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***De Facto and De Jure Property Rights:
Land Settlement and Land Conflict on the Australian, Brazilian and U.S.
Frontiers***

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Emergence of Property Rights

- **Economics: Endowments – property rights emerge with scarcity or highest valued use.**
- **Sociology: Social Norms determine property rights based on shared set of beliefs of fairness**
- **Political Science: Special Interests, Salience of the Issue and Extent of Suffrage**
- **Examine progression of property rights on three frontiers: AU; BR; and U.S.**

Delineation of Property Rights

- **Open Access-** no exclusivity to resource
- ***De Facto* Property Rights-** who specifies rights *in loco* and who enforces rights *in loco*
- ***De Jure* Property Rights-** specified legal right from a legitimate government who has authorization.

Costs of Open Access

- **If resource not scarce: no costs**
- **Race for PR- resources used to secure “first possession”, e.g. move to frontier too early**
- **Land Conflict – expenditures to defend or gain control over resource**
- **Too much investment – if rights are upon extraction or help to determine PR**
- **Too little investment – if you will not reap the return, e.g. annual vs perennial crops**

Benefits of Secure Property Rights

- **Incentive to retain and enhance the value of assets.**
- **Promotes trade: specialization and voluntary trade creates wealth**
- **Incentive to invest. Provides security that individual investors will reap the returns of their investment.**
- **Ability to invest. Secure property provides collateral.**

Specification and Enforcement of PR

**1st Person Specification
1st Person Enforcement**

**2nd Party Specification
1st Person Enforcement**

**3rd Party Specification
1st Person Enforcement**

**1st Person Specification
2nd Party Enforcement**

**2nd Party Specification
2nd Party Enforcement**

**3rd Party Specification
2nd Party Enforcement**

**1st Person Specification
3rd Party Enforcement**

**2nd Party Specification
3rd Party Enforcement**

**3rd Party Specification
3rd Party Enforcement**

Open Access *De Facto* Property Rights

- **First Arrival specifies his claim (first person) and defends against new entrants (first person) – endowment explanation; person with the highest net rent goes to the frontier**
- **New Entrants (if homogeneous) more likely to recognize and help defend claim of first arrival and other claimants. Social norm explanation.**
- **New Entrants (if heterogeneous) more likely to engage in conflict or potential for conflict. Social norm explanation**

Conflict in the Commons

- **May be relatively peaceful**
- **Capital may proceed labor with greater heterogeneity and greater conflict or potential for conflict, especially when labor enters.**
- **Enforcement against heterogeneous (e.g., farmers vs. pastoralists) outsiders- home court advantage and relative violence potential**
- **Conflict may lead to demand for *de jure* property rights**

De Facto 1st Party to Commons

- **Specification and Enforcement by commons: the ugly head of free riding arises. Need social norms.**
- **If entrants homogeneous and organized for other collective goods more likely to get 2nd Party (commons) specification and enforcement**
- **Enforcement against outsiders- home court advantage- easier to defend than to usurp; and relative violence potential because of higher rents**
- **Large claim size may need to hire third parties.**

Commons to *De Jure Property Rights*

- Endowments explanation: assign *de jure* right to *de facto* claimant. Ignores politics.
- Politics: special interests; salience of the issue; and extent of suffrage.
 - special interests favor *de facto* claimant
 - salience of issue “Land” brings in interests of constituents
 - greater extent of suffrage favors redistribution
- *De Jure* Specification and Enforcement
 - Specification cheap; and enforcement costly if against former *de facto* claimant – potential violence

Enforcement of *De Jure* Property Rights

- **Home Court Advantage:** Frequently the “first possessors” control the local courts and legislators and *de facto* rights may vary from *de jure* rights
- **Distance to the frontier raises government enforcement:** favors those with violence potential having *de facto* rights
- **Violence potential= f (extant commons arrangements; and NPV over opportunity costs).**

Open Access and *De Facto* PR: Brazil

- 1822: Ended the use of *sesmarias* as means of land rights.
- 1822-1850: no formal rules for acquiring land
- Two earlier booms: sugar (1550-1650); and gold (1700-1780)
- Post boom: *De facto* large claims but little competition given the low NPV of the land
- Coffee (perennial & site specific) circa 1830s with slaves the scarce factor of production
- Capital (those w/slaves) preceded labor to the frontier and some were already on the frontier at the time of the coffee boom

De Facto PR: Brazil

- **Claims overlapped but no conflict until boom**
- **Post boom, violence erupted with land claimants hiring gunmen and self-enforcing**
- **Rent dissipation by the 1840s led to pressure for formal land laws**
- **Simultaneously there was pressure to encourage immigration because the abolition of slavery on the horizon**

De Facto to De Jure PR: Brazil

- **1850 Land Law- Land claimants acted collectively in the political arena.**
 1. **validate all extant land claims; and 2.****thereafter purchase the only “legal” means to obtain land**
- **Squatting continued unabated with claims legitimated through fraud/bribery.**
- **Provision of no sales prevented politically impotent entrants**
- **No immediate need for immigrants as slavery still legal until 1888.**

De Facto to De Jure PR: Brazil (cont)

- **By 1888 immigration underway**
- **Coffee *coronels* needed to prevent immigrants from squatting on the frontier**
 - **through fraud, G would not recognize their claims**
 - ***Coronels* offered paternalistic package including right to inter-plant crops between coffee**
- **Coffee boom lasted until 1930 with violence and political lobbying determining *de facto* and *de jure* rights on expanding frontier.**

Open Access to *De Facto PR*: Australia

- **Squatters (capitalists with sheep) precede labor to the frontier – late 1820s.**
- **Initially self-enforcement.**
- **Incentive for Commons:**
 1. **illegality of claims: incentive not to engage in conflict for fear of G interference**
 2. **early violence potential of Aboriginal tribes encouraged cooperation amongst settlers.**
- **Established norms about use**
- **Commons had value: active market for sheep runs**

De Facto to De Jure PR: Australia

- **Late 1830s squatters lobbied for *de jure* PR**
- **1846 leases granted: 1-14 years depending on distance from the settled regions**
- **Lease prices: flat fee plus fee for sheep flocks above 4,000 sheep**
- **1846: Pre-emptive purchase of 640 acres per 16K leased**

New Entrants and Potential Conflict

- **Mid-1850s: End of Mining Boom: Ex-miners petitioned for land reform on leased land to squatters**
- **1850s: Universal Male suffrage**
- **Status quo until the 1860s; political strength of the squatters**
- **No movement of labor to the frontier without *de jure* PR**
- **Selectors Acts across states in 1860s**

Enforcement of Rights

- **Many invalidations of claims of Selectors**
 - parcel infringed on government reserves; land selected was owned by squatters; and land selected by an earlier selector
- **Squatters ability to retain *de facto* and *de jure* rights to claims: “dummying”; “peacocking” – selecting prime water land; and force land to auction**
- **Additional home court advantages: declaring land a public reserve; informational asymmetries on land quality; and aridity caused selectors to fail.**

Open Access to *De Facto*: U.S.

- **G sale price greater than value of use right**
- **Squatters (capitalists with cattle) precede labor to the frontier – late 1860s.**
- **Range rights established by first possession; homesteading; and pre-emptive rights**
- **Overgrazing under open access**
- **Incentive for Commons- Cattlemen's Associations: 1) branding of cattle; 2) ranchers relatively homogeneous; and 3) round-up – collective activity with economies of scale**

Open Access to *De Facto*: U.S. (cont)

- **Exclude outsiders: posted that range was fully stocked and backed up by excluding intruder from roundup**
- **Prevent overstocking: stipulated number of cows and bulls on range and enforced through round-up.**
- **Ownership on ranges determined by “branding”**
- **Commons effective: market for range rights**

Commons/Conflict and *De Jure* PR: U.S.

- **1880 Commission recommended lower prices as well as leases - Congress did not approve recommendations**
- **1880s Homesteaders (farmers) beginning to encroach on *de facto* claims of ranchers.**
- **Potential conflict: Homesteaders had specified *de jure* rights; General Land Office GLO opted not to enforce rights of homesteaders**
- **Little Actual Conflict: Ranchers had overwhelming violence potential; relied on intimidation**

Commons to *De Jure* PR: (cont)

- Throughout 19th century, GLO continued on the side-lines
- Maintenance of *de facto* rights for ranchers
- 1900: wheat boom and surge in homesteaders
- President Teddy Roosevelt supported “small guy” and championed conservation of National lands. Cut “illegal fences” with cavalry.
- End of *de facto* range rights – G had violence advantage

Concluding Remarks

- **Endowments determine who arrives first and *de facto* property rights**
- **Social Norms determine ability to form sustainable commons arrangements for specification and enforcement of *de facto* property rights.**
- **Politics determine *de jure* property rights.**
- **Political Supply: Specification granted without enforcement in all three cases led to potential or actual violence.**