

Those annoying drones

A generation ago, the stereotypical curmudgeon yelled at kids to keep off his lawn. Today's curmudgeon wonders whether he can legally shoot down drones that fly over his property. He can't, but his uncertainty is fueled by the high likelihood that the law governing where drones can fly is still evolving. Today's uncertainty stands in sharp contrast with the years when the laws governing property seemed to be settled. In those days, as David Friedman explained in his book *Law's Order*, it was clear that people could not walk across your land but planes could fly over it. Until drones came along, no one thought about the space above the soil but below where planes might fly. The economics of law can give us some insight into what the final laws will look like.

The economics of law holds that the person who has the highest value for using the space tied to a property should have the right to use that space. So, just as it was long ago, the curmudgeon will continue to have the right to determine who can walk on his land. The curmudgeon will retain this right because he still cares more about the use of the surface of his land than anyone else. And airlines will still have the right to fly over the land because they have an intense interest in being able to do so and the curmudgeon is only slightly annoyed by the

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insist that drones stay clear of the air space over their land. Or, firms may value the commercial benefits of drone use so much that drones should be allowed to pass over any property. The law, in short, should favor whomever has the most at stake.

But how the law favors each of these parties would be different. If the landowner's right to privacy is paramount, these landowners will get a property right. This means they can insist that the drones keep away from the airspace over their land. If a drone operator wants to fly over the curmudgeon's land, he risks being prosecuted for the offense. Or, to avoid the risk of prosecution, he must attempt to negotiate a contract that allows his drones passage over the land. However, in this case, these negotiations won't be successful since the drone operator does not value using the airspace enough to make the curmudgeon an offer that would entice him to give up his privacy.

high-flying planes.

But now, it isn't yet clear who has the most intense preferences about the space where drones travel. The landowners might value their privacy so highly that they should be able to

In contrast, if the drone operators can earn more profit from flying over the curmudgeon's land than the value the curmudgeon places on his privacy, then the landowners should get a liability right. In this case, the liability right allows the drone operators to fly over everyone's property. But the drone operator must compensate the landowner for any damage done by his drones. This compensation includes replacing structures that the drone may crash into, as well as compensating the land owner for the damage done from any pictures the drone takes that inadvertently end up in the public domain and infringe on the property owner's privacy.

Notice that when there is a liability right, the drone operator does not have to negotiate with individual property owners. Doing so would have been so costly that the drones probably could not profitably operate – even in cases when it is economically efficient for them to do so.

The legal rights to drone use will probably evolve so that those that value the airspace 40 feet over a property's surface can do what they want with that space without having to negotiate with any other parties. We will see how it plays out.

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