Faculty Spotlight

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"No interest is good unless it must vest, if at all, not later than 21 years after some life in being at the creation of the interest." Although I teach the Rule Against Perpetuities and use the Socratic method, I try to infuse Property Law classes with the drama of current disputes in the field. Debates over doctrine, zoning powers, environmental protection, and housing policy make for lively classroom exchange. The courses I teach — Property Law, International Law, and a seminar called "From Marx to Markets" — touch on my main academic concerns: How does a country create private property? What property rights are essential for well-functioning markets?

Over the past decade, I have worked with governments in a dozen countries to help create land and housing markets. In Latin America, I worked for USAID to bring basic infrastructure to shantytown communities. In Bangladesh for the Ford Foundation, I researched how funds flow out from the central government and down into poor communities. While at the World Bank from 1990 to 1994, I helped develop a methodology that shows quantitatively the effect that government policies have on land and housing markets — in brief, housing policy matters more than policy-makers realize. During my years at the Bank, as an "agent of international monopoly capitalism," I also worked in Albania, Armenia, Hungary, Poland, Romania, and Russia developing the legal framework for real property rights.

This practical experience motivates my current research — which focuses on the creation of private property in the move from socialism to capitalism. Working with reforming governments, I saw that standard western property theory has some surprising gaps. Our property law — developed over centuries in response to historical peculiarities — does not offer much useful guidance for rapidly emerging property markets. When I was working in Moscow, a senior Russian official called my attention to a puzzle: privatization of some state-owned assets such as apartments was quickly creating private markets; privatization of other assets such as commercial space created mostly empty storefronts. What could the Russians do to help new entrepreneurs move out of their cold street kiosks and into retail stores? How do you create secure rights in real property? I hope my research can help plug some of the gaps in property theory and offer some useful advice for transition reformers.

My first article uses the transition experience as an accidental laboratory for thinking about property. Property theory does not explain a range of strange phenomena — such as empty storefronts in shopping-deprived Moscow — that have emerged during the early years of transition. Understanding these phenomena requires going back to the basics of property: the starting point of transition and end point toward which market reformers aim. I use the example of empty storefronts to illustrate what I call anticommons property, a type of property where multiple "owners" each hold a few sticks in the property rights bundle. More concretely, as to a single piece of commercial real estate, rights to sell may be divided among several local government agencies and enterprises; rights to receive the revenue from the sale given to other owners; rights to lease, to receive lease revenue, to occupy, and to determine use given to yet more owners. The tragedy of the anticommons emerges when privatization creates excessive rights of exclusion — owners of storefronts hold on to their initial endowment of property sticks, each excluding use by the others, and end up wasting the resource. In other words, if property rights are split up too much ex ante, people may not be able to bargain ex post to reassemble those rights into useable property.

The article has three main punch lines: First, the standard theories do not well describe the starting point for transition: what comes before private property? Second, theory does not well describe the available end points of property: what happens when property rights are oddly bundled during the transition? Third, the article concludes that the particulars of bundling property rights matters more than has been recognized in property theory and transition practice.

A second project that I am working on concerns poster law. Students place tens of thousands of posters around the Law School each year: in staircases, on walls, and on bulletin boards. Rarely, however, have formal disputes about postering arisen. Students know how far to go — and go no farther despite numerous avenues for postering deviance: plastering, blizzarding, mega-signs, or door posting. How do the informal norms and formal law of postering interact? Is poster law efficient? Is it just? What is the cutting edge of poster law? I would appreciate recollections of postering experiences from alumni posterers.

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"Michael Heller has an extraordinary, lively mind and has greatly enhanced our international program with his lively teaching and his efforts in directing the International Law Workshop series of lectures. He is a welcome new colleague!"
Michael A. Heller, J.D.
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