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Property in a Market Context

It is important for emerging and transitional economies to have an informed understanding of property in a market context. As F.A. Hayek suggested, the primary function of a market economy is not to allocate resources efficiently but to overcome knowledge problems resulting from dispersed and fragmented information. In this function the market is facilitated by a formal, transparent, stable, and predictable system of property rights. In this paper I discuss some of the implications of this Hayekian view which runs counter to the American law and economics paradigm. Significance is given to the idea that knowledge and information are socially situated and involve exchange within and among cultural-interpretive communities. In this context, property functions as an information signifier for exchange, and communities with well developed property law infrastructure have a competitive advantage over communities without such systems.

An important aspect of the signaling function of property involves the way it which it organizes and regularizes time, space, and place. In this paper I will emphasize the connections to time. To identify but a few of these relationships to time in property I list a partial sample. Property creates estate interests situated in time (fee simples, life estates, future interest, leasehold estates, present possessory rights); divides estates in to units of time with such things as time share condominiums; is financed by payments made over time (mortgages); has numerous rules linked to moments in time such as the doctrine of equitable conversion, the doctrine of merger, laches, foreclosure, the equitable rights of redemption, the statutory right of redemption, and the notorious rule against perpetuities; articulates rights with respect to priorities based on "first in time, first in right" principles, as modified by recording statutes; deals with record and off record interests in terms of curative acts and marketable record title acts that eliminate errors and interests over time; creates rights through use and possession over time through adverse possession and prescriptive easements; eliminates interests over time with the concept of abandonment; protects rights over time under the doctrine of waste; and, employs rules that adjudicate title conflicts with respect to the law in force at the time the interest was created. These and many other elements of time expressed through property shape an information framework that facilitates market exchange.