Securing Property Rights

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Insecure Property Rights in Developing Countries

- Securing property rights is critical, but this goal is often not attained
- The weak are vulnerable to takings by the strong

1. By the government
   - Underpayment under eminent domain (Singh 2012)

2. By powerful private parties
   - Undercompensation for environmental damage (Mayorga Alba 2010)

- Law replaced by violence/self protection

We ask: In a regime with such abuse by the strong, what are the best ways of securing property?

- Compare property rules (injunction) with liability rules (compensation)
Poor Enforcement is Key to Understanding the Insecurity

- Corruption of police/judges
- Political influence on judges
- The strong control justice through bribes, influence and intimidation

**Our key point:** When the strong subvert justice, property rules are more likely to succeed than liability rules
Compensation Is a Weak Link

- *Krehl v. Burrell* (1878) 7 Ch.D. 553

  The question I have to decide is, whether the appeal to me by the defendant to deprive the plaintiff of his right of way and give him money damages instead, can be entertained. I think it cannot. [If it were,] of course that simply means the Court in every case, at the instance of the rich man, is to compel the poor man to sell him his property at a valuation. . . . I am quite satisfied nothing of the kind was ever intended, and that if I acceded to this view . . . I should add one more to the number of instances which we have from the days in which the Bible was written until the present moment, in which the man of large possessions has endeavoured to deprive his neighbour, the man with small possessions, of his property, with or without adequate compensation.
Kennedy and Michelman (1980, p. 723)

The whole point of a property regime is to restrain the strong from resorting to their strength... The weak are no longer vulnerable to unrestrained depredations, and they now have the chance of becoming rich without becoming strong... The only thing that is certain to be certain under property is effective protection of the weak against violent dispossession by the strong, and vice versa.
## Coase’s Farmer–Railroad Problem

Coase Theorem - with bargaining

<table>
<thead>
<tr>
<th>Farmer has right with <em>injunction</em></th>
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- Injunction same as liability to get Efficiency
Coase’s Farmer–Railroad Problem

When the railroad is powerful – without bargaining

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- Without bargaining, there is a trade off
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<td>✓</td>
<td>F gets 0</td>
<td>F doesn’t pay</td>
</tr>
<tr>
<td>RR passing w/o safety</td>
<td>RR pays F</td>
<td>RR passes</td>
<td>RR passes</td>
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- With bargaining, injunction is always better
World Justice Project

1. Surveys experts and households about interactions with justice
   ▶ 102 countries, ca. 1,000 households and 25 experts per country

2. Data cover many years

3. Sheds light on security of property rights
Popular Perception of Undue Influence over Judges

- Mexico
- China
- Bangladesh
- Pakistan
- Myanmar
- Nigeria
- Brazil
- Turkey
- Russia
- Ethiopia
- South Africa
- Italy
- Iran
- France
- India
- United States
- Indonesia
- Thailand
- Germany
- United Kingdom
- Philippines
- Egypt
- Japan

Government Interests

Private Interests
Experts’ Assessment of Undue Influence over Judges

Percentage of Cases under Pressure or Corruption vs. Log GDP per Capita (2011)

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Experts’ Assessment of the Legal Disadvantage of the Poor

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Compliance of Polluters

Probability that a polluting company complies with the law

Log GDP per Capita (2011)
Central Messages

- Litigant power undermines the effectiveness of fact-intensive rules
- Bargaining improves the case for injunctions
  - Calabresi and Melamed (1972)
- With injunctions, contracts only permit and never deny action
  - Subversion of courts doesn’t matter so long as payments are up front
Parallel Between Property and Contract

- Specific performance v. contractual damages
- Damages praised for enabling efficient breach
  - Holmes (1897), Posner (2009)
- Dissent from the left: concern with inequity
- Contract litigation overwhelmingly ends with corporate victory
  - Corporations v. individuals (Galanter 2001)
  - Large corporations v. smaller businesses (Dunworth and Rogers 1996)
- Our point: inequity also leads to inefficiency
Textbook Case

Peevyhouse v. Garland Coal & Mining Co. (Okla. 1962)

1. Farmers leased land to coal miner with promise of remedial work
2. Miner chose to breach and not restore land after strip mining
3. Trial jury awarded $5,000 considering the cost of remediation
4. Appeal court reduced award to $300 diminished property value

- Triumph of efficiency over bleeding-heart sympathy?
- Or the strong riding roughshod over the weak?
- Our paper moves the needle towards specific performance
Implications

1. Liability rules become more common when rule of law improves
2. Property rules entail less expropriation and more progressive outcomes
3. More investment in rent-seeking in judicially weaker regimes
   ▶ Greater judicial corruption in developing world
4. Liability rules have higher legal costs than property rules
   ▶ Civil cases in the US: 49% tort, 48% contract, 2% property
5. Demand for formality higher where justice is more fairly administered
6. The strong have higher demand for formality than the weak
7. Asymmetric parties more likely to contract where justice is fairer
8. Specific performance helpful where justice can be easily subverted