

PHL 310  
Environmental  
Ethics

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Week Two

# Pollution

- Growing up in Southern California
- Living in La Grande
  - Wood smoke
  - Field burning
- Living in Portland
  - General air quality
  - Superfund site
  - Air toxics
  - Lead contamination
- World as a whole

# Economic Analysis

- Economics as the study of (scarce) resource allocation
- The economic implications of environmental ethics
- Environmental economics
- The economic implications of pollution
- Externalities (social cost)

# Law and Economics

- Really begins in 1960s
  - Ronald Coase
  - Guido Calibrasi
  - Richard Posner
- Criminal law
- Regulatory law
- Tort (nuisance) law
- Efficient pollution

# Efficiency

- Pareto superiority
- Pareto optimality
- Kaldor-Hicks efficiency
- Wealth maximization
- Marginal cost = marginal benefit
- Efficient allocation of resources
- Efficient pollution

# Ronald Coase

- 1910 - 2013
- London School of Economics
- University of Chicago
- British career
- Early American career
- University of Chicago
- Nobel Prize
- “The Nature of the Firm” (1939)
- “The Problem of Social Cost” (1960)



# Some Jargon

- Costs
  - Private costs
  - Social costs
  - Transaction costs
- Externalities
- “Internalizing externalities”
- Pigovian tax
  - Who is responsible?
- Reciprocal causation

# Coase's Examples

- English case law
- American case law
- Assumptions by judges
- Assumptions by Pigou
- Not highly mathematical
- Nuisance law
- Coleman's example



	Marginal Profit to Rancher	Marginal Damage to Farmer
Cow 1	\$50	\$10
Cow 2	\$40	\$20
Cow 3	\$30	\$29
Cow 4	\$20	\$40
Cow 5	\$10	\$49
Cow 6	\$0	\$57

# Efficient Number of Cows?

- Give the right to the rancher
- Give the right to the farmer
- Pigovian tax
- Marginal Cost = Marginal Benefit
- Assume perfect information (no transaction costs)
  - Give the right to the rancher
  - Give the right to the farmer
  - Suppose they marry

	Marginal Profit to Rancher	Marginal Damage to Farmer
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# Some Implications

- What Coase said about his work
- No such thing as perfect information
- Doesn't matter from the perspective of social cost who gets the right
- Matters a lot to the rancher
- Matters a lot to the farmer
- What do we do in the real world?

# Law & Economics After Coase

- The always are transaction costs
- The farmer and the rancher
- Calabresi — cheapest cost avoider
- Calabresi & Melamed
  - A new look at reciprocity
  - Property rules, liability rules, inalienability
- Posner — law as market mimicker

# Assumptions of far

- Farmer-ranch scenario
- Humans are rational actors
- What we value can be monetarized
- Only two parties affected
- Only profits and losses matter
- Zero transaction costs
- All of these are problematic

# What Is Law?

- Natural law
  - Religious
  - Secular
- Legal positivism
  - A system of rules
  - Democracy
  - Role of judges
  - Hard cases
  - Discretion
  - Common law
- Legal realism

# Legal Realism

- Legal actors
- Judges
- Biases, prejudices, political and moral commitments
- Legal decisions are made by people
- The law simply is the behavior of legal actors (judges)
- Critical legal studies

# Kennedy's Nuisance Case

- Presupposition of existing law
  - Pollution is illegal
  - Injunctions only remedy
- Residents would pay 10
- Factories would ask 20
- Under Coase
- Transaction costs
- Under Kaldor-Hicks
- No liability
- Equity questions up to legislature
- Damage remedy?
- Cost of litigation
- Indeterminacy
  - Damages or no liability
  - Tverskian cognitive bias
  - Not on/off decisions
- Ideology of courts



# Big Picture Concerns

- Values
  - Respect for precedent
  - Fairness
  - Justice
  - Wealth?
- Distribution
- Kennedy's radical liberalism

# Jeff's Take

- Of course economic affects are relevant to environmental policy and law
- Law and economics is a valuable way of thinking about the law
- Concerns about neoclassical economics and law and economics
- Distributional concerns
- Environmental policy must be just, not just efficient