately double every forty years, we have eliminated slavery, and we have created tremendous possibilities for geographic, social, and economic mobility.

Despite living in an era of triumphant capitalism, however, property rights are still threatened by a variety of state, national, and international forces. A case in point: The U.S. Supreme Court recently dealt the protection of property rights a significant legal setback in *Tahoe-Sierra Preservation Council Inc. v. Tahoe Regional Planning Agency*, 535 U.S. 040 (2002). The court sided against the landowners by claiming that a development moratorium lasting several years was not a compensable taking and thus the property owners were not entitled to compensation for losses in property value caused by the regulatory restrictions.

The real question in this case was who should pay to maintain Lake Tahoe, all of us who enjoy its beauty or only those unlucky few who used their savings to buy development lots? Justice

Holmes answered this question some eighty years ago in *Pennsylvania Coal v. Mahon*, 260 U.S. 393 (1922), when he explained that “a strong public desire to improve the public condition is not enough to warrant achieving the desire by a shorter cut than the constitutional way of paying for the change” (quoted in Adler 2002). Though this case pales when compared with takings by tyrannical governments such as the one ruling Zimbabwe, it illustrates the necessity of vigilance and the necessity of understanding the nexus between secure property rights and a free society.

The crucial connection among secure property rights, freedom, and prosperity is elucidated in this primer. We describe what property rights are (chapter 1), what they do (chapter 2), how they evolve (chapter 3), how they can be protected (chapter 4), and what their future might be (chapter 5). We emphasize that this is a primer, a brief treatment of a vast and complex subject studied by scholars from many disciplines. You will find discussions of philosophers, political thinkers, economists, and lawyers. We highlight that our intent is not to cover all of the intricacies of the subject, but rather to give nonexperts a blueprint for how societies can encourage or discourage freedom and prosperity through their property rights institutions.

This primer might be thought of as the *Reader's Digest* version of a much longer treatment of property rights, *Property Rights: Cooperation, Conflict, and Law*, edited by Terry L. Anderson and Fred S. McChesney (2003). The book began as a conference at the Hoover Institution, which brought together lawyers, economists, and political scientists to discuss our modern understanding of the law and economics of property rights. From the conference, the scholars refined their thoughts into chapters and combined them into what is one of the most definitive volumes on the subject. For the reader who wants to go beyond this primer, we have referenced chapters in the longer volume that will provide greater depth for the points discussed here.

Much of the literature on property rights—and this primer is no exception—relies on lessons from history. We have used many examples from the United States frontier, where new resources, expanding populations, emerging technologies, and a lack of formal government afforded a crucible for property rights evolution and institutional innovation.

Despite their being from history, these important lessons are no less applicable to the study of property rights today. From the open access of the oceans to the far reaches of space, new frontiers where property rights are undefined offer new opportunities for their evolution. The genetic structure of living organisms serves as an example of such a frontier.

Consider the following hypothetical case (Stix 2002). A man named Salvador Dolly gives blood for a genetic test to determine his fitness to father a child. The testing company sells the remains of Dolly's blood to NuGenEra, a biotechnology company. NuGenEra discovers that Dolly's genes make him resistant to HIV. The company quickly applies for a patent on his genome. When Dolly finds out that his genes guard against the deadly virus, he sets up a company to market his blood. NuGenEra sues Dolly for patent infringement, claiming that it owns his genome. Will Dolly have to forgo property rights to his own genome? Should these rights be balanced against society's need for the therapies for HIV? This case brings to light just some of the many unanswered questions regarding how the "genomics" era may affect intellectual property rights.

How we have dealt with the evolution and protection of property rights in the past and how we deal with them as they are applied to new issues in the future will determine how free and prosperous our society is. If we allow individuals more autonomy in the use of their human and physical property, they will have an incentive to invest in their assets and to use them more productively. These incentives result if people are, as the Nobel laureate

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Milton Friedman titled one of his books, “free to choose.” We hope this primer helps readers better understand what property rights are and how important they are to freedom, an asset that is all too precious and scarce.