

[handout sent to students]

Discussion Questions- Week 15
Law and Economics

Friedman, David D. (2000) *Law's Order: What Economics Has to Do with Law and Why it Matters*

Ellickson, Robert C. (1991) *Order without Law: How Neighbors Settle Disputes*

1. We should be sure we have a few key terms/concepts down, and try to connect them somehow with the process of resolving legal disputes and with government regulation.
 - a. Public goods
 - b. Pigouvian tax/subsidy
 - c. Copyright vs. patent
 - d. Freedom of contract and possible impediments to freedom of contract
 - e. Others?
2. What are the important conflicts in question in Ellickson (three, basically)? Who are the major parties? What are their preferences?
3. Coase claims property rights have to first be granted and enforced by a government. What does Ellickson argue might happen instead?
4. Informal vs formal rules: in the absence of possible punishment by the state (from formal laws), how does a group of people enforce their informal rules (or norms)? What are these informal norms in Ellickson's examples?
5. What other examples can you think of how informal norms shape how people and society behave?

[My own notes that I had in class]

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6. We should be sure we have a few key terms/concepts down, and try to connect them somehow with the process of resolving legal disputes and with government regulation.
 - a. Public goods- non excludable, nonsatiable good, society will not have the incentive to produce enough of these, hence govt often provides them (lighthouse example).
Coase would say the problem is no clear property rights]
 - b. Pigouvian tax/subsidy- tax/subsidy that brings cost to level most efficient from society's standpoint, problem is you have to know what amt. of tax will do this
 - c. Copyright vs. patent
[copyright protects expression, but not the idea; patent protects idea, not expression]
[patent standards higher, but protection shorter]
 - d. Freedom of contract and possible impediments to freedom of contract
[what is "freedom"? similar to Coase solution, with clear (property) rights, parties will bargain to efficient contract]
[why might it not be efficient?—unequal bargaining power (uses buying book example),
some terms can't be bargained over
some may be harmful to society (eg cartel),
duress (sinking ship p153)
[what does court try to do when there is a conflict over a contract?—fill in blanks, try to guess what party would do had a conflict been anticipated]
[different ways to measure liability, and penalties for breach- Coase answer again is "none," contracts will be renegotiated to the point where they will be willing to fulfil them, again assuming no trans costs]
[expectation damages- damages enough to make other party as well off as if contract honored]
[reliance damages- due to uncertainty about possibility of breach, people will ask for only damages to make one as well off as if one had *never* signed the contract, only pay damages, not profits—this makes it less risky to sign a contract]
[liquidated damages- agree *in advance* what damages will be, court doesn't have to decide—this is a form of insurance really]
 - e. Others?
7. What are the important conflicts in question in Ellickson (three, basically)? Who are the major parties? What are their preferences?
[1. Livestock trampling land 2. Who builds the fence 3. Who pays when a car hits a cow]
[traditionalists, tend to rely on the norms the most, want open range]
[modernists (ranchettes), may look to law more, prefer closed range]

[open range- rancher not liable for damage from cows in unfenced land]

[closed range- makes rancher strictly liable for damages, not just when negligent]

8. Coase claims property rights have to first be granted and enforced by a government. What does Ellickson argue might happen instead?

[govt not even needed to provide property rights, people will essentially divvy them up themselves—assuming they are repeat players who expect to interact in the future, this is enough to get people to cooperate]

[nonetheless, it is a Coasian solution in that they exchange rights]

9. Informal vs formal rules: in the absence of possible punishment by the state (from formal laws), how does a group of people enforce their informal rules (or norms)? What are these informal norms in Ellickson's examples?

[first, the laws exist, what do they know of them? Different than places with “no” law]

[nonetheless, ranchers managed to prevent closing, even though the costs to them wouldn't be as bad as they thought, but they did it for *symbolic* reasons—had to justify it though, the insurance “story” an example again of social production of knowledge]

Cows:

[norms:

1. People should make reasonable effort to prevent damage to others
2. But should also tolerate small amt of damage, live and let live
3. Mental accounting of debts—remember who has damaged their stuff, whether they've damaged others' stuff, can use previous episodes to “call up debts”]

[How to enforce:

1. Self-help- gossip, threaten property or even violence
2. Report to county authorities (typically ranchette strategy), then animal control calls rancher
3. Submit informal claims, as in, try to get someone to pay you, and bargain, but not actually sue
4. Lawsuits (mostly modernists only, and very rare in this case)]

Fence-building

[per law, there is supposed to be proportionality in most cases, but nobody knew this. So norms are not very different, still no one knows or looks to the formal laws]

[norms:

1. If someone builds a fence, ought to compensate the other rancher, using norm of proportionality (cost proportional to size of stock) either 50/50, all or nothing, or labor/materials (ranchers usually use 50/50; large rancher may just build one on their own)
2. Repair when you find damage on the spot, again amt of work often based on proportionality norm]

[assumption of multiple opportunities to fix fence, so people do it as “exchange of gifts,” with expectation they will be repaid later

[similar methods for enforcement]

[Cows vs cars

ranchers believed rancher was completely responsible if cow hit by car in closed range system and feared this would jack up insurance costs, but this was wrong, they'd only pay in case of negligence, and insurance would not change much going from open to closed range
[norms not so useful in cow vs car example since they likely aren't repeat players

10. What other examples can you think of how informal norms shape how people and society behave? Why might this be a problematic description of how society works?