

Nine Objections to Steiner and Wolff on Land Disputes

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In the July 2003 *Analysis*, Hillel Steiner and Jonathan Wolff (2003) propose a framework for “resolving disputed land claims between competing nations or ethnic groups.” The idea is that we should auction off the land, with the loser of the auction getting the money. While this might mean that the richer party will normally end up with the land, and this is normally not thought to be a good thing, if the auction is conducted as they specify “it will turn out that the other party ends up with something which, in the circumstances, it prefers to the land: lots of money.”

Actually, it isn't so clear that this is what will result. Let's say we have a particular parcel of land that groups A and B want. They each want it quite strongly, but B has deeper pockets than A, so while A would be prepared to pay 8 for the land, B would be prepared to pay 12. For the auction process to function, there must be a minimum bid increment, I'll say it is $\frac{1}{2}$. Assume that B has just bid 4, A must now choose whether to bid $4\frac{1}{2}$ or accept B's bid. And assume for now that A is not bidding tactically, it only makes a bid if it would prefer to win the auction with that bid than accept B's bid. This assumption will be relaxed below.

So for now, A must decide whether it prefers to be given 4, or to get the land for $4\frac{1}{2}$. Since it values the land at 8, and since it will give up $8\frac{1}{2}$ to buy the land (the $4\frac{1}{2}$ it will pay, plus the 4 it would have received from B) it may well decide to just accept the bid. But now it has ended up with something it definitely does *not* prefer to the land, since it just accepted a bid for 4. There are two assumptions at play here. One is that A doesn't bid tactically, which I shall return to a bit. The other is that how much A will pay for the land is not affected by receiving B's 4. That is, I assume that the marginal utility of money is relatively constant for A over the ranges of money at play in the auction. This assumption might be false if we're dealing with a very large or valuable body of land, but it's not unreasonable in most circumstances. (Space prevents a complete study of what happens if we take the declining marginal utility of money completely into account. Roughly, the effect is that some of my criticisms are *slightly* vitiated.) Now while these assumptions *might* be false, Steiner and Wolff give us no reason to be certain they are false. So for all they've said we could have a situation just like this one, where the poorer party ends up with something it wants much less than the land. Hence

Objection 1. There is no guarantee that the losing party will end up with something they prefer to the land.

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While this contradicts an alleged benefit of Steiner and Wolff's plan, it might not be thought to be a deep problem. After all, A gets half as much as they wanted, and if they are only one of two equal claimants to the land, then this is a fair result. This *may* be true, but note that the assumption that each party has an equal claim to the land is doing a lot of work here. If A's claim is stronger, then only getting half of the value of the land is quite unfair. If the two claims are incommensurable, there may be no fact of the matter whether it is fair that A receives 4. If we cannot tell which of the moral claims is stronger, which is very often the case in land disputes, it may be impossible to tell whether A's receiving 4 is fair or not. Hence

Objection 2. The proposal is only appropriate where each party has a genuinely equal moral claim to the land. This doesn't happen often, and it is quite rare that we know it happens.

While Steiner and Wolff note that they are leaving questions about enforcement and compliance to another place, so it isn't fair to press them too strongly on these topics, it is worth noting how this feature of their proposal makes compliance harder to enforce. If by participating in the auction both parties are tacitly agreeing that the other party has an equal claim to the land, and I think the above suggests they are doing just this, that will reduce the legitimacy of the auction process in the eyes of members of the losing group. And that will lead to enforcement difficulties down the line.

There is an administrative problem lurking around here. Since each party will end up with something from this process once the auction begins, we must have a way of determining whether the competing claims warrant an auction, or whether one party should receive the land, or whether some kind of negotiation is possible. And once we set up a process to do that, it could easily encourage relatively spurious land claims. Unless there is a serious cost to suggesting that one should be party to an auction of some block of land, there is a large incentive to get into these auctions wherever and whenever possible. Perhaps some method could be designed to offset this incentive, and perhaps even the desire groups have to be approved by the court of public opinion will offset it at times, but it seems to be a problem with the proposal as formulated.

To be sure, if A accepts B's bid, then both parties do end up with *something* from the auction. A gets 4, and B gets some land that it values at 12 for 4, a gain of 8. Note that B does much better out of the auction than A. If the auction stops when the richer party makes a bid at or above half the price the poorer party would pay, then the richer party will always end up with a higher 'utility surplus'. Hence

Objection 3. If there's no tactical bidding the utility surplus is given entirely to the richer party.

Let's relax the assumption that A does not bid tactically. Indeed, let's make things as good as could be realistically expected for A. It knows that B values the land at 12 and does not bid tactically, so B will make bids up to 6, and accept any bid over 6. Hence the auction proceeds as follows: A bids $4\frac{1}{2}$, B bids 5, A bids $5\frac{1}{2}$, B bids 6,

A accepts. Now things *could* go better for A, but it would require some luck and courage. A could bid $6\frac{1}{2}$ and B could reply with a bid of 7, but since this requires B acting against its own interests (it is better off accepting the bid of $6\frac{1}{2}$ after all), and hence also requires A making a risky move that will only yield dividends only if B acts against its own interests in just this way, such an outcome seems unlikely. So in practice the best case scenario for A is that B pays 6 for the land. In this case A ends up with 6, and B ends up paying 6 for land it values at 12, a gain of 6. Hence

Objection 4. Among the realistic outcomes, the best case scenario for the poorer party is that it ends up with as large a utility surplus as the richer party.

Best cases don't often happen, so in practice we should normally expect a result somewhere between the 'no tactical bargaining' option, where B receives a larger share of the surplus, and this 'best case scenario' where the two parties get an equal share of the surplus. Hence in almost all cases, the richer party will get a larger surplus than the poorer party. This seems like a flaw in the proposal, but worse is to come. Most of the ways in which B can realistically increase its share of the surplus involve behaviour that we should not want to encourage.

Consider again A's decision to reject the bid of 5 and bid $5\frac{1}{2}$. Assume, for simplicity, that A plans to accept a bid of 6, but drop the assumption that A knows that B will reject a bid of $5\frac{1}{2}$, if it is made. So before A makes its decision, there are three possible outcomes it faces:

Accept the bid In this case it receives 5.

Bid $5\frac{1}{2}$ and have it accepted In this case it gets the land (value 8) for $5\frac{1}{2}$, net gain $2\frac{1}{2}$.

Bid $5\frac{1}{2}$ and have it rejected In this case B bids 6, and A accepts, so it gets 6.

A's expected utility is higher if it bids $5\frac{1}{2}$ rather than accepts B's bid iff its degree of belief that B will bid 6 is over $\frac{5}{7}$. If it is less confident than that that B will bid 6, it should accept the bid of 5. As it happens, B *is* going to reject a bid of $5\frac{1}{2}$ and bid 6, so it is better off if A accepts the bid of 5. If A knows B's plans, this will not happen. But if A is ignorant of B's intentions, it is possible it will accept the bid of 5. Indeed, since A's confidence that B will decline must be as high as $\frac{5}{7}$ before it makes the bid of $5\frac{1}{2}$, it might be quite likely in this case that A will just accept the bid.

Not surprisingly, we get the result that B is better off if its bargaining plans are kept secret than if they are revealed to A. That in itself may not be objectionable. But remember that the agents here are not individuals, they are states. And the decisions about how to bid involve policy questions that will often be the most important issue the state in question faces for many a year. Ideally, decisions about how to approach the auction should be decided as democratically as possible. But democratic decision making requires openness, and it is impossible that all the stakeholders in B, including one imagines the citizens, can participate in the decision about how to approach the auction without B tipping its hand. In the modern world it's impossible to involve

everyone in B without opening the debate to agents of A. And this, as we've seen, probably has costs. Since B is better off if it does not make decisions about how to approach the auction in the open, we have

Objection 5. The proposal favours secretive governments over open democratic governments.

Assume that B has been somewhat secretive, but A is still fairly confident that B will not accept a bid of $5\frac{1}{2}$. Its degree of belief that such a bid will be rejected is $\frac{3}{4}$, let's say, so it is disposed to gamble and make that bid. But now B starts making some noises about what it will do with any money it gets from A. The primary beneficiary of this windfall will be B's military. And the primary use of this military is to engage in military conflicts with A. While some of these engagements will be defensive, if A gets the land under dispute many will be offensive. (I don't think these assumptions are particularly fanciful in many of the land disputes we see in the modern world.) A must take this into account when making its decisions. It seems reasonable to say that every 1 that A gives B has a disutility of 1.2 for A, 1 for the cost of the money it gives up, and 0.2 for the extra damage it may suffer when that money is turned into weaponry turned back against A. Now the utility calculations are quite different. If B accepts A's bid of $5\frac{1}{2}$, A's balance sheet will look like this:

Gain The land, value 8.
Cost $5\frac{1}{2}$ paid to B, value $5\frac{1}{2}$
Cost B's extra military capability, value (a little over) 1.
Net gain Roughly $1\frac{1}{2}$.

So now the expected utility of bidding $5\frac{1}{2}$ is:

$$\begin{aligned} & \text{Prob}(\text{Bid Accepted}) \times \text{Utility}(\text{Bid Accepted}) + \text{Prob}(\text{Bid Rejected}) \times \\ & \text{Utility}(\text{Bid Rejected}) \\ & \approx \frac{1}{4} \times 1\frac{1}{2} + \frac{3}{4} \times 6 \\ & = 4\frac{7}{8} \end{aligned}$$

Hence A's expected utility for accepting B's bid of 5, i.e. 5, is higher than its expected utility of bidding $5\frac{1}{2}$, so it will accept the bid, just as B wanted it to do. So if B indicates that it will use any payments from A to attack A, it may well be able to get the land for less. Hence

Objection 6. The proposal favours belligerent governments over peaceful governments.

One qualification to this objection is that what matters here is what A thinks B will do, not what B actually does. So the objection is not that the proposal rewards offensive behaviour, but that it rewards belligerence, or indications of offensive behaviour. This isn't *as bad* as rewarding military action, but it is still objectionable.

Throughout I have used a particular example to make the points clearer, none of the arguments turns on the details of this example. What matters is that in any case where one party is able to spend more for the land in question simply because they are richer, the richer party will almost inevitably have a higher utility surplus, and this party can increase their expected utility surplus by being more secretive about their plans, and by being adopting a more belligerent tone towards their rivals before and during the auction. So it seems the proposal systematically rewards behaviour we should be discouraging.

The remaining objections concern the implementation of Steiner and Wolff's proposal. While I don't have a demonstrative proof that any of these concerns present insurmountable difficulties, they all suggest ways in which the proposal must be qualified if it is to be just.

The proposal seems to assume that the parties to the dispute agree over whether the land in question can be divided. As Steiner and Wolff put it, "The auction can thus be viewed as a device for achieving a fair settlement for the disposition of a good when neither division nor joint ownership is acceptable to the parties." In some conflicts at least part of what is at issue is whether the land can be divided. For instance, if we were applying this proposal as a way of settling the war between Britain and Ireland in 1921, would we say that all of Ireland should be auctioned off, or just that the six counties that became Northern Ireland should be auctioned? Assuming the British had decided that governing southern Ireland had become too much trouble and were only interested in retaining the north, they may not have wanted to pay for the whole country just to protect their interests in the north. But at least some of the Irish would have been unwilling to accept a process that may have led to the division of the country, as would have obtained had the south been granted Home Rule, but the north left subject to an auction. (The historical facts are, obviously, somewhat more complicated than I've sketched here, but even when those complications are considered the difficulties that must be overcome before we know how to apply the proposal to a real situation are formidable.) Hence

Objection 7. The proposal assumes a mechanism for determining which land is indivisible, and in some cases developing such a process is no easier than settling the dispute.

Steiner and Wolff assume that the groups, A and B, are easily identifiable. In practice, this may not be so easy. For example, at least some people in Scotland would prefer that Scotland was independent. For now most people prefer devolution to independence (and some would prefer rule from Westminster) but we can easily imagine circumstances in which the nationalist support would rise to a level where it became almost a majority. If a majority in Scotland wants to secede, and the British government is willing to do this, then presumably they will just secede. But what are we to do if a narrow majority in Scotland wants to secede, and the British government (or people) do not want them to go? Presumably Steiner and Wolff's proposal is that some sort of auction should be held to determine who should be in charge of the land. But who exactly are meant to be the parties? On the Westminster side, is

the party Britain as a whole, or Britain except for Scotland? On the Scottish side, is it the Scottish people? The Scottish government, which for now is a creature that exists at the pleasure of the British Parliament? Those people who support Scottish independence? If the last, how shall we determine just who these people are? Perhaps some one or other of these answers can be defended, but the proposal is seriously incomplete, hence

Objection 8. There is no mechanism for determining who shall count as a member of the groups in question.

Finally, the proposal simply assumes that we can agree upon the currency in which the auction shall be conducted, but it is not ever so clear that this can be done. Usually, the two parties to a dispute will use different currencies, so to avoid conflicts it would be best if the auction were conducted in a neutral currency. But finding such a currency may be non-trivial. There are only a handful of currencies in the world whose supply is sufficiently abundant to conduct an auction of this size, and most of the time those currencies will be backed by governments who favour one side in the dispute. If they use this favouritism to provide access to credit denominated in their currency at a discounted rate, that threatens the fairness of the auction. Hence

Objection 9. The proposal assumes a given currency in which to conduct the auction, but in practice any choice of currency may favour one side.

The last three objections are, as mentioned, somewhat administrative. It is possible that in a particular situation they could be overcome, though I think that it is more likely that they would pose serious difficulties to a would-be auction-wielding pacifier. But that's not the serious problem with the proposal. The real problem, as the first six objections show, is that it favours rich, secretive, belligerent states that are disposed to make spurious land claims over poor, democratic, pacifist states that only make genuine land claims.

References

Steiner, Hillel and Wolff, Jonathan. 2003. "A general framework for resolving disputed land claims." *Analysis* 63:188–189.