

Eric Freyfogle

*The Land We Share:  
Private Property Rights and  
the Common Good*

Island Press, 2003.

# property law

- property law is a social institution that changes as it continues to serve society's needs... the common good, as well as needs and desires of individual land owners.

# consider

- *sic utere tuo*, do no harm, remains a guiding principle of land use litigation;
- but courts should revive the phrase once firmly linked to it: *salus populi lex est*, the good of the people is the supreme law.

# “highest and best use”

- planning boards today serve an increasingly diverse and mobile culture; achieving agreement on the definition of “the good of the people” poses quite a challenge as core values and beliefs drift apart.

# reciprocity

- an oversimplified polarity exists in private property rights rhetoric;
- there is a need to balance the reciprocity of individual liberties with those of neighbors – both land owner rights *and* responsibilities.

# A more sophisticated approach

- to the debate is developed in *The Land We Share*;
- one which acknowledges various means by which land value is created; the importance of labor; neighbors; and community interests and needs in privately held land and natural resources.

# A more sophisticated approach

... particular interests in land ownership are discussed, such as:

- the right to exclude;
- the right to quiet enjoyment; and
- transferability of title.

# Tragedy of the Commons

- Garret Hardin's 'tragedy of the commons' is discussed, and Freyfogle challenges the argument that private ownership will induce property management that values healthy ecosystems and the long term, given well-known economic pressures.

# Tragedy of Fragmentation

- Freyfogle introduces a 'tragedy of fragmentation,' which characterizes the American landscape and refers to the separation of land parcels and jurisdictional boundaries that do not reflect the continuity and connected nature of land and natural systems.

# principles

- any land-use regulation should protect existing property owners who have invested labor in their lands...
- as opposed to protecting the rights of neighboring land owners to develop their land in a way that may be harmful to others or the public good.

# principles

- land-use regulation should treat all lands of similar character and position in time equally...
- instead of treating all landowners the same by giving them each the same density of development right regardless of the land's characteristics.

# complexity and civility

- For our future collective well-being, land owners are encouraged to adopt an ecologically-based land ethic, which values complexity, relationships, systems-thinking, land health, and a down-stream view, as espoused by Aldo Leopold and Wendell Berry.