Private property rights are part of how we safely care for ourselves as human beings. The advantages of Private Property depend on three things—the 3-Ds:

- Property must be defined for exclusive use. Ownership must be defined in order to use resources wisely.
- Property must be defended for exclusive possession. Primarily against thieves and government.
- Property must be divestible. This is the ability to dispose, transfer, buy or sell, without market bias, coercion, or externalities.

Pollution, or resource degradation, commonly occurs when the “environmental receptors” of pollution (air, water, etc.) are commonly owned, not held as private property. These “externalities” occur when either producers or consumers do not fully consider costs or benefits of their actions when making decisions. Pollution or resource degradation interferes with the rights of other individuals and enterprises in the enjoyment of those goods.

Some good things can only be done by government violating private property rights. When private property rights are violated to do good, eventually there is a price to pay in disincentives for meeting human needs, reduced freedoms, and reduced liberty.

Table. Many kinds of Property Rights in Nature. Bonnie McCay, Rutgers Univ.

<table>
<thead>
<tr>
<th>Property Type</th>
<th>Exclusivity</th>
<th>Rights-Holders</th>
<th>Marketability</th>
</tr>
</thead>
<tbody>
<tr>
<td>Private</td>
<td>High</td>
<td>Individuals, firms</td>
<td>High</td>
</tr>
<tr>
<td>Common</td>
<td>Low within, High</td>
<td>Members of specified group or community, larger organizations</td>
<td>Mixed</td>
</tr>
<tr>
<td></td>
<td>without</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Public</td>
<td>Low</td>
<td>All members of general society. Defined by citizenship</td>
<td>None</td>
</tr>
<tr>
<td>Government</td>
<td>High</td>
<td>Governments</td>
<td>Varies by statute, lease, auction, sale</td>
</tr>
<tr>
<td>Undefined/Open Access</td>
<td>None</td>
<td>Anyone/no one</td>
<td>None</td>
</tr>
<tr>
<td>Many gradations and overlaps</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Property Institutions (Bonnie McCay)

Private property in land and capital
Government property in parklands, wilderness areas, etc.
Public rights to navigable rivers and tidewaters.
Other
  - Private rights to use public lands (western rangelands)
  - Public rights to use private lands (Swedish Allmennsretten).
  - Public constraints on private rights (zoning, permitting)
  - Public/Private collaborations (conservation easements, land trusts, etc.)
  - Common property rights to use and management of local forests, parks, fisheries, wetlands.

Property Rights Framework and Conflicts (Bonnie McCay)

1. Property Rights are one of the most significant institutions of society; like marriage, family relationships, employer/employee relationships, or government/citizen relationships.
   a. Institution in sociological sense, not organizations. Instead, patterns of behavior, backed by social sanctions, codes of conduct (Roush in Echeverria & Eby, 1995:5). Have force of custom, often not questioned; just the way things are done; embody ideas of right and wrong; define and enforce moral and social order.
   b. American institutions of private property in land and capital; the idea that the welfare of the community and nation depends on the productivity that comes about through private property and the protections it gives the fruits on one’s labor.
   c. American institution of public rights to navigable rivers and tidewaters and beaches; the “Public Trust” idea, that some places and natural things are too important to the public to be granted to individuals; and that if they are, the public retains some rights of use and access.
   d. More complex and controversial institutions:
      i. In the Western region of the U.S. the institution of private rights to use public lands;
      ii. In Sweden, the institution of public rights to use private lands for certain purposes, i.e., picking mushrooms or berries (allmennsretten);
      iii. In England, a similar institution for public by-ways through private lands;
      iv. In many places, local-level institutions, including zoning, that protect public interests by interfering with what private owners do with their property.
      v. Increasingly, in the U.S. and other industrialized countries with high levels of environmental concern and pressures against the maintenance of traditional uses of land, like farming or fishing,
the development of new techniques to coordinate public and private interests, like conservation easements, transfer of development rights systems, land trusts; also the use of private funds to help create public property, as with the Nature Conservancy.

vi. Common property rights to use and management of local forests, parks, fisheries, wetlands. A reality in some places, an experiment in others, a plan in yet others.

2. Property rights describe relations between people and nature, as defined socially, that is, between people: “Property rights do not refer to relations between men and things, but, rather, to the sanctioned behavioral relations among men that arise from the existence of things and pertain to their use.” Furobotn & Pejovich 1972: 1139, in McCay and Acheson 1987.

3. Many kinds of property rights in nature. See Table above.

4. Property rights are embedded in particular societies and economies, not fixed or universal:
   a. American notion of private property in land, for example, may be quite different from that of the Netherlands, in the extent to which community needs and controls are accepted as normal limits to what is done with the property. This is partly because, in America, private property is embedded in other institutions, including a high value on personal freedom and self-determination. In the Netherlands, it is embedded in a different mix of private enterprise (the home of the Protestant Ethic!) and values of community harmony, given the need to cooperate for protection against the elements.
   b. The ways property rights are claimed and defended and understood can change over time. For example, in the early settlement of New England, many of the communities had a strong notion of communal property and constraints on the use of and sale of private lands, that they brought with them from England and/or created to express religious ideals. But, over time, “the Commons” were sold off and people became freer in the ways they used their lands, more suitable to frontier conditions.

5. Today, many conflicts over land-use and sea-use are cast in property rights terms:
   a. The “takings” or compensation claims of farmers, beach-front property owners, and others who are forced to change the ways they use their property, and perhaps the marketable value of their property, because
of broad public policies about endangered species, coastal zone protection, wetlands protection, public access, etc.

b. The concerns of fishermen who find their public rights, or common property rights, to use the resources of the sea curtailed by abuses of sea by pollution, mining, dumping; by competing concerns over marine mammals, migratory birds, etc. which call for cut-backs in fishing activities; and by the growing tide of privatizing the right to fish, through individual transferable quotas (ITQs). They are all property rights issues, the first two pertaining to competing public/common rights; the third to conflict between public and private rights.

c. At land, the institutions of private property rights are bolstered by the American value on personal freedom and self-determination. At sea, it is the opposite: at least traditionally, those values have been expressed in the freedom to fish.

d. Aquaculture, or mariculture, is yet another story of competing property rights. Because of the Public Trust Doctrine, mariculturists often rely on public leases from the State, becoming in effect holders of private property. Getting and keeping those leases is not easy. One version of this, is competition between public-right fishermen and mariculturists over fishing grounds and/or markets (and concerns about water quality and the spread of fish diseases). Another is competition between mariculturists and people who live on the shoreline, who see their private property rights as including the right to a view of the harbor of sea that does not include fish pens and working boats.

Conflicts and Property Rights

“Takings” and public/private conflict over land use
Individual Freedom < Private Rights
Private Rights vs. Public Claims

“Public Trust” and public/public, public/private conflicts over sea use
Individual Freedom < Public Rights
Public Rights vs. Other Public Rights
Public Rights vs. Public Claims
Public Rights vs. Private Rights

Mariculture and property rights conflicts
Individual Freedom < Public/Private Rights
Public Rights vs. Public Rights (mariculturists vs. fishers)
Private Rights vs. Private Rights (mariculturists vs. riparian owners)