EXTERNAL APPENDICES TO CHAPTER 11

Appendix 11.1: CHANGES IN THE PATTERNS OF PRIVATE OWNERSHIP

A. Mutations in the Meaning of Property and Contract

What can people do with the property they own? One type of property consists of a bundle of specific rights defined in a deed, but property law can modify the degree to which such rights are absolute or constrained. This bundle of rights defines what we mean by "ownership." Another type of property consists of valuable rights that are defined in contracts, but these are constrained by contract law. The legal constraints on property and contract are part of the institutional structure of the economic system and have an important impact on how the economy operates.[1]

In the field of property law in the second half of the 20th century, individual ownership rights appear to have strengthened at the expense of the ability of the government to make "public interest" decisions about land use for zoning, environmental, recreational, or other purposes. For instance, attempts to require compensation by the government for losses in private property value in zoning decision will lead to less governmental action in this sphere. In a parallel fashion, increasingly successful attempts to narrow the application of the commerce clause in the U.S. Constitution has began to reduce governmental actions to regulate various activities in the economy. To look at this change from another angle, the scales of justice balancing private property and public interest began to tilt more toward the former, which, in turn, has an impact on the way economic activities are carried out by both the public and private sectors, not to mention on the distribution of income and wealth, since much more property is held by those on the upper part of

[1] This brief discussion on property and contract law draws heavily on the analyses of Gunther and Sullivan (1997), especially pp. 494 - 505 and Atiyah (1979).

the income distribution.

In the field of contract law in the second half of the 20th century, somewhat different trends emerged. The golden age of freedom of contract was from 1770 to 1870. Thereafter, regulation and administrative laws began to limit free contracts in many areas of economic activity. Further, to protect various parties to contracts, contract law began taking into account third-party effects, imperfect information, market breakdowns, monopoly, and assymetries in power. As a result, U.S. courts increasingly recognized the importance of "reasonable expectations" over the literal terms of contract and the "sanctity of unjust contracts" was correspondingly weakened. This trend, combined with changes in liability law, has had an important effect on transaction costs, that is, the costs of making and enforcing the agreements underlying an economic transaction. It also contributed to the rise of the adversarial legalism of the U.S. regulatory system, which is discussed in Chapter 11. The impacts of such changes on the operation of the entire economy are, however, often difficult to specify.[2]

Unfortunately, in trying to foresee what will happen over the course of the coming decades, we run into the limits of responsible prediction. Much depends on the composition of the Supreme Court and on the political climate of the nation, matters that are notoriously difficulty to anticipate.

---

[2] An example of the analytic difficulties in linking the legal structure to economic results can be seen in the labor market, where U.S. employer's have lost the right to fire at will, and certain employees' rights to a particular job have been created (a trend analyzed by Olson, 1997). This legal development has gone much further in Europe. Many argue that the restrictive labor laws on the continent have created labor market rigidities, which, in turn, have been important causes of their high unemployment rates since the mid 1980s. This proposition is not, however, self-evident, and Stephen Nickell (1997) has provided some interesting data to refute it.

B. Trends in the Non-Profit Sector

In addition to data on public ownership, Panel B in Table A11.2 also shows the share of GDP originating from the non-profit sector. Following the analysis of Chapter 7, I divide this sector into two parts: membership organizations, which include clubs, unions, trade organizations, and other organizations serving primarily the purposes of their members; and other non-profit organizations, which include both "trust" and "social" organizations.

The share of GDP originating in the membership organizations did not greatly change over the period. The rising share of GDP originating in other non-profits reflects the fact that health, education, and welfare services increased faster than most other sectors, and non-profit organizations played a major part in the production of these sectors. As a share of the GDP, the U.S. appears to have the largest non-profit sector of any major industrial nation (Salamon and Anheier, 1996), primarily because in other nations many of the same services supplied by these organizations are carried out by the government.

In the private sector, as shown in Table X-11.1, the share of fixed, reproducible, tangible wealth held by non-profit organizations increased slightly, while the share held by cooperatives - at least those that are tax exempt - was very small and declining.

One last aspect of the non-profit sector deserves brief comment. In certain respects the operations of the non-profit sector resemble those of the private sector. For example, executive compensation in these "charitable" organizations, especially the largest, are roughly commensurate with those in the private sector: The president of the non-profit pension fund for teachers (TIAA) received over a million dollars a year. In other respects the operations of non-profits resemble those of government. For instance, there are few major differences in the operations of non-profit, for-profit, and local governmental hospitals, just as there

Table X-11.1: Trends in the Size of Non-Profit and Cooperative Sectors, Wealth Indicators

Private, Fixed, Reproducible, Tangible, Non-Residential Wealth, Excluding Consumer Durables

	Held directly by corporations	Held directly by persons, sole proprie-tors, and partnerships	Held directly by non-profit organizations	Held directly by tax-exempt cooperatives	Total
1950s	76.2%	16.3%	6.7%	0.8%	100.0%
1960s	74.9	16.2	8.1	0.9	100.0
1970s	74.2	16.1	8.9	0.9	100.0
1980s	74.9	16.5	7.9	0.8	100.0
1990 - 97	74.7	16.6	8.1	0.6	100.0

Note: The data come from a CD of U.S. Department of Commerce, Bureau of Economic Analysis, April 1999: Fixed, Reproducible, Tangible Wealth of the United States, 1925 - 97. Washington, D.C.: Table Tw4a.

is few major difference between the operations of private and public universities. Since a growing share of the revenues of the non-profit sector comes from the public sector, the non-profit sector increasingly appears to serve simply as an arm of government that is administratively more flexible.

C. A Final Note

As I argue at length in Chapter 11, the really important change in ownership is the "socialization of capital." The data on this phenomenon are presented in Table 11.4 in the text and further discussion here is unnecessary.

BIBLIOGRAPHY FOR EXTERNAL APPENDICES TO CHAPTER 11

Atiyah, P. S. 1979. The Rise and Fall of Freedom of Contract. Oxford: Clarendon Press.

Gunther, Gerald, and Kathleen M. Sullivan. 1997. Constitutional Law, 13th edition. Westbury, New York: The Foundation Press.

Nickell, Stephen. 1997. "Unemployment, and Labor Market Rigidities: Europe versus North America." The Journal of Economic Perspectives, 11, no. 3 (Summer), 55 - 75.

Olson, Walter K. 1997. The Excuse Factor: How Employment Law is Paralyzing the American Workplace. New York: Free Press.

Salamon, Lester M., and Helmut K. Anheier. 1996. The Emerging Non-Profit Sector: An Overview. New York: Manchester University Press.