

Den faste eiendom og dens grenser fra et filosofisk synspunkt

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Klaus Kummer: The Property and the Boundary from a philosophical view

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The Greeks and Romans were the first who grappled intensively with the *concept of boundary*. The Greek worldview focused much more on the concept of finiteness than on infiniteness because only the notion of finiteness implies measurement and shape, and shapelessness was considered an expression of imperfection. Several famous philosophers including *Leibnitz, Kant, Hegel* and *Jaspers* dealt with the *phenomenon of boundary*. They emphasised that it was impossible to develop the world without using the concept of boundary. Some philosophers had a *critical* view of boundaries, however. *Rousseau, Marx* and *Tucholsky* emphasized this view and came out against property and boundaries. *Hieronimo*, chief of the Apaches, said wistfully more than 100 years ago that he was born where the wind blew freely over the plains, where the sun shone and where there were no boundaries. In this context, the *notion of property* becomes important. Nowadays, private property is an uncontested objective for broader classes in terms of social, economic and welfare issues. Private property is an essential regulative factor, but it requires social commitment. *Our professional engagement* is positioned right in the middle of this context. According to Horaz there is a measurement for everything because in the end there are boundaries. Consequently, human beings are demarking beings, because boundaries guarantee differentiation and identity of human beings

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1. The Topic

Human beings long for developed boundaries. This longing is neither reactionary nor paradoxical as it does not refer to concrete barriers or walls but rather – in a sociological sense – to points of reference. These points of reference guarantee our freedom: freedom for oneself and for others. They offer us a *sense of community*, necessary for living together on one's own authority. It is important to treat our habitat, the *earth* carefully because it reacts sensitively, is endangered and limited. Within living memory people have always tried to find a balance between real and legal control of limited parts of the earth: between individuals and the community.

We as surveyors are right in the middle of this process because we determine through measurement, the extent and shape of things. To deal with the philosophical cognitions about boundaries and property is essential for our profession, for our common under-

standing and for our orientation in terms of professional policy on a European level. Our work has always been a basic and inseparable part of the cultural roots of our states. Recalling this and recognizing our contribution to cultural development, our profession should be able to develop strategies specifying how, by which means and to what extent we will be able to make our contribution to this fundamental sociological process in the future. Globalization and European unification present new opportunities for our profession, and we surveyors must intensify our cooperation to meet these challenges.

In the following we will see that the basic principles of the topic *The Property and the Boundary* are essentially the same in all our countries. The *philosophical view* will prove this because philosophy is defined as the systematic analysis of basic principles. It deals with relationships between things in the world, tries to summarize these in an overall

view and analyses possibilities of human cognition. In other words and quoting *Immanuel Kant*, philosophy deals with the following questions: «*What can I know? What am I supposed to do? What can I hope? What is man?*»

2. The item «boundary»

We know that Greeks and Romans grappled intensively with the term «*boundary*». The Greek worldview focused much more on finiteness than on infinity because only the notion of finiteness implies measurement and shape, and shapelessness was considered as an expression of imperfection. «But Nature flies from the infinite, for the infinite is unending or imperfect and Nature ever seeks an end. And the end is a limit.» (*Aristotle*). In terms of the origin of terms, the Greeks are speaking of *óras*, *péras* and *térma*, the Latin equivalents are the terms *finis*, *limes* and *terminus*. The French language includes many terms for the item «boundary» such as *limite*, *frontière*, *borne* and *extrémité*. The German terms *Grenze*, *Schranke* and *Ende* are derived from the Slavic languages (Polish: *granica*; Czech: *hranica*).

The English language defines the term in a more differentiated way than the German language. English has four different terms for boundary: firstly *frontier* denoting a development frontier which is constantly moving and behind which there is «no man's land»; secondly *limits* which is derived from the Latin word *limes*, originally referring to Barbarian limits between the (own) civilization and foreign barbarism; thirdly *border* defining modern states' national borders and fourthly *boundary*, a very versatile term for a system boundary which is also used for property boundary.

Each definition involves both inclusion and exclusion as *Spinoza* stated: «*Omnis determination est negatio*» (each limitation is also negative/*Verneinung*). Boundaries are far from being only means of delimitation, limits, or threatening or annoying obstacles. Limitations may also serve as means of enclosure. Enclosure brings about familiar safety. Therefore boundaries are also means of beneficial separation.

The dimensioning, i.e. the length of natural boundaries is relative. It depends on the measurement instrument and on the scale. Furthermore, natural boundaries cannot be taken for granted. Where, for example, is the exact boundary between land and sea? For the definition we need further determinations. These are especially necessary to define property boundaries.

The term «boundary» is a nondescript notion. We often use it carelessly in our everyday speech, but in contrast the term is omnipresent in specialized academic languages. The term boundary also seems to be a popular and impressive notion in science, culture and politics. In these fields the term «boundary» is often not given much thought. It is used in reference to boundaries of misery, of education, of progress, of national product, of law, of power or of the welfare state. Would it in some cases not be more appropriate to replace the term «boundary» with the word «problem»?

3. Boundaries as a phenomenon of human existence

Several famous philosophers such as *Leibniz*, *Kant*, *Hegel* and *Jaspers* dealt with the phenomenon of 'boundary'. They emphasized that developing the world would have been impossible without knowing the term 'boundary'. Boundaries define existence, they determine human identity. Boundaries give a character to things. Furthermore, boundaries do not only infer the things which they include because the end of one thing is the beginning of the next. Border means a boundary of one thing and of another thing. Only by differentiation you can be aware of the common attributes of different things.

Human beings seem to need boundaries to define themselves and to live. When borders are cancelled, new ones develop. The most illustrative example in German history is the border between GDR and West Germany. Before the accession to the Federal Republic of Germany people in the GDR established five new federal states with new state boundaries. Obviously we need spaces for identification and points of reference. The same proc-

ess occurs in the context of the European unification, which should not only involve integration but also options for structured/limited cultural identification.

The same applies without restrictions to property boundaries. A property boundary is an enclosure of identity and property. Although the boundary is the end of one thing, it is also the beginning of a new thing. A property boundary does not belong to one person. It is the basis of peaceful neighborhood. Finally, accepted boundaries create respect and harmony.

4. Demarcation as a changing process

The process of demarcation was first mentioned in the story of Creation. Heaven and earth, light and darkness as well as water and earth were put into their boundaries. Paradise also deals with boundaries. In the course of time the term 'boundary' has changed. Herdsmen and nomads had another conception of it than farming people. Boundaries become even more important in the context of accommodating many people in a minimum of space. Boundaries help define space for the individual so that others do not come too close.

The process of demarcation depends primarily on the intensity of land use. Herdsmen and nomads did not need boundaries which were precisely defined to the meter or even centimeter. Extensive animal breeding required large areas which were sufficiently available for a relatively small number of people. In the course of settling down, the requirements for demarcation increased. Boundaries had to be defined more precisely and the technical and juridical requirements were fulfilled by the surveyors through a process of social and technological development.

In contrast, the process of local demarcation nowadays can be postponed under special conditions. It is often sufficient to provide an option of precise demarcation using accurate and juridically consistent data i.e. coordinates. This gives the possibility to transfer a certificated and precise dimensioning to the locality at any time –at the moment when it is desired or needed. In many

cases we do not see any national borders in the locality, even less internal federal state or district boundaries. A process of change to an abstract boundary definition has also begun with regard to property boundaries.

In case of conflicts or if concretely needed, people may refer to the precise dimensioning in existing registers. Many people consider that this kind of abstract demarcation nowadays completely fulfills its traditional purpose.

Certainly, this attitude has consequences for the activities of surveyors. In addition to their traditional regulatory function of demarcation, surveyors' activities have a second function: to guarantee the option of exact demarcation. To carry out this function well, we need to be willing to accept this extended field of activity and not obstruct it due to singular and misunderstood financial interests. We need innovative willingness and a flexible approach to our established practice.

5. Criticism of boundaries

Human beings have always had a critical view of boundaries as well. *Rousseau* and *Marx* emphasized this aspect and came out against private property and boundaries. Ironically, socialist states erected the most inhuman borders ever. *Hieronimo*, chief of the Apaches, said wistfully more than 100 years ago: «I was born where the wind blew freely over the plains, where the sun shone and where there were no boundaries». Were there really no boundaries? Or were they only defined differently? *Leonardo da Vinci* said about 500 years ago: «Where there are no boundaries there is no shape.» Nowadays, it becomes clear that boundaries imply esteem, respect and recognition. According to *Goethe* boundaries were not designed to be overstepped, but to be respected. Boundaries protect identities and they appreciate and recognize foreign matters. They are to define difference but not disparity.

Tucholsky criticized borders in his cabaret glosses and essays in 1920 as follows: «Spacious is the landscape. Mountains, valleys, and lakes. The trees are rustling, the grass is bowing in the wind. But there is a barbed-wire fence going directly through the clear-

ing, through the forest, across the country road: the border. On both sides men are standing, but those on the other side are wearing blue uniforms with yellow buttons and those on this side red uniforms with black buttons. They are standing there with their guns, some of them are smoking, all of them have a serious facial expression. Yes, there is the border now. ... One step forward and you are a stranger».¹

We can see that the view of boundaries strongly depends on socio-political approaches of a certain zeitgeist, on the socio-political guidelines of previous nation states as well as on social systems and power blocs. However, we can also see the following: It is not *boundaries* that deserve to be criticized, but the corresponding consciousness of boundaries.

We as surveyors may be reassured. Boundaries will always be required. However, our methods have to be flexible, exact and credible. Our activities, which are not one-sided or corrupt but which must be impartial, allow us to develop alternatives, such that boundaries can create identity in a positive understanding without exclusion. We as surveyors are by no means dispensable. On the contrary, it is through our contribution that boundaries can guarantee freedom. However, we should have foresight and not exaggerate the visualization of boundaries, so that we do not provoke criticism against us. Modesty and flexibility would promote long-lasting recognition for our profession. Determination of boundaries, demarcation and subdivisions nowadays involves guaranteeing high quality and professional competence, as well as the traditional insignia of official authority which should be used as cautiously as possible.

6. Property

In the context of the discussion about boundaries, the notion of property automatically becomes important. Nowadays, private land

ownership is an uncontested objective for broad classes of people due to social, economic and welfare issues. Private property is an essential economically regulatory factor, but it requires social commitment. Security of land ownership, guaranteed by the constitution in many states, is based on social justice and social peace.

We know that public goods like air, water and climate tend to be mistreated. If it were possible to privatize breathable air and drinkable water completely, every individual would use these goods much more carefully. In socialistic social orders, restrictions on privatization of property often resulted in serious problems. It has to be pointed out that much property is now given careful treatment due to its privatization. Private property is considered to be of timeless significance. This is an important insight for our professional group.

Private property has always had significance and this is closely linked to the roots of our culture. Even ancient Christianity focused right from the beginning on protection of private ownership. The seventh of the ten commandments is as follows: «You shall not steal», showing the connection between personal freedom and property. The tenth commandment «You shall not covet your neighbour's house; you shall not covet your neighbour's wife, or male or female slave, or ox, or donkey, or anything that belongs to your neighbour» strengthens the protection of ownership even more by delegitimizing certain convictions and intents to unjustly appropriate property and land already before such intentions can be put into effect.

Furthermore, private property is a regulatory factor in business because it guarantees liberal economical engagement. This fact has had a normative effect on the constitutions of many European states. In this context three *principles* become clearly evident:

Firstly: The principle of *common provision* of property (even quoted by *Cardi-*

1. Quotation translated by the translator; original version: Weit liegt die Landschaft. Berge, Täler und Seen. Die Bäume rauschen, die Quellen springen, die Gräser neigen sich im Wind. Doch quer durch eine Waldlichtung, durch den Wald, über die Chaussee hinüber läuft ein Stacheldraht: die Grenze. Hüben und drüben stehen Männer, aber die drüben haben blaue Uniformen mit gelben Knöpfen und die hüben rote Uniformen mit schwarzen Knöpfen. Die stehen mit ihren Gewehren da, manche rauchen, alle machen ein ernstes Gesicht. Ja, das also ist nun die Grenze. ... Einen Schritt weiter und du bist ein Fremder»

nal Joseph Frings to legitimize petty theft during the misery after the Second World War).

Secondly: The principle that everybody is entitled to an adequate part of land property as *personal civil right of liberty and individual disposition*.

Thirdly: The principle of *property ethics* for the use of crop yields in solidarity, to put aside yield abundances for needy persons.

7. Legal basis in the state system

Property (particularly land property) and boundaries are legally based in any state system. Every state is defined by three elements: its people, state authority and national territory.

Taking the legal definition of the subject of property and boundaries in Germany as an example, we can see that property is not only protected by the Constitution, it is even ranked as an elementary fundamental right. It stipulates «Property and the rights of inheritance are guaranteed.» and it imposes duties because «Its use should also serve the public welfare». Property can even be converted into public property by expropriation.

These constitutional rules are attributable to the ancient 'civil law' which was laid down in the Civil Code in Germany more than one hundred years ago. The Civil Code, highly influenced by the French 'Code Civil' defines property as the most powerful right to a thing, as an outright disposition implying factual (propertied) and legal power. The rules of the Civil Code also deal fundamentally with boundaries, including regulations on how to proceed with building over property boundaries and specifying that demarcation (the setting of fixed boundary marks, the demarcation) is defined as a right which is actionable by neighbors.

Furthermore, the civil law demands that a state register be installed for the legal validity of property. The 'Grundbuch' is the land-title register which is based on its own legal basis, and the «Land Registry Act» stipulates that the cadastral land survey register is an official part of the 'Grundbuch'. Consequently, proven boundaries and dimensions regis-

tered in the cadastre/land survey register as real establishments constitute the basis of the cadastre and are inseparable part of the Grundbuch.

We can see that the state's system fundamentally defines the dimensioning and registration of property as characteristic traits of the social order at the highest legal level. Following this basic idea, property surveyors are not only a traditional but also a state bound professional group today.

8. Our professional field is in the centre

Our occupational field is therefore positioned in the middle of this context. According to Horaz: «there are measurements in every thing because in the end there are boundaries». As human beings we are 'demarking' beings because we seek boundaries. They guarantee differentiation and individual identity of human beings. Demarcation is a basic factor of personhood. Demarcation is highly communicative because the more precisely a measurement is defined with regard to somebody else, the more one refers to this human being. Consequently, the profession of surveyors is characterized by far-reaching social acceptance. We should take this into consideration and emphasize this for the development of our profession. In this context we can mark spatial matters; walls were erected by others here and there.

Human beings find parallels in the animal world. Animals also delimit their habitats, for example in the context of natural boundary protection. Other animals respect their territory because they send out positive signals. If we take for example oscine birds, their territory is recognized where their singing is fully effective.

Territories and habitats are secured by *respect of boundaries*. That means for our professional field that our methods and our expertise have to uphold the respect for the profession in order to be used successfully by the state in the long term. In this context the size, height or stability of boundary fittings and marks are not important, but the decisive factor is the option of guarantee. If this option is recognized by society, implying justifiable expenditure and reasonable fees, we

will have a chance to fulfill our mission. We have to take responsibility for offering a good relationship between benefit and cost. In this context it would seem beneficial to define a set of professional ethics which would be formulated to be applicable throughout Europe. Professional rules which are only aligned with high expense covered by the state would not meet people's adjusting needs. We have to preserve – at least virtually – the availability of measurements and carry them out if required.

9. Summary

To summarize the comments above and how they could be applied in the framework of our professional rules, we have to take into consideration the following:

Firstly:

We do not have to be worried about the future existence of our profession, but we should take any suitable opportunity to point out our function in terms of social policy so that it is fixed in the consciousness of decision-makers. In this context, professional policy and public relations are important.

Secondly:

Demarcation and setting of boundaries are (and will be in the future) the prominent principles of our professional exercise. They comprise the regulatory procedures and on-site activities. We should, however, make flexible use of our technical expertise by adapting the procedures and by meeting and fulfilling citizens' requirements. In this context modern options of demarcation are important.

Thirdly:

We have to be able to provide conventional

terrestrial measurement accurate to the centimeter as a standard, and have the necessary skills to do so. We should also integrate new survey techniques, e.g. based on remote sensing. In this context a diversification of conventional surveys is important.

Fourthly:

Our activities are state based. In this field the state should not act solely as an authority, but also as the guaranteeing instance. In exceptional cases, the virtual – dimensioning with adequate existing data should be an additional option. The option of transferability to the locality is an addition to classical procedures. In this context «register surveys» are important.

Property and boundaries have played an important role for humanity right from the beginning. They will always play an important role. Procedures, methods and their implementation as well as the consciousness of society of the characteristics these must possess will change, however. In this context, dimensioning and the guarantee of dimensioning are important in order to be able to create and maintain respect for boundaries. The «WHAT» should be guaranteed in terms of professional policy. The «HOW» deserves further discussion, which we as survey professionals should carry out ourselves before others do so.

We can confidently quote *Leonardo da Vinci* who said: *«where there are no boundaries there is no shape».*

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