

## **Notes on Liability for Harm or Restitution for Benefit**

In a world of zero transaction costs, the distinctions between harm and benefit and punishment and reward disappear. This is the case when an individual witnesses a crime. Two different cases may apply on this scenario. The government may have a \$100 reward for reporting the crime or it could have a \$100 fine (assuming 100% probability of getting caught) for not reporting the crime. Either way, not reporting will yield a \$100 loss. This is true for the case of the \$100 reward because the witness loses his chance of having the \$100 reward in his possession because of not reporting. On the other hand, if a fine is instead imposed for sure for not reporting, the individual also loses \$100.

## **Notes on the Takings Clause and Compensation for Regulation**

Government buying a property is not the same as imposing regulation. The government can purchase the property (with just compensation, or else it is a taking) at its real estate value. However, any regulation imposed on a property does not have to be compensated, especially if the regulation is based on the negative externalities produced by such properties. This is the exact reasoning for the *Miller v. Schoene* (1958) case in which Cedar tree owners are ordered to cut down their Cedar trees due to the damages they impose on apple orchards.

Why is it that regulation on negative externalities need not be compensated? This is due to the fact that compensation for these is very costly and since the harm of the regulation is much less than the benefit to society, compensation is not needed. Hence, regulation is imposed on negative externalities to achieve efficiency in allocating rights. A zoning ordinance is an example of a regulation to achieve efficiency. Relevant cases involve brick yards and quarries that are ordered to be shut down due to their proximity to cities.

There are, however, properties that exude positive externalities to society. For instance, buildings that attract tourists are usually deemed as landmarks. These buildings are renowned for their architecture, history, and/or religious significance. Once officially proclaimed as landmarks, these buildings need to be preserved (and cannot be altered even for more beneficial purposes). In anticipation of this event, owners of these buildings may try to ruin them or alter them right away such that public officials do not recognize them as landmarks anymore. In addition, to avoid the title of landmark, future building plans avoid making their buildings as unique and architecturally-refined as possible. Hence, all these arguments pertain to the reduction of positive externalities that are associated with these types of structures. In order to reduce such disincentives, there should be some sort of compensation for these buildings. As of the present, there are not much, if at all.

Do not, however, associate this to takings. Private property, if seized for public use, is acquired involuntarily but must have a corresponding compensation. This follows from what is enforced by the law.