Economic Perspectives on Adverse Possession

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Land Invasions and Supplementary Title
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Advantages of Supplementary Title:
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- Encourage productive use of land
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- Clear Titles
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- Encourage productive use of land
- Clear Titles
  - after the time period is elapsed, the occupant knows he owns the land
  - he is encouraged to develop it
  - he can obtain credit
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- Avoid displacing occupants who have emotional and cultural ties to the land
“Kink” in typical utility function
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A is title holder
B is occupant
"Kink" in typical utility function

Victory for A during year #1 would result in:
“Kink” in typical utility function

Victory for B during year #1 would result in:
“Kink” in typical utility function

Victory for A during year #15 would result in:
“Kink” in typical utility function

Victory for B during year #15 would result in:
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- Encourage title holders to bring suit to evict occupants while the evidence is still fresh
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- Encourage productive use of land
- Clear Titles
- Avoid displacing occupants who have emotional and cultural ties to the land
- Encourage title holders to bring suit to evict occupants while the evidence is still fresh
  - promotes prompt and accurate resolution of disputes
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Disadvantages of Supplementary Title -- in Central America:
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- Punish title holders who, through no fault of their own, have been unable to oust squatters
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- Encourages organized groups of “land invaders”
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- Encourages organized groups of “land invaders”
  - violent confrontations between owners and invaders
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- Discourages landowners from leasing their land -- for the same reason
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Reduces productive use of the land
Land Invasions and Supplementary Title

Goal: Identify a system for granting supplementary titles that will maximize the advantages and minimize the disadvantages
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(1) uses the land openly, exclusively, and continuously
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wrongful occupant of land obtains full ownership rights if he
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(2) for 10 years
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(3) hostilely and with a “claim of right”
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wrongful occupant of land obtains full ownership rights if he

(1) uses the land openly, exclusively, and continuously

(2) for 10 years

(3) hostilely and with a “claim of right”
  • without permission
  • believing or claiming that the land is his
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wrongful occupant of land obtains full ownership rights if he
(1) uses the land openly, exclusively, and continuously
(2) for 10 years
(3) hostilely and with a “claim of right”
(4) some states also require payment of taxes
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- “tacking” of successive periods of occupancy permitted
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Typical supplementary-title system in the United States:

- required period shortened to 5 years if occupant has “color of title”
- statute “tolleed” (i.e., suspended) if owner suffers from a disability
- “tacking” of successive periods of occupancy permitted
- doctrine of “relation back” makes the occupant the owner as of the time he entered
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Typical supplementary-title system in Central America:

- a good-faith occupant of land obtains full ownership rights if he:
  - (1) uses the land openly, exclusively, peacefully, and continuously
  - (2) for 10 years
  - (3) with an apparently valid title
  - (4) pays taxes
  - (5) petitions a court for issuance of supplementary title
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Typical supplementary-title system in Central America:

- required period shortened to 30 years if occupant lacks “color of title”
- “tacking” of successive periods of occupancy permitted
- in most countries, if the original registered owner ever appears, the occupant must surrender the land
- in some countries, the total amount of land is limited
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Net result:

- Supplementary Title is rarely used in Central America
- Persons who do acquire supplementary title have difficulty obtaining credit or developing the land
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Proposal: Alter the Central-American supplementary title statutes:

(1) Shorten the time periods
   5 years for good-faith occupancy
   10 years for occupancy without good faith

(2) Titles are cleared after that time
    supplementary title is as good as ordinary title

(3) Suspend the time period if either:
    title holder is disabled
    title holder files notice of intent to dispute the claim
    title holder files notice that occupancy is permissive