

INDEX

abnormality 61 absolute property rights 68 abuse of rights 61, 62, 88-91 actor heterogeneity 298-301 ad coelum rule 73 adverse possession 256-8 affirmative asset portioning 194, 195 affordability of housing through unbundling of rights and subsidies 142-3 agency 167, 192, 197 Aghion, Philippe 239 Alchian, Armen 188, 192 Alexander, Gregory 27, 55 aliens: restrictions on ownership of property 252 ambiguity 189, 202 American Convention on Human Rights 258, 263, 287 amortization 74 appropriation of property see expropriation of property arbitration 62, 66 Aristotle 295 Armour, John 196-8, 201 Arruñada, Benito 32 asset heterogeneity 301–4 asset portioning 194-6, 209 Atiyah, Patrick 64 Atlantic Yards project 223-5 Audio Home Recording Act (AHRA; 1992) 72 Austin, John 15, 63 Austria 253, 306 autonomy 290, 292, 295 Ayres, Ian 31

Bainbridge, Stephen 190, 283 bankruptcy/insolvency 41 eve-of-insolvency transaction 198 lowering costs of 144-5 prevention of 144 reorganization in 238 Barzel, Yoram 69, 106, 193 Bebchuk, Lucian 239 Belarus 248 Bentham, Jeremy 14, 31, 63 Berle, Adolf 9, 45, 179-81, 182, 183, 185, 198, 201, 207, 212 Berne Convention for the Protection of Literary and Artistic Works (1886) 252Bernstein, Lisa 65, 80 best efforts 67, 106 bilateral incentives behind public commons 10, 134-6 bilateral investment treaties (BITs) 259-62, 268, 274-5, 308-11 challenge of BITs: from investment to property 284-9 evolution beginnings 276–9 functions of BITs 279-84 present situation 275-6 property protection and actor heterogeneity 298-301 asset heterogeneity 301-4 cultural heterogeneity and concept of property 289-98 horizontal legal norm heterogeneity 305-8 vertical legal norm heterogeneity 304 - 5



340 INDEX

Blackstone, William 13, 68 bonding assets 194 Boston: Dudley Street Neighbourhood Initiative (DSNI) 221–2 bottom-up institutions 77 bottom-up private ordering 78-81 boundaries of the firm 186, 187, 191 Brazil 245 breach of faith 75 Bryant Park 130-1 Build-Operate-Transfer (BOT) contracts 107 bundle of rights concept 2, 48, 68, 186, 191 'disintegration of property' and 28-30 political version of 26-8 business corporations see corporations **Business Improvement Districts** (BIDs) 130-1 Büthe, Tim 283 Calabresi, Guido 16 Canada 262, 288 capitalism 25, 185 Carl Schurz Park Association 127-8 Castle Coalition 215 categorical imperative 22 chaos 202 China 56-7, 244, 251, 259, 270, 276, 296-7, 303 Claeys, Eric 48 clarity: not synonymous with exclusion 51 Clarke, Donald 297 Clinton, Hillary 244 club goods 120 Coase, Ronald 16, 30, 31, 32, 187, 191, 192, 203, 209, 226, 230 coercion 190 Cohen, Felix 182 Cohen, Morris 16, 25, 181, 182, 184, 207 collectivism 295 ComCom 130 commodity, property as 27 Common Interest Communities (CICs) 86-8, 108, 118, 146, 159, 163, 164-6, 173

as residual claimant 109-10 controlling commonly-owned assets 110 controlling privately-owned assets 111-13 common property regimes 3, 8, 97, 98, 99, 153 land assembly as anticommons setting 219-26 for-profit private development projects 222-6 non-profit private development projects 220 public projects 219-20 limited common property 205 private-common property mixed regime 108 Renewing Kibbutz 108, 114-18, 147, 148, 162, 171 see also Common Interest Communities (CICs) public-common property mixed regime 118-20 bilateral incentives behind public commons 134-6 over- and under-inclusiveness of current law 137-9 possible tensions between 'public' and 'commons' 136-7 providing mixed solutions for public commons 139-40 public commons in public spaces 125 - 34'public' in local public spaces 120 - 5community 4, 8, 153-4, 178 definitions 154-6 territorial communities 156-60 intentional communities 160-4, 169, 170-2planned communities 86-8, 159, 163, 164-6, 173-4 see also Common Interest Communities (CICs) Property Headwind/Tailwind/ (Near) Zero-wind 167-9 spontaneous communities 157, 166-7, 174-8



INDEX 341

Community Development Block Grant (CDBG) 133 Community Development Corporations (CDCs) 167 Community Gardens 132-4 Community Land Trusts (CLTs) 140-2, 147, 167 structural and institutional features affordability through unbundling of rights and subsidies 142-3 credit mediation 143-4 lowering costs of insolvency 144-5 prevention of insolvency 144 compensation, eminent domain and 216, 228-40 corporate governance 233-5 general design considerations 229-32 hybrid regime 231 landowners-turned-shareholders' perspective 235-40 market-based just compensation 229 piggybacking on existing law 230-1 special government allocation and tax aspects 232 conditional sales 80 confiscation of property see expropriation of property Confucius 295 consent 203 eminent domain and 216 constitutions 288 South Africa 248-9 United States 61, 76-7, 123, 175, 215 consumption property 179, 180, 182 content-filling, top-down 81-3 contracts 41, 65, 208, 210 Build-Operate-Transfer (BOT) 107 incompleteness and see incompleteness Private Finance Initiative (PFI) 105, theory of the firm: from contract to property 186-7 Armour and Winchop on joint, sequential ownership 196-8 exploring proprietary nature of

Hansmann and Kraakman on asset portioning 194-6 'nexus of contracts' and its discontent 187-91 Williamson and Hart on vertical integration and residual control 192 - 3control right to exclude versus separation of ownership and control 199-203 vertical authority versus horizontal governance 203-7 why property structure does not impose control 45 China example 56-7 clarity not synonymous with exclusion 51 limits of value pluralism 52-5 ownership could be relative right 52 property is not only about ownership 49-50 property regimes go beyond private title 50-1 property structure accommodates normative choice 49-57 resource typology as effective benchmark 55-6 rise of new essentialism 46-9 Cooperative Kibbutz 113-14, 116, 148, 161, 170 copyright 70-1, 200 new technology and 72-3 Copyright Act 70 corporate social responsibility (CSR) 185 corporations 4, 5, 8, 9, 40, 179-86, 208-13, 302 challenging property theory 198-9 organizational structure as statusbased stratification 207-8 right to exclude versus separation of ownership and control 199-203 vertical authority versus horizontal governance 203-7 ownership 52 shareholders 4, 181, 197, 203-5, 208,

210, 211, 212

the firm 191-8



342

Cambridge University Press 978-1-107-03538-6 - The Construction of Property: Norms, Institutions, Challenges Amnon Lehavi Index More information

INDEX

corporations (cont.) Dworkin, Ronald 34, 35 stakeholders 186, 210 dynamism: institutions and dynamism theory of the firm: from contract to in property 59–62 property 186-7 Armour and Winchop on joint, Easterbrook, Frank 189 sequential ownership 196-8 economic property rights 69 exploring proprietary nature of economics the firm 191-8 law and economics 2, 7, 16, 24, 31 Hansmann and Kraakman on property in 14-15, 24, 30-3 asset portioning 194-6 right/value distinction 32, 33-8 'nexus of contracts' and its egalitarianism, public spaces and 121-3 discontent 187-91 Egger, Peter 283 Williamson and Hart on vertical Egypt 277 integration and residual control Eisenberg, Melvin 190, 191 Ellickson, Robert 42, 145, 146 192 - 3embeddedness 290, 292, 294, 295 see also Special Purpose Development Corporations eminent domain 44, 214-17 compensation 216, 228-40 corruption 243 corporate governance 233-5 credit mediation 143-4 general design considerations critical legal theory 2, 26, 185 229 - 32Cuba 277 hybrid regime 231 culture landowners-turned-shareholders' cultural heterogeneity and concept perspective 235–40 of property 289-98 market-based just compensation property rights protection and 314–15 custom 62, 83-6, 104 piggybacking on existing law 230-1 special government allocation and Dagan, Hanoch 53 tax aspects 232 Dalhuisen, Jan 80, 299 incompleteness and 75-7 De Soto, Hernando 32, 269, 292, 293 land assembly 216 debt crisis 281 for-profit private development defensive asset portioning 194 projects 222-6 delegation 61, 103 Kelo case 214-16, 217-19, 225, 235 democracy, public spaces and 123-5 land assembly as anticommons Demsetz, Harold 60, 98, 145, 147, 188, setting 219-26 192, 269 non-profit private development projects 220 dependency theory 280 public projects 219-20 Detroit 175 Digital Millennium Copyright Act proposed mechanism (DMCA) 71 reconceptualizing taking as discretion 107 incorporation 226-7 discrimination 302 restructuring just compensation 'disintegration of property' 28-30 as a financial option 228-40 division of labour 28 Special-Purpose Development Dodd, E. Merrick 185 Corporation (SPDC) 217, 227-40 Dudley Street Neighbourhood uncoupling taking and just Initiative (DSNI) 221-2 compensation 226



INDEX 343

empirical evidence 14 fragmentation bilateral investment treaties (BITs) enforcement, selective 197 Engels, Friedrich 24 and 306, 308 entity property 198 structural over-fragmentation 268 Environmental Protection Agency 221 fraudulent convenience law 198 Epstein, Richard 48 functionalism 65 essentialism 186, 208 future uses, incomplete allocation of new essentialism 2, 5, 46-9, 185, 199, 71 - 3200, 207, 213 game theory 14 estate system 201 ethnic-religious communities 161 gas fields 73 European Convention on Human general rights 19 Germany 275, 276, 303 Rights 9, 255-8, 287 European Union 253-5, 267, 276, 306 Gillette, Clayton 79 eve-of-insolvency transaction 198 Giuliani, Rudy 135 exclusion 46, 47, 49, 50, 182, 207 globalization 4, 9, 79, 245-52, 265-6, clarity not synonymous with 274, 286, 299 exclusion 51 current gaps in cross-border land law right to exclude versus separation of institutional incompleteness ownership and control 199-203 266 - 8expropriation of property 256, 277, no single blueprint for local 286, 303 reform 269-71 see also eminent domain structural over-fragmentation 268 externalities, public spaces and 120-1 growing effects of extra-national systems 252 fairness 66, 212, 303 bilateral investment treaties see bilateral investment treaties bilateral investment treaties (BITs) and 285 (BITs) fair access 71 sub-society rights 262-5 fair use 56, 60, 61, 70-1, 303 supranational conventions and federalism 262 institutions 252-9 fee simple absolute 202 land law as national construct 9, Fennell, Lee 146 245-52 feudalism 25, 183, 184, 207, 246 property in land as human right firms see corporations 271 - 3Fischel, Daniel 189 Goldschmidt, Chanan 292, 293, 312 floating charges 80 good faith 62, 66, 67, 79, 80, 83-6, food crises 243 106, 299 governance 46, 282, 289 foreigners: restrictions on ownership of property 252 good governance principles 245 Special Purpose Development Forest City Ratner Companies (FCRC) 223-5Corporations (SPDC) 233-5 formalism 15 unified 193 new formalism 63-4, 185 vertical authority versus horizontal form/substance debate governance 203-7 green burials 225 new formalism 63-4, 185 rules versus standards in legal theory Grev, Thomas 28, 29 64 - 7Grosse, Robert 283



344

Cambridge University Press 978-1-107-03538-6 - The Construction of Property: Norms, Institutions, Challenges Amnon Lehavi Index More information

INDEX

Hansmann, Henry 194-6 individualism 295 Hart, H. L. A. 19, 34, 35 informal ordering 42 Hart, Oliver 193, 194, 196, 203, 239 informal user groups: McCarren Park Hegel, Georg Friedrich 16 Moms 126-7 information hierarchies 227 Hillery, George 155 costs 189 Ho, Peter 270 propertization of information Hohfeld, Wesley Newcomb 1, 26, 188 resources 99 Honoré, Tony 48 innovation 70 horizontal governance 203-7 insolvency see bankruptcy/insolvency horizontal legal norm heterogeneity institutions 3, 4, 8 305-8 capacity 92-3 dynamism in property and 59-62 housing 140, 220-2 see also Community Land Trusts institutional incompleteness 266-8 institutional lessons of property (CLTs) human ecology 156 standards 91 human rights established institutional capacity American Convention on Human 92 - 3Rights 258, 263, 287 external constraints 93 European Convention on Human homogeneity 91 Rights 9, 255-8, 287 incompleteness 91 property in land as human right 271-3 institutional choice does not United Nations Human Rights impose consent 93 Council 259 scale of effect 92 legal standards and institutional hybrid regimes see mixed (hybrid) property regimes choice 'custom,' 'good faith' and 'trade usage' 83–6 in rem and in personam relations 1, 39 incentives: bilateral incentives behind 'normalcy' in nuisance, 'abuse of rights' doctrine 88-91 public commons 134-6 incidents of ownership 48 'objectionable conduct' and incompleteness 60, 61, 91, 102, 106, 'reasonableness' 86-8 193, 298 New Institutional Economics (NIE) 2, 15, 31, 192, 289 institutional incompleteness 266-8 towards an institutional analysis of legal standards in property and 67-9 standards 77-8 incomplete allocation of future bottom-up private ordering 78-81 uses 71-3 top-down content-filling 81-3 incomplete delineation of private intellectual property rights 56, 252, 292 copyright 70-1, 200 overlapping uses 69-71 incomplete rights and regulation new technology and 72-3 patents 301 intentional communities 160-4, 169, incompleteness and eminent

interdependence 290

(IOLTA) 37

interdisciplinarity study of property

Interest on Lawyers' Trust Accounts

domain 75-7

indigenous peoples 263-5, 266, 300,

INCOTERMS 79

independence 290

304-5

India 276



INDEX 345

International Centre for Settlement of	Klein, Daniel 26
Investment Disputes (ICSID)	Kraakman, Reinier 194-6
277, 309	
International Commerce Commission	land assembly 216
(ICC) 79	as anticommons setting 219–26
International Monetary Fund 269, 281	for-profit private development
International Property Rights Index 32,	projects 222–6
312	non-profit private development
internationalization see globalization	projects 220
interpersonal relations, property as 6,	public projects 219–20
53, 55	Kelo case 214–16, 217–19, 225, 235
investment	land grabbing 243–6, 253, 260, 285
	land law 265–6
bilateral investment treaties see	
bilateral investment treaties	current gaps in cross-border land law
(BITs)	institutional incompleteness
multilateral agreement on	266-8
investment (MAI) 308	no single blueprint for local
Iran 277	reform 269–71
Israel 163, 164-6	structural over-fragmentation 268
Cooperative Kibbutz 113-14, 116,	growing effects of extra-national
148, 161, 170	systems 252
Jewish Ultra-Orthodox	bilateral investment treaties see
communities 172	bilateral investment treaties
minorities 171	(BITs)
Renewing Kibbutz 108, 114-18, 147,	sub-society rights 262–5
148, 162, 171	supranational conventions and
	institutions 252–9
James, William 289	national construct, as 9, 245-52
Jefferson, Thomas 251	property in land as human right
Jensen, Michael 187, 188	271–3
Jewish Ultra-Orthodox communities	law 29
160, 162–3, 170, 172	land law see land law
joint ownership 196-8, 205	law and economics 2, 7, 16, 24, 31
judicial activism 267	law and society 7, 24
justice 19	law merchant see lex mercatoria
,,	right/value distinction in 32, 33–8
Kant, Immanuel 20, 22-3	leases 80
Kaplow, Louis 65	legal norm heterogeneity
Katz, Avery 66	horizontal 305–8
Katz, Larissa 47, 90	vertical 304–5
Kazakhstan 248	legal pluralism 308
Kelsen, Hans 15, 63	legal property, structure of see
kibbutz movement	structure of legal property
Cooperative Kibbutz 113–14, 116,	legal realism 2, 63, 181
148, 161, 170	legal standards 3, 8, 43, 61, 62
Renewing Kibbutz 108, 114–18, 147,	framing legal standard in form/
148, 162, 171	substance debate
Kitayama, Shinobu 290, 295	new formalism 63-4



346 INDEX

legal standards (cont.) rules versus standards in legal theory 64-7 incompleteness and 67-9 incomplete allocation of future uses 71-3 incomplete delineation of private overlapping uses 69-71 incomplete rights and regulation $73 - \bar{5}$ incompleteness and eminent domain 75-7 institutional choice and 'custom,' 'good faith,' and 'trade usage' 83-6 'normalcy' in nuisance, 'abuse of rights' doctrine 88-91 'objectionable conduct' and reasonableness' 86-8 institutional lessons 91 established institutional capacity 92 - 3external constraints 93 homogeneity 91 incompleteness 91 institutional choice does not impose consent 93 scale of effect 92 towards an institutional analysis bottom-up private ordering 78-81 top-down content-filling 81-3 legal theory property in 15-16, 17 rules versus standards in legal theory 64-7 legislation 59, 61 lex mercatoria 78, 298 New Lex Mercatoria 299-300 liability rules 31, 113 liberalism 27, 158 neo-liberalism 281 Libva 277 Licht, Amir 292, 293, 312, 313 lien 5, 49 Llewellyn, Karl 63, 68 local government 159 Locke, John 18

McCarren Park Moms 126-7 Madagascar 244 Maitland, Frederic William 246 marital property 54, 206 Markus, Hazel 290, 295 Marx, Karl 24-5 Marxism 25, 29 Means, Gardiner 9, 45, 179-81, 182, 183, 185, 198, 201, 207, 212 measures for property rights 292 Meckling, William 187, 188 Melamed, A. Douglas 16 Merrill, Thomas 39, 46, 47, 51, 59, 61, 191, 271, 272 Mill, John Stuart 63 Milner, Helen V. 283 minorities 158, 171 ethnic-religious communities 161 mixed (hybrid) property regimes 3, 8, 98 limits of private property 98-103 past experience and present potential 104 private-common property 108 Renewing Kibbutz 108, 114–18, 147, 148, 162, 171 see also Common Interest Communities (CICs) public-common property 118–20 bilateral incentives behind public commons 134-6 over- and under-inclusiveness of current law 137-9 possible tensions between 'public' and 'commons' 136-7 providing mixed solutions for public commons 139-40 public commons in public spaces 125 - 34'public' in local public spaces 120-5 public-private property 105-8, 150 toward a unifying theory 145 flexibility in trial-and-error 148-50 mixed non-utilitarian values 147 - 8mixed optimal scales and production functions 145-7



INDEX 347

tri-layered property regimes 140 see also Community Land Trusts morality of the civil condition 18-21 mortgages 5, 49 Community Land Trusts (CLTs) and credit mediation 143-4 lowering costs of insolvency 144-5 prevention of insolvency 144 Mossoff, Adam 48 multilateral agreement on investment (MAI) 308 nation states: land law as national construct 9, 245-52 national treatment 285 neo-colonialism 244 neo-liberalism 281 Neumayer, Eric 283, 284 New Deal 184 new essentialism 2, 5, 46-9, 185, 199, 200, 207, 213 new formalism 63-4, 185 New Institutional Economics (NIE) 2, 15, 31, 192, 289 New London Development Corporation (NLDC) 217-18 New Property 183 New York 147 Atlantic Yards project 223-5 bilateral incentives behind public commons 134-6 possible tensions between 'public' and 'commons' 136-7 public spaces in 119, 120-5, 166, 176 democracy and 123-5 egalitarianism and 121-3 formal mixed management: Prospect Park Alliance and ComCom 128-30 formal sub-local structures: Bryant Park and BIDs 130-1 incorporated user groups: Carl Schurz Park Association 127-8 informal user groups: McCarren Park Moms 126-7 over- and under-inclusiveness of current law 137-9

positive externalities 120-1 public commons in 125-34 publicly-authorized, conditional commons: Community Gardens 132-4 'nexus of contracts' and its discontent 187-91 Nicita, Antonio 71 normative choice, property strutcture accommodating 49-57 China example 56-7 clarity not synonymous with exclusion 51 limits of value pluralism 52-5 ownership could be relative right 52 property is not only about ownership 49-50 property regimes go beyond private title 50-1 resource typology as effective benchmark 55-6 North, Douglas 31 North American Free Trade Agreement (NAFTA) 261 Nozick, Robert 18 nuisance 38, 61, 62, 69, 100 'normalcy' 88-91 numerus clausus principle 59, 197, 213 objectionable conduct 86-8 281

objectionable conduct 86–8
obligations law 195
obsolescing bargain theory (OBT) 280,
281
oil fields 73
Olmsted, Fredric Law 121
open-access regimes 97, 263
opportunism 226
opting out, constraints on 41–3
ordering 210
bottom-up private ordering 78–81
informal 42
Organization for Economic
Cooperation and Development
(OECD) 283
originalism 82
over-fragmentation 268

overlapping uses, incomplete

delineation of 69-71



> 348 INDEX ownership 5, 201, 203, 291 political version of bundle of rights incidents of 48 26 - 8joint and sequential ownership 196-8 property as 25-6 property is not only about Pollock, Frederick 246 positivism 15 ownership 49-50 property regimes go beyond private Private Finance Initiative (PFI) 105, 107 title 50-1 private property 3, 8, 97, 98, 147 psychological 14, 289 Common Interest Communities relative right, as 52 (CICs) and 111-13 restrictions on ownership of emergence of 60 property by aliens 252 expropriation see expropriation of right to exclude versus separation of property ownership and control 199-203 limits 98-103 private-common property mixed Roman law 250 regime 108 Pakistan 276 public-private property mixed Paraguay 263, 266, 300, 301, 304-5 regime 105-8, 150 Parchomovsky, Gideon 176 sovereignty and 181, 184 Paris Convention for the Protection of privatization 97, 101, 149 productive property 180, 184 Industrial Property (1883) 252 Park Moms 126-7 Property Headwind 167-9 passive property 181 Property Rights Alliance 32, 292, 312 patents 301 property rules 112 Property Tailwind 167–9 paternalism 190 Penner, James 47 Property (Near) Zero-wind 167-9 Pfaffermayr, Michael 283 proportionality principle 287 proprietary nature of the firm 191-8 Pfizer 214 philosophy, property in 13, 18 Prospect Park Alliance 128-30 Kant on property as public right Proudhon, Pierre-Joseph 13 proxies 67 morality of the civil condition 18-21 psychology 2 Rawls on property and public reason property in 14, 289 21-2 psychological ownership 14, 289 public forum doctrine 123 piracy and intellectual property rights 72 planned communities 86-8, 159, 163, public goods 110, 120 164-6, 173-4 public rights, Kant on property as 22-3 see also Common Interest public spaces 119, 120-5, 166, 176 Communities (CICs) democracy and 123-5 Plater, Zygmunt 89 egalitarianism and 121-3 over- and under-inclusiveness of pluralism legal pluralism 308 current law 137-9 limits of value pluralism 52-5 positive externalities 120-1 policies 35 providing mixed solutions for public polis theory 159 commons 139-40 political science, property in 14 public commons in 125-34 formal mixed management: 'disintegration of property' not Prospect Park Alliance and (only) about politics 28-30 ComCom 128-30



INDEX 349

formal sub-local structures: Common Interest Communities Bryant Park and BIDs 130-1 (CICs) as 109-10 incorporated user groups: Carl controlling commonly-owned Schurz Park Association 127-8 assets 110 informal user groups: McCarren controlling privately-owned Park Moms 126-7 assets 111-13 publicly-authorized, conditional residual control 192-3 commons: Community resources 69 Gardens 132-4 crises 243 public trust doctrine 138 resource typology as effective public use 61, 62, 71, 76-7 benchmark 55-6 publicly-owned property 3, 8, 50, 97, 98 rights 147, 186, 211 privatization 97, 101, 149 abuse of rights 61, 62, 88-91 public utilities 102-3 affordability of housing through unbundling of rights and public-common property mixed regime 118-20 subsidies 142-3 'public' in local public spaces bundle of rights concept 48, 68 120 - 5'disintegration of property' and 28-30 public-private property mixed regime 105-8, 150 political version of 26-8 totalitarianism and 248 general rights 19 human rights see human rights see also eminent domain public/private interface 43-5 incomplete rights and regulation 73-5 Putnam, Robert 159 Kant on property as public right 22-3 measures for property rights 292 Radin, Margaret 16, 53 overfragmentation of 100 Rawls, John 19, 20, 21-2, 23 ownership as relative right 52 Raz, Joseph 36 right/value distinction 32, 33-8 realism 2, 63, 181 special rights 19 reason: Rawls on property and public tradable rights 100 vested rights doctrine 74 reason 21-2 reasonableness 61, 80, 86-8 risk-spreading 101 Robinson, D. H. 187 reciprocal arrangements 190, 196, 198 Robinson, John 26 recognition, rule of 34, 35 regulation, incomplete rights and 73-5 Roman law 39, 48, 249-51 regulatory takings doctrine 73-4 Rose-Ackerman, Susan 283 Reich, Charles 183-4, 207 rule of law 282, 294 religion 169 rules versus standards in legal theory religious communities 160-1 64 - 7Russia 248 Jewish Ultra-Orthodox communities 160, 162-3, 170, safe harbours 71 Renewing Kibbutz 108, 114-18, 147, Salacuse, Jeswald W. 283 148, 162, 171 scale economies 28, 101 rent control 51, 68 Schwartz, Shalom 290, 292, 293, 312, 312 repos 80 Scott, Robert 66, 67 reputation 66 securitization transactions 231 residual claimants 69 selective enforcement 197



350 INDEX

separation of ownership and control 199-203 sequential ownership 196-8 servitude 49 sex offenders 174 shareholders 4, 181, 197, 203-5, 208, 210, 211, 212 Special Purpose Development Corporations (SPDC) 233-5 financing 238-40 key for internal share allocation 235-6 public offering 237-8 Siegelman, Peter 176 Sierra Leone 243 Singer, Joseph 53 situation sense analysis 63, 68 Smith, Adam 14, 31 Smith, Henry 39, 46, 47, 48, 51, 59, 61, 191, 198, 271, 272 social capital 159 social cost 30 social obligation theory 16, 55 social sciences, property and 23-4 'disintegration of property' not (only) about politics 28-30 Marx and Weber on property 24–5 political version of bundle of rights 26 - 8property as politics 25-6 see also economics social theory, property in 2, 14 sociology, property in 14 South Africa 248-9 sovereignty, property as 181, 184 Soviet Union 247 Special Purpose Development Corporations (SPDC) 217, 227-8 corporate governance 233-5 general design considerations 229-32 hybrid regime 231 market-based just compensation piggybacking on existing law 230-1 special government allocation and tax aspects 232 landowners-turned-shareholders' perspective 233-5

financing 238-40 key for internal share allocation 235-6 public offering 237-8 Special Purpose Vehicles (SPVs) 231, 234 special rights 19 Spess, Laura 283, 284 spillovers, public spaces and 120-1 spontaneous communities 157, 166-7, squatting (adverse possession) 256-8 stakeholders 186, 210, 266 standards 35 legal see legal standards status-based stratification 207-8 strategic costs 121 stratification, status-based 207-8 structural over-fragmentation 268 structuralism 29 structure of legal property 3, 4, 7, 38, 57-8, 288 constraints on opting out 41-3 public/private interface 43-5 third party applicability 39-41 why property structure does not impose control 45 China example 56-7 clarity not synonymous with exclusion 51 limits of value pluralism 52-5 ownership could be relative right 52 property is not only about ownership 49-50 property regimes go beyond private title 50-1 property strutcture accommodates normative choice 49-57 resource typology as effective benchmark 55-6 rise of new essentialism 46-9 Sullivan, Nicholas P. 283 Summers, Robert 64 Sweden 306 Tajikistan 248

taxation 180, 302



INDEX 351

Special Purpose Development Corporations (SPDC) 232 technology, intellectual property rights and 72-3 territorial communities 156-60 intentional communities 160-4, 169, planned communities 86-8, 159, 163, 164-6, 173-4 see also Common Interest Communities (CICs) Property Headwind/Tailwind/ (Near) Zero-wind 167-9 spontaneous communities 157, 166-7, 174 - 8third parties 197, 208 third party applicability structure of legal property 39-41 third-sector housing 140 see also Community Land Trusts (CLTs) Tiebout, Charles 159 title 269 property regimes go beyond private title 50-1 Tobin, Jennifer 283 Tönnies, Ferdinand 157 top-down institutions 3, 78, 190, 211 top-down content-filling 81-3 totalitarianism 248 tradable rights 100 trade usage 62, 80, 83-6 transaction costs 32, 101, 121, 192, 193, 230 Trevino, Len J. 283 Triantis, George 66, 67 tri-layered property regimes 140 see also Community Land Trusts (CLTs) trusts 80, 197 Turkey 256 Turkmenistan 248

Ukraine 248 under-value transactions 198 unified governance 193 Uniform Commercial Code (UCC) 66, 84, 85

United Kingdom adverse possession 256-8 feudalism 246 land law 247 Private Finance Initiative (PFI) 105, 107 railways 149-50 United Nations 278 Charter 278 Conference on Trade and Development (UNCTAD) 280, Convention on Contracts for the International Sale of Goods 79 Human Rights Council 259 United States Steel Corporation 182 use fair use 56, 60, 61, 70-1, 303 incomplete allocation of future uses incomplete delineation of private overlapping uses 69-71 public use 61, 62, 71, 76–7 user groups Carl Schurz Park Association 127-8 McCarren Park Moms 126-7 Uzbekistan 248

values

limits of value pluralism 52–5 right/value distinction 32, 33–8 Vandevelde, Kenneth 278 Vernon, Raymond 280 vertical authority 203–7 vertical integration 192–3 vertical legal norm heterogeneity 304–5 vested rights doctrine 74

Waldron, Jeremy 19
Washington Consensus 269
Weber, Max 24–5
Williamson, Oliver 31, 192, 194, 196,
203, 209, 226, 230
Winchop, Michael 196–8, 201
World Bank 269, 281
World Trade Organization (WTO) 308

Yackee, Jason 284