2019

Property Attachments

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A Response to Eric A. Posner and E. Glen Weyl, *Radical Markets: Uprooting Capitalism and Democracy for a Just Society* (Princeton 2018)

INTRODUCTION

For a property scholar, the most intriguing part of Eric Posner and Glen Weyl's *Radical Markets* is its proposal for a self-assessed system of property rights. Their "common ownership self-assessed tax" (COST) would place everyone's belongings perpetually on the block at prices that the owners themselves choose (and must pay taxes on).[1] The idea of making self-assessed valuation the basis of both taxation and involuntary dispossession is not new; such mechanisms have been discussed by scholars for many decades.[2] But the Posner and Weyl proposal is unique in its breadth and in the boldness of the challenge it poses to traditional understandings of property.

In the real property context, which I will focus on here, the appeal of the COST approach and its insurmountable sticking point both come down to complementarities—or more colloquially, attachments.[3] COST promises to unlock the value currently

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1 Eric A. Posner and E. Glen Weyl, *Radical Markets: Uprooting Capitalism and Democracy for a Just Society* 30–79 (Princeton 2018).

2 See id at 55–62 (discussing the ancient roots and modern intellectual history of the approach); Daniel M. Holland and William M. Vaughn, *An Evaluation of Self-Assessment under a Property Tax*, in Arthur D. Lynn Jr, ed, *The Property Tax and Its Administration* 79, 81–115 (Wisconsin 1969) (examining self-assessed property tax proposals by Arnold Harberger, Nicholas Kaldor, and others). For some of the many scholarly treatments of the topic, see generally for example, Yun-chien Chang, *Self-Assessment of Takings Compensation: An Empirical Study*, 28 J L Econ & Org 265 (2012); Saul Levmore, *Self-Assessed Valuation Systems for Tort and Other Law*, 68 Va L Rev 771 (1982); Lee Anne Fennell, *Revealing Options*, 118 Harv L Rev 1399 (2005); T. Nicolaus Tideman, *Three Approaches to Improving Urban Land Use* (unpublished PhD dissertation, The University of Chicago, 1969) (on file with author).

3 Goods are complementary if they are more valuable when consumed together. Left and right shoes are a standard example.

lost when complementary entitlements (adjacent parcels of land, say) cannot be successfully assembled due to holdout problems. Posner and Weyl's proposal is also sensitive to complementarities between different pieces of property owned by the same person.[4] But there are other complementarities that COST ignores or disrupts. These include not just the attachments that people form with their properties over time, but also those that exist among separately owned properties that are located near each other. A homeowner's valuation of her home, for example, is deeply contingent on whether the residence next door will remain standing or will be replaced with a factory.

As I will explain, these neglected complementarities make COST unworkable as presently conceived. Nonetheless, Posner and Weyl advance property theory by spotlighting a contradiction at the heart of ownership—its capacity to both encourage and impede efficient activity. Finding the best way to manage this tension is an increasingly pressing project, and Posner and Weyl's work provides a timely catalyst.

I. PROPERTY AS MONOPOLY

Posner and Weyl frame their analysis around an axiom articulated by William Stanley Jevons: "Property is only another name for monopoly."[5] The idea is intuitive. If a person owns a unique resource, she is its sole supplier. Whether this putative monopoly gives an owner any real leverage depends, however, on two factors. The first, constructed by law, is whether the owned resource is protected by a property rule or merely a liability rule. Property rule protection, in Guido Calabresi and Douglas Melamed's framework, entitles the owner to reject any proposed transfer of the resource, unless and until she receives an offer that she wishes to accept.[6] Liability rule protection, by contrast, would allow the property to be transferred against the owner's will, at a price.[7]

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[4] See Posner and Weyl, *Radical Markets* at 64 (cited in note 1); note 21 and accompanying text.

[5] Posner and Weyl, *Radical Markets* at 41 (cited in note 1), quoting W. Stanley Jevons, *The Theory of Political Economy* xlvi (Macmillan 5th ed 1957). See also Eric A. Posner and E. Glen Weyl, *Property Is Only Another Name for Monopoly*, 9 J Legal Analysis 51, 51 (2017).

[6] Guido Calabresi and A. Douglas Melamed, *Property Rules, Liability Rules, and Inalienability: One View of the Cathedral*, 85 Harv L Rev 1089, 1092 (1972).

[7] See id. This price could be determined in any number of ways. It might be based on an objective metric like fair market value. Or it could be set in advance by the owner herself, as COST contemplates.

The second factor is whether there are good substitutes for the resource. Even though each piece of real estate is unique in a spatial sense, its owner does not command significant market power as long as there are lots of other pieces of property that will serve a buyer just as well. Maybe, however, the buyer needs this *particular* parcel and nothing else will do. That might be the case if the parcel lies along a contiguous pathway that the buyer is trying to assemble, or within the footprint of a redevelopment plan. In other words, monopoly in real property typically involves strong complementarity between what one party owns and what another party already has (or is in the process of acquiring).[8]

A. The Cost of Monopoly

When property rule protection applies *and* the property interest is one that lacks good substitutes, the owner commands a meaningful monopoly. The owner's monopoly power presents two threats to allocative efficiency. The first is that her property will not be transferred to a higher valuing user. The second is that excessive resources (including time) will be burned up haggling over the price, whether or not a deal is eventually reached.

It is intuitive that bargaining impasse and holdout dynamics can block efficient transfers. Miscalculations about reservation prices coupled with each party's efforts to claim more of the surplus can cause a worthwhile deal to fail. The risk of failure increases when the would-be buyer attempts to put together many unique entitlements, as commonly occurs in land assembly efforts. The second problem, wrangling, arises from the potentially huge bargaining range between the seller's reservation price and the buyer's valuation, which can lead to protracted struggles over the division of the surplus. These two threats to allocative efficiency can thwart valuable land assemblies or deter would-be assemblers from undertaking such projects.[9]

Although Posner and Weyl do not stress this point, urbanization has increased the economic significance of land assembly by making *patterns* of land use centrally important. To make and

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8 Although assembly problems offer the most straightforward example of complementarities, there are other ways in which complementarity becomes important. A particular parcel might be crucial to a buyer's projects not because it lies adjacent to other property of that buyer, but rather because it will enable the buyer to make use of special skills she possesses. For example, she might be a brickmaker and the land may be the only nearby source of brick-making clay, or she might be a wildlife painter and the land occupies a unique vantage point for observing a particular species.

9 See, for example, Michael Heller and Rick Hills, *Land Assembly Districts*, 121 Harv L Rev 1465, 1473 (2008).

remake patterns of land use over time, real property must be available as an input into new spatial combinations as needs change. Where ownership is scattered among many landholders, each of whom holds a veto on making any synchronized change, large-scale redevelopment becomes difficult or impossible. The result can be a substantial loss in allocative efficiency.[10]

B. The Benefits of COST

COST breaks down owners' monopoly power by stripping away one of the twin preconditions of that power: property rule protection. It replaces the owner's veto power over transactions with a liability rule, albeit a specially formulated one, which enables other parties to take the entitlement if they pay. This basic move of swapping in a liability rule for a property rule also occurs in the exercise of eminent domain. But while any liability rule solution will enable transfers that might otherwise be strategically blocked, COST's self-assessment feature promises to surgically facilitate only those involuntary transfers that *should* occur—that is, those that move the land into more valuable uses.

COST follows in a long line of self-assessed valuation mechanisms.[11] Previous iterations often focused on the self-assessment of real property for the dual purposes of property tax valuation and eminent domain compensation. A homeowner would announce a value for her home, for example. That valuation would have two consequences. First, it would determine how much property tax she would have to pay. Second, it would determine how much she would receive in compensation if her home were condemned. The mechanism elicits honest valuations only if the expected penalties for undervaluation and overvaluation are equalized.[12] For example, if the property tax rate is higher than one's personal risk of having one's property condemned, undervaluation would be expected—a prediction confirmed by experience with this method in Taiwan.[13]

Expanding the pool of potential acquirers to any willing buyer, as Arnold Harberger proposed in 1962, provides a more

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10 Posner and Weyl place resource misallocation losses in the trillions in the United States, although the source they cite for that figure does not identify monopoly dynamics as the sole culprit (as they acknowledge). Posner and Weyl, *Radical Markets* at 38 & n 7 (cited in note 1).

11 See note 2.

12 See, for example, Florenz Plassmann and T. Nicolaus Tideman, *Marginal Cost Pricing and Eminent Domain*, 7 Foundations & Trends Microecon 1, 38–98 (2011).

13 Chang, 28 J L Econ & Org at 274 (cited in note 2).

powerful motivation to accurately self-assess.[14] Posner and Weyl's approach builds on this same basic template. COST would encompass not just real property, but all forms of property: real, personal, intellectual, and intangible. The system requires owners to write what amount to call options on their goods, with the owners themselves selecting the strike prices.[15] These call options can be exercised at any time by anyone for any reason. The owner can avoid involuntary dispossession only by choosing a self-assessed valuation that lies above everyone else's willingness to pay, and backing up that valuation by paying the requisite taxes.

Significantly, the tax rates for different classes of property vary under COST based on the expected turnover rate—the probability of a buyer showing up with a higher reservation price within a certain period of time.[16] Classes of property for which monopoly power poses a great threat to allocative efficiency are taxed at higher rates, which makes it more costly for owners to hold onto their property. Tax rates are set lower for property types over which owners wield little or no monopoly power. This calibration of tax rates is designed to balance the investment incentives that come from continued possession of property against the threat of allocative inefficiency that comes from the owner's veto power over transfers.[17]

II. Property as Complementarity

Although owners can be monopolists, property is not *just* another name for monopoly. It does other things as well, as Posner and Weyl recognize when they take investment incentives into account. A more complete picture of how property works (and where it goes wrong) would equate it with a different economic concept: complementarity. Complementarity comes into play in several distinct ways, some of which COST addresses, and some of which it ignores or undermines.

A. Complements within Boundaries

Property, at its most elemental, is designed to group together resources that produce value in combination. In a real property

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14 See Posner and Weyl, *Radical Markets* at 56–58 (cited in note 1).

15 Liability rules have been frequently equated with options in the legal literature. See, for example, Ian Ayres, *Optional Law: The Structure of Legal Entitlements* 14–17 (Chicago 2005).

16 See Posner and Weyl, *Radical Markets* at 57–62 (cited in note 1).

17 See id at 59–61.

context, this usually means defining entitlements that are contiguous in space and continuous in time. Contiguity is consistent with a boundary exclusion strategy that draws a line around a "thing" and allows the owner to control access to it.[18] Continuity extends that "thingness" over time.[19] Owning the same piece of property today and tomorrow and next week and next year often lets an owner derive benefits that are larger than the sum of the individual time slices viewed in isolation.

Under COST, the owner gets to decide (in some respects) what counts as a single "thing." Posner and Weyl would allow an owner to group together any (or all) of her goods as she chooses and make their acquisition an all-or-nothing proposition. For example, right and left shoes can be valued as a unit.[20] Likewise, a landowner can bundle land and buildings, or different pieces of land, so that she is not left with a worthless subset. This design choice recognizes and accommodates certain kinds of complementarities.[21] Notably, however, COST does not allow owners to bundle assets in the dimension of time. A landowner has no way to put would-be acquirers to an all-or-nothing choice between taking her property now or leaving it alone for a fixed span of years. Dispossession can thus break up the *temporal* complementarity of property.[22]

COST's incorporation of investment incentives into the tax rate structure already responds to temporal complementarity to some degree, since returns on investment play out over time. But some temporal economies of scale are discrete or lumpy in nature, and do not involve investment in the ordinary sense. For instance, suppose Alice has just bought a home that would be several times more valuable to her if she could stay in it until her youngest child, who is now five years old, graduates from high school. She

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[18] See generally Henry E. Smith, *Property as the Law of Things*, 125 Harv L Rev 1691 (2012).

[19] See id at 1711–12 (discussing property's "persistence").

[20] Posner and Weyl, *Radical Markets* at 64 (cited in note 1).

[21] Id. For a critique of self-assessed taxation that focuses on complementarity among an owner's holdings and questions Posner and Weyl's proposed solution to this problem, see Tyler Cowen, *Should We Move to Self-Assessed Property Taxation?* (Marginal Revolution, Oct 24, 2017), archived at http://perma.cc/6WMS-MAC3, discussing Posner and Weyl, 9 J Legal Analysis (cited in note 5).

[22] Cowen makes closely related points when he observes that "your human capital and your personal plans are non-marketable, non-transferable assets that can't be put in this [self-assessed] bundle" and that there may be insufficient time to reconstruct a "perfect mesh of plans and possessions," often constructed over decades, if some or all of one's goods are suddenly confiscated. See Cowen, *Should We Move to Self-Assessed Property Taxation?* (cited in note 21).

strongly wants her children to experience continuity in their home surroundings as they grow up. But she has no way to group the dozen-odd years together and require that the full temporal set be taken at once, or not at all. She can value the home based on what it would be worth to stay the full period, but having her possession interrupted midway through remains possible—and if that happens, she will have grossly overpaid in taxes based on a complementarity that did not come to pass. It would be like making installment payments on a pair of shoes and having the vendor cancel the contract halfway through and deliver just the left shoe.

It is true, of course, that many people currently lack long-term security of possession in their homes. Indeed, Posner and Weyl suggest that COST would simply turn everyone into lessees.[23] But this is not quite accurate.[24] Lessees have far greater rights to continued possession than owners would have under COST. Even when tenants have no right to renew the lease, they are still able to temporally bundle to the extent of the lease term. The landlord cannot interrupt the tenant's possession during that term, even if the landlord's interest in the property changes hands.[25] COST thus jettisons not only the perpetual temporal bundling of ownership, but also the bundling that leases routinely accomplish.

Posner and Weyl do allude to a way in which temporal complementarities may differ from concurrent complementarities among owned things: the former kind of attachment may loosen as society stops protecting long-term possession.[26] If people know they cannot hold onto their things, they will become less attached to them in the first place. There is some support for this idea.[27] Moreover, we are moving into an era in which on-demand ar-

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23 Posner and Weyl, *Radical Markets* at 62 (cited in note 1).

24 In fact, COST creates a defeasible estate (fee simple subject to executory limitation) with the future interest held by the first person to pay the stated valuation.

25 See, for example, Joseph William Singer, et al, *Property Law: Rules, Policies, and Practices* 830–31 (Wolters Kluwer 6th ed 2014).

26 See Posner and Weyl, *Radical Markets* at 75–79 (cited in note 1) (discussing this potential shift, which they characterize as normatively desirable).

27 See Jeffrey J. Rachlinski and Forest Jourden, *Remedies and the Psychology of Ownership*, 51 Vand L Rev 1541, 1572–74 (1998) (discussing experimental results on the impact of the legal remedy on the endowment effect); Ian Ayres and Eric Talley, *Solomonic Bargaining: Dividing a Legal Entitlement to Facilitate Coasean Trade*, 104 Yale L J 1027, 1102 (1995) (suggesting endowment effects might be weaker in a liability rule regime). See also generally Jonathan Remy Nash and Stephanie M. Stern, *Property Frames*, 87 Wash U L Rev 449 (2010).

rangements are beginning to eclipse the long-term possessory interests associated with traditional ownership. This suggests that the temporal complementarities embodied in property ownership may be breaking down.[28]

Nonetheless, existing attachments to particular pieces of real property, especially the home, are unlikely to weaken without an institutional structure in place that offers a good substitute for spatial continuity. Staying in the exact same physical location may be less important, for example, than remaining in the same community, or in a similarly configured community elsewhere. This observation points to a larger and less malleable obstacle in the picture. The next Section explains.

B. Complements beyond Boundaries

We have already seen how complementarities translate into monopoly power. The logic is straightforward. If parcels *A*, *B*, *C*, *D*, and *E* must all be consolidated for a path or for redevelopment at a particular scale, then the entire project is at the mercy of each of the parcel owners. Owner *E*, for example, might refuse to sell unless she is given the lion's share of the surplus. She will be in a strong position if she is the last to agree, but every other owner will also want to be in that same position, and endless maneuvering is likely to ensue. Under COST, a developer can simply acquire the full set of alphabetic parcels at once by paying each owner her self-assessed valuation.

This example works seamlessly if the parcels are not complementary to each other when they are individually held, and only become complementary when they are assembled. But what if *A*, *B*, *C*, *D*, and *E* are also close friends who frequently meet to play Scrabble and eat alphabet soup? *B*'s valuation of his property might be $400,000 if all of his neighbors remained in place, but plummet to $100,000 if his was the last home left standing on the block. *B* could pay taxes for years based on his home's value as part of Alphabet Row, and then find himself stuck with a home worth only a fraction of its former value if the other homes are acquired and his is not. He could at that point change the valuation of his home to $100,000. But most of what *B* was trying to protect with his earlier valuation was already taken away without compensation when the developer acquired parcels *A*, *C*, *D*, and *E*.

[28] See, for example, Lee Anne Fennell, *Property beyond Exclusion*, 61 Wm & Mary L Rev *20–30 (forthcoming 2019), archived at https://perma.cc/5ED3-7PU6.

We can concretize the attachments among the properties in this story as a warm cloak of neighborliness that has now been pulled harshly from *B*'s shoulders, devaluing his home by $300,000, even though he remains in possession. The developer who acquired *A*, *C*, *D*, and *E* underpaid for what she took. Even if *A*, *C*, *D*, and *E* had identical valuations to *B*, and the developer had to compensate each of them for the portion of their valuations attributable to the neighbor-cloak, she did not pay for the share attributable to *B*. It is not just a question of unfairness to *B*. If an acquirer can pick and choose properties from a set that already exhibits complementarities, the results may be inefficient. Acquisitions may take place that would not occur if their full cost were taken into account.[29]

The problem with attempting to individually value property that is entwined with other entitlements under separate ownership closely resembles a core problem with Henry George's land tax:[30] it was impossible to disaggregate the value that an individual owner added to the land from that which was added by other nearby land uses and users. Posner and Weyl discuss this difficulty with the Georgist approach using a vivid example:

> Consider, for example, the Empire State Building. What is the pure value of the land beneath it? One could try to infer its value by comparing it to the value of adjoining land. But the building itself defines the neighborhood around it; removing the building would almost certainly change the value of the surrounding land. The land and the building, even the

[29] A variant of this problem already exists under the current property regime when, for example, a developer pursues a "divide and conquer" strategy in which some neighbors are bought out early, making the neighborhood less attractive for those who remain. See generally Gideon Parchomovsky and Peter Siegelman, *Selling Mayberry: Communities and Individuals in Law and Economics,* 92 Cal L Rev 75 (2004). But it is much harder for neighbors to coordinate to resist this strategy when each lacks the power to refuse a sale, as they would under COST. I thank Daniel Hemel for raising the theoretical possibility that neighbors could coordinate their valuations under COST through a complex set of contingent contracts and side payments.

[30] See Henry George, *Progress and Poverty: An Inquiry into the Cause of Industrial Depressions and of Increase of Want with Increase of Wealth; The Remedy* 227–60 (Robert Schalkenbach Found 50th anniv ed 1940) (describing the land tax proposal). Posner and Weyl treat George's ideas as antecedents for their own, while noting the practical problems that his land tax presented. See Posner and Weyl, *Radical Markets* at 42–45 (cited in note 1). For an illuminating exploration of difficulties associated with the land tax methodology, see generally Donald G. Hagman, *The Single Tax and Land-Use Planning: Henry George Updated*, 12 UCLA L Rev 762 (1965) (chronicling the tax's fictional implementation in New Chicago, Mars).

> neighborhood, are so tied together, it would be hard to figure out a separate value for each of them.[31]

As Posner and Weyl observe, the "[t]he same [valuation problem] would hold true for many neighborhoods, defined less by their purely physical location than by many other factors, such as the look and feel of their architecture and the relationship among buildings, streets, parks, and paths."[32] Yet Posner and Weyl do not seem to notice the profound implications that this same interdependence among properties and surrounding amenities carries for the COST approach.

Shifting to self-assessment and allowing people to value their land and buildings jointly does not solve the problem.[33] It is inherent in the interdependence *among* properties. Suppose I live down the block from the Empire State Building and have a great view of it. My property might be worth half as much, or even less, if the Empire State Building were not there. But I have no idea whether the developer thinking of carrying out a forced purchase of my property would also be acquiring the Empire State Building at the same time, much less whether she has in mind to destroy it, leave it standing, or build something in front of it that will block my view. I cannot set a meaningful value for my property that will lead to appropriate tax levels when part of what I am valuing involves the fate of someone else's property.

There is a practical and political problem that accompanies this fundamental difficulty: a vast superstructure of land use controls has already been erected to address interdependence among separately owned properties, from nuisance law to zoning to private covenants. While these controls are flawed and often directed at improper ends, they comprise collective property entitlements effectively held by the community.[34] It does a developer or other acquirer no good to assemble land if it cannot be put to the desired use. Communities could thus defang the COST scheme through land use controls that make acquisition pointless.[35] It is possible to imagine schemes through which the land use rights could

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[31] Posner and Weyl, *Radical Markets* at 45 (cited in note 1).

[32] Id.

[33] Self-assessment might, however, reduce some of the administrative hassle that Posner and Weyl flag, or at least disperse it among the population rather than concentrate it on officials charged with conducting valuations. See id at 44–45.

[34] See Robert H. Nelson, *Zoning and Property Rights* 1, 15–18 (MIT 1977).

[35] See Katrina Wyman, *Property in* Radical Markets, 86 U Chi L Rev Online 125, 130–34 (this symposium) (discussing "public law veto points" that would prevent the sorts of land assemblies Posner and Weyl envision, even if private property rights were modified through COST).

themselves be bought and sold, as scholars have previously explored.[36] But without explaining how and whether land use controls would be valued, acquired, or overridden, the COST proposal is quite incomplete. Any method of dealing with these collective land use rights must confront both the political power supporting them and the complementarities to which they respond.

Unlike temporal attachments to property, which might weaken as societal arrangements change, complementarities *among* parcels are here to stay. And they are increasing in economic significance as urbanization proceeds apace. Indeed, the same social and economic circumstances that produce the holdout problems that make COST valuable also make individual valuation problematic. Maximizing the value of real estate as a resource under modern conditions requires untangling which set of competing complementarities among properties is most valuable. As a result, efforts to overcome problems of insufficient assembly (that is, efforts to exploit potential complementarities) must be sensitive to preexisting complementarities.

There are some ways to proceed. One possibility is to add put options to the mix, so that an owner like *B* in the example above could force a developer to take his property along with that of his neighbors.[37] Alternatively, acquisition might be permitted to proceed only by means of predefined take-it-or-leave-it blocks.[38] Such approaches require some coordinating process that determines which adjacent interests or properties will be part of the all-or-nothing set.[39] It thus diverges from the elegant simplicity of every owner valuing her own property. But if value creation is not an atomized affair, value assessment cannot be atomized either.

[36] See generally, for example, Peter F. Colwell, *Tender Mercies: Efficient and Equitable Land Use Change*, 25 Real Estate Econ 525 (1997); Marion Clawson, *Why Not Sell Zoning and Rezoning? (Legally, That Is)*, 2 Cry California 9 (1966).

[37] See Lee Anne Fennell, *Forcings*, 114 Colum L Rev 1297, 1356 (2014).

[38] See Lee Anne Fennell, *Fee Simple Obsolete*, 91 NYU L Rev 1457, 1482–85 (2016).

[39] This requires, in turn, some kind of collective decisionmaking apparatus, whether public or private. For one approach to collective land assembly decisions, see generally Heller and Hills, 121 Harv L Rev (cited in note 9). Quadratic voting, another proposal contained in Posner and Weyl's book, might be employed in some fashion. See Posner and Weyl, *Radical Markets* at 80–126 (cited in note 1); Wyman, 86 U Chi L Rev Online at 133 n 42 (cited in note 35). For an adaptation of the quadratic voting approach to community decision-making about public goods, see generally Vitalik Buterin, Zoë Hitzig, and E. Glen Weyl, *Liberal Radicalism: A Flexible Design for Philanthropic Matching Funds* (Working Paper, Dec 31, 2018), archived at http://perma.cc/HDA9-CLBK.

CONCLUSION

The best argument for the COST approach is also the best argument against it: complementarities. While the proposal would enable new and valuable combinations of entitlements, it ignores other attachments of equal importance. Urbanization is increasing both the bite of monopoly power and the significance of interactions among properties. It has become more worthwhile to break through owner vetoes, but owners are less able to provide atomized, context-free valuations. Instead, more and more depends on what happens outside the owned parcel.

Meanwhile, temporal complementarities, although probably of diminishing economic significance, remain one of the prime justifications for the institution of property. Until people's attachments to their properties loosen, COST will be a political impossibility. One of the most promising avenues for reducing attachments to specific pieces of real property would involve shifting the attachment to a network or community capable of providing a reliable stream of benefits. For example, homeowner Alice might be less concerned about displacement from her home if she could be assured of being able to stay in the same community, with her kids in the same schools. Such a result is well within our grasp.[40] But it cannot be reached through a system of forced transfers that ignores preexisting community-level complementarities.

The COST proposal's greatest strength lies in its capacity to spark a much-needed conversation about the nature of property rights. By highlighting the tension between investment incentives and allocative efficiency, Posner and Weyl reveal a fault line built into ownership's present structure, one that carries great and growing economic significance, and that is rapidly becoming too expensive to ignore. Their insights can help us respond creatively to the essential challenge of remaking property for modern conditions.

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40 Existing models of land readjustment, common in a number of countries, can preserve the ability of residents to remain in a community by granting them property interests of equal or greater value following land redevelopment. For background on this approach and its many variations, see generally Yu-Hung Hong and Barrie Needham, eds, *Analyzing Land Readjustment: Economics, Law, and Collective Action* (Lincoln Institute of Land Policy 2007).