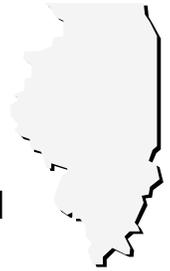




# LOCAL GOVERNMENT TOPICS

Land  
Use



## Introduction to Property Rights: A Historical Perspective

Everyone seems to have an opinion about property rights, whether about one's own rights, those of someone else, or the rights of a community. Property rights discussions can reveal diverse and controversial opinions and are often related to larger issues such as land use, regulation, planning, and the like. Since there is no universal definition of property rights, considering different perspectives and the historical background can be helpful in understanding property rights issues.

According to Neil Meyer, professor of agricultural economics and rural sociology at the University of Idaho, "what is often referred to as property is really the access right to a stream of benefits from a given set of resources." In the United States today, access to that stream of benefits is controlled in four basic ways: private ownership, public open access, public closed access, and state ownership.

### Who Owns What Property and Where Do Property Rights Come From?

Property rights come from culture and community. One person living in isolation does not need to worry about property rights. However, when a number of people come together, they need to define and enforce the rules of access to and the benefits from property. In this way, the group or community defines the stream of benefits.

"This land is mine to use, enjoy, and treat as I wish." Many property owners feel this way about their rights to land, and certainly, landowners possess many rights to the properties they hold. However, historical actions by governments and courts suggest that the property rights of private owners are shared with the public. Therefore, the definition of property

rights can, and has, changed over time. Although the issue of property rights has received a great deal of attention in recent years, it is valuable to remember that property rights have been debated in the United States since the country was formed over 200 years ago.

### What Are Property Rights?

Property rights establish relationships among participants in any social and economic system. Holding the rights to property is an expression of the relative power of the bearer. Holding such power or rights commands certain responses by others that are enforced by the community or our culture. For example, a producer owning 100 acres of cropland is entitled to the returns from his property, management ability, and good sense. He is protected from trespass by his neighbors' cultural customs and the laws of the community. The production, or stream of benefits from the land, is his to sell, give away, or otherwise dispose of as he sees fit.

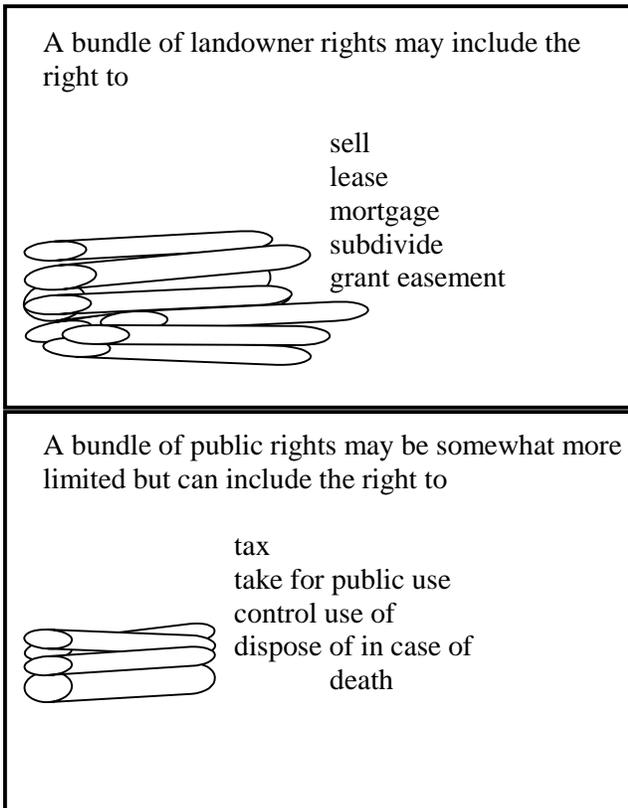
Property rights are a function of what others are willing to acknowledge. The limits on an owner's actions result from expectations and rights of others as formally sanctioned and sustained by law. The boundary between obligation and right is variable. Patterns in rights and obligations reflect prevailing judgments on what is fair, and people's values determine fairness. Laws and rules generally reflect the values held by a sufficient number of the people in a social group.

### A Bundle of Rights

Property rights have been likened to a bundle of sticks where each stick represents a right or stream of benefits.

The bundle expands as “sticks,” or rights, are added and gets smaller as sticks are taken away.

Some important landowner sticks include the right to sell, lease, mortgage, donate, subdivide, grant easements, etc. The community also has a bundle of rights, such as to tax, take for public use, regulate uses, etc. Some more recent issues have also been added to and taken from the bundle by our culture and community, such as the rights to farm, to air and water quality protection, to species conservation and preservation, etc.



Governments, acting for the public, have long exercised powers that may affect individual property owners’ use of their land, including the power to tax private property, take property under eminent domain (with compensation), and establish rules with the policing power to enforce them. These are more formal powers, but communities also have auxiliary powers to influence behavior, such as public spending, public ownership, and public opinion.

History shows that previously accepted concepts of property have changed with new conditions and passage of time. Early communities treated land and other natural resources as a communal resource held in joint ownership. Under feudalism, status in the community was directly related to the rights a person held in land. Even though the distribution of rights has changed considerably over the

generations, understanding this history is important because it provides the basis for our present concept of property rights.

### How Are Rights Defined?

Five legal terms from feudal times are still in use today: property, fee, estate, interest, and right. These terms have similar meanings and are often substitutes for one another. Fee simple ownership means that the owner enjoys all the rights that one can hold in a property. Many citizens believe and cherish the notion that these rights have not changed since the frontier period in America. However, a review of the many programs adopted by local, state, and federal governments shows our culture has adopted a larger role for public rights than was recognized in the individualistic frontier perspective. This evolution over the past 200 years can be attributed to increasing population, rising incomes, more competition for available resources, environmental concerns, wider suffrage rights, etc.

It is apparent that the rights we hold in property spring from society. Rights are real only when the sovereign power, acting as an agent for society, recognizes those rights and is willing to defend and enforce them.

It is also important to remember that removing sticks from the bundle of rights does not necessarily mean less satisfaction for the owner or that property has less value. For example, residential easements that deliver electricity, water, and sewer service usually enhance property values and add comfort to the owner. The same may be said for regulations protecting water and air quality, controlling noise, avoiding health concerns, etc.

### Do Private and Public Rights Conflict?

Depending on a person’s perspective, one set of rights may be in conflict with another’s perceived set of rights. Who is right or wrong, though, is not necessarily a question that can or should be answered. Since property rights are culturally defined and enforced, no one knows how or when public rights may be broadened over time. This situation can create concern or conflict since the interests of different groups of people vary greatly.

Those who see private ownership as an opportunity for acquiring wealth have obvious reasons for being concerned about trends toward public ownership. Others view land as a fragile resource needing community protection and more

public supervision. Most Americans are probably somewhere in the middle of these two views.

As demands and pressure increase for stronger public programs to direct land use, private property owners may fear that such societal attitude shifts will adversely affect them. They may worry about being stripped of certain rights. Accepting this change requires recognizing the rights that owners enjoy in private property are balanced by responsibilities. Property owners need to use land or other streams of benefits in a manner that does not impact negatively on others and to use practices that serve the basic community interests. Defining what may be a negative impact or what specific practices to follow, however, can be a point of conflict. The community also needs to reflect on the value of private ownership to society and to remember that it is in private owners' best interest to use their land productively.

### **What Is Common Property?**

Although perspectives vary, the general aspects of private and public ownership and rights are fairly well understood in today's society.

Common property is a third category of ownership. Common property consists of benefit streams that are jointly owned and/or managed. Grazing on public lands or fishing on the open seas are examples of different types of common property ownership, jointly sharing the benefit streams between public and private. Common property can be more controversial and complicated because groups and individuals have different beliefs on how to manage the resource.

In some parts of the United States today, many prominent property rights conflicts concern the management of commonly owned resources.

Ownership and management can be easily confused when using the term common property. Public property can be divided into three types: open access, closed access, and state/government. With *open access*, there is no governance and everyone can use and take part in the benefit stream(s) of a particular resource. This situation may result in uncontrolled use that can destroy the resource. A second type of public property is the *closed access*, which is jointly managed and owned. Those who jointly own the closed access resource provide control, limit access, define rules, etc. Many fisheries are managed in this manner. The third type, *state management*, has governmental managers making decisions and rules about access, use, etc. These decisions can become controversial for the recipients of the various benefit streams—for example, the issue of grazing on public land.

### **Summary**

When discussing private property rights issues, it is important to remember that property rights are not absolute but, instead, a function of what society is willing to acknowledge, defend, and enforce. The relationship between the rights of the individual and the rights of the community have been in constant flux throughout our history and will likely continue to change with time. Since the discussion of these shifting relationships can be extremely polarizing and controversial, adopting a historical perspective may help to improve the overall discourse on these issues.

This material written by:

Neil Meyer, Extension Professor, Department of Agricultural Economics and Rural Sociology, University of Idaho

Edited by

John Church, Extension Educator, Natural Resources, University of Illinois

Reviewed by

Donald L. Uchtmann Professor of Agricultural Law, University of Illinois College of Agricultural, Consumer and Environmental Sciences; and Gerrit Knaap, Associate Professor, Urban and Regional Planning, University of Illinois College of Fine and Applied Arts

LGIEN Fact Sheet 2000-006