Università della Svizzera italiana

Faculty of Economics

IdEP Economic Papers

2018 / 02

U. Pagano, M. Vatiero

Positional goods and legal orderings

Positional goods and legal orderings

Ugo Pagano (Università degli Studi di Siena)

and

Massimiliano Vatiero (Università della Svizzera italiana)

Abstract. People consume because others consume, maintained Veblen in 1899. More recently, theoretical, empirical and experimental articles have argued that people constantly compare themselves to their environments and care greatly about their relative positions. Given that competition for positions may produce social costs, we adopt a *Law and Economics* approach (i) to suggest legal remedies for positional competition, and (ii) to argue that, because legal relations are characterized in turn by positional characteristics, such legal remedies do not represent 'free lunches'.

JEL Codes: B41, D01, D62, K00.

Keywords: Positional good, Conspicuous consumption, Legal ordering, Legal relations.

Pre-print version

Published on: Marciano A. and G.B. Ramello (eds.), *Encyclopedia of Law and Economics*, Springer.

Upon passing by a small village of barbarians,
Julius Caesar asserted "[f]or my part,
I had rather be the first man among these fellows
than the second man in Rome."
(Plutarch)

1. The issue

A positional good is an economic good that depends largely on comparison of one's own consumption with that of others (Hirsch 1976, McAdams 1992, Pagano 1999, Hopkins and Kornienko 2004, Schneider 2007, Vatiero 2009, Fiorito and Vatiero 2013). Positional concerns refer to the fact that individuals consider their rank, relative standing or position when they evaluate their situation and act upon this evaluation.

For instance, in the above quotation from Plutarch, Julius Caesar (Roman emperor) admitted his willingness to renounce the larger and better private and public goods that he could consume in Rome (e.g. *panem et circenses*) to gain the position of sovereign (which is a positional good) in a relatively poorer community. Likewise, in John Milton's *Paradise Lost*, Satan stated that it is "[b]etter to *reign* in Hell, than *serve* in Heaven" (emphasis added). In other words, individuals like Caesar and angels like Satan prefer to be the first or the leader in a reference group, even if it is a second-rate one (e.g., a barbarian village or Hell). The recent experimental literature corroborates this 'position matters' argument (e.g. Solnick and Hemenway 1998, 2005).

Similarly, Hopkins and Kornienko (2004) state, "it is not just that the car is big [enough for needs] but that it is bigger than those owned by the neighbours that also matters" (Hopkins and Kornienko 2004:1087–1088). Carlsson et al. (2007) test this size-matters hypothesis with an experiment and find that people prefer cars bigger than the average size in their society.

A further example is provided by San Gimignano, a small Italian town close to Florence and Siena. In the past, San Gimignano was characterized by about 80 towers (today there are 'only' 20 of those towers remaining). The families of San Gimignano did not build towers to live in them or for military defence (because they were unfit for habitation or for fortification), but rather to display their power, affluence, wealth and status to the rest of the community. Similarly to the 'size-matters' argument in Hopkins and Kornienko, in the case of San Gimignano's towers, tallness matters.

Positional concerns are pervasive in numerous socio-economic domains (see Solnick and Hemenway 2005) and play a pivotal role in people's happiness (e.g. Frey and Stutzer 2002, Clark et al. 2008). This entry wants to deal with negative effects of positional competition and institutional remedies.

Some consequences of competition for positions are illustrated by the following example concerning a labour relationship (see Frank 2012). Consider two types of employment contract, distinguished between wage and safety at work. The former type of contract is characterized by a

wage relatively higher *but* a level of workplace safety relatively lower than those of the latter type. Denoting with w_L, w^H and R, respectively, the low(er) wage, the high(er) wage, and disutility for unsafe work (e.g. *R*isks of injuries), assume that

$w_L > w^H - R$ [1]

That is, the disutility due to an unsafe workplace is relatively higher than the increase in wage. In other words, the choice of the contract with unsafe work may produce social costs (i.e. higher health expenditures).

In this game, the Nash equilibrium (*Safe work and low wage* for both parties) is efficient (see Figure 1).

		Friday	
		Safe work and low wage	Unsafe work and high wage
Robinson	Safe work and low wage	$w_L; w_L$	$w_L;\ w^H - R$
	Unsafe work and high wage	$w^H - R;\ w_L$	$w^H - R;\ w^H - R$

Figure 1: The trade-off between safety (or health) and wage

Now assume that positions matter. For instance, a worker with a higher wage can acquire a relatively larg(er) car: that is, there is a positive utility POS deriving from position (e.g. being the worker with the highest wage in the reference group) as well as a corresponding negative utility $-POS$ (for being the worker with the lowest wage in the reference group). The choice of the worker changes as in Figure 2.

		Friday	
		Safe work and low wage	Unsafe work and high wage
Robinson	Safe work and low wage	$w_L; w_L$	$w_L - POS; w^H - R + POS$
	Unsafe work and high wage	$w^H - R + POS;\ w_L - POS$	$w^H - R; w^H - R$

Figure 2: The choice when positions do matter

In particular, if $w_L - POS < w^H - R < w_L < w^H - R + POS$, then the game becomes a prisoner's dilemma: the Nash equilibrium (both parties choose *Unsafe work and high wage*) is Pareto inefficient.

Indeed, even if the second type of contract (lower wage *but* a higher level of workplace safety) is efficient in terms of social welfare (because health expenditures with lower workplace safety are relatively higher than the increase in wage, cf. [1]), each worker prefers the first type of contract because positional competition (on the wage) is important. This means that agents may substitute a non-positional good (i.e. safety at work) with a positional good (wealth), thus causing social costs (i.e. health expenditures). Moreover, if every employee chooses the employment contract with an high wage, then no agent will enjoy a positional advantage in wealth. In equilibrium, no-

one will consume a positional good (i.e. the biggest car), but all workers will 'consume' a lower level of safety at work.

Hence, the consumption of positional goods may produce the following social costs:

1. Agents could substitute a non-positional good (e.g. a private and/or public good) with a positional good, leading to suboptimal equilibria (see also Frank 1985a, 1985b, 2008).
2. Because the 'parallel investments' in obtaining positional goods may lead to the situation in which no-one consumes positional goods, positional competition may waste the economic resources of agents (see Pagano 1999).

How should institutions regulate the competition for positions? What are institutional remedies? A first group, say of *Public Economics*, involves Pigouvian remedies, i.e. a progressive consumption tax on luxury/positional goods (see Frank 1985a, 1985b, 2008). A second group, say of *Law and Economics* (see definition of Marciano 2016), may consider rules as means to reduce social costs due to positional competition. This second group is the focus of the next two sections.

2. Institutional remedies

How could norms reduce social costs due to positional competition? We investigate three types of *Law and Economics* remedies: norms which i) restrain/punish the consumption of positional goods, ii) make the consumption of non-positional goods compulsory, and iii) encourage cooperation by agents competing in positions.

i) Restraining the consumption of positional goods

Because of the social costs deriving from the consumption of positional goods, the law-maker may penalize or prohibit the consumption of positional goods. An example is the so-called sumptuary law—Black's Law Dictionary defines such a law as made for the purpose of restraining luxury or extravagance, particularly against inordinate expenditures in the matter of apparel, food, furniture, etc. Sumptuary laws were enacted in Ancient Greece and Rome, and from the Middle Ages onwards in France and England; and again, in the 17th century in the American Colonies and in feudal Japan (cf. Dari-Mattiacci and Plisecka 2012).

For instance, in ancient Rome, a series of laws governed the materials of which garments could be made and the number of guests at entertainments. In France, Philip IV issued regulations governing the dress and the entertainments of the various social orders. Under later French kings, the use of gold and silver embroidery, silk fabrics, and fine linen was restricted. In 1433, an act of the Scottish Parliament prescribed the lifestyle in Scotland, even going so far as to limit the consumption of pies and baked meats. In feudal Japan, an imperial edict regulated the size of houses and imposed restrictions on the materials that could be used in their construction. Rules in the Tokugawa period in Japan specified the sorts of toys that parents could give their children. For the Aztecs, *macehualtin*—members of the labouring class—who displayed finery and precious objects could be put to death. An interesting and 'romantic' view on sumptuary law is in *Dei Sepolcri* by Ugo Foscolo, where the author condemned the Napoleon edict of Saint-Cloud on *positional* expenditures for funerals.

However, attitudes on sumptuary law changed with the Enlightenment, industrial mass production, and consumer-oriented societies. For this reason, there are today limited examples in which legal norms discourage or punish the consumption of a positional good—an exception could be represented by the case of the case of 'power': Power is a positional good (Pagano 1999; Vatiero 2009) whose consumption in liberal countries is legally and formally limited, e.g. by antitrust law, labour law and public law (see Vatiero 2009), which may represent modern forms of sumptuary norms.

Although in liberal society there are not clear examples of legal norms which punish the consumption of positional competition, social norms may do so. This is the case of the Tenth Commandment "You shall not covet your neighbour's house; you shall not covet your neighbour's wife or his servant or his ox or his donkey or anything that belongs to your neighbour." Because the Commandment implies punishment in the case of *envious* choices and conducts, it should affect the behaviours of agents, at least of Christians and Hebrews, and may mitigate positional competition.

ii) Making the consumption of non-positional goods compulsory

Because of the social costs due to the consumption of positional goods, the law-maker may render (a minimum level of) the consumption of non-positional goods compulsory. That is, the legal system may provide norms which reduce the substitution between positional goods and non-positional goods by defining a non-renegotiable minimum consumption of non-positional goods.

Indeed, labour law establishes non-renegotiable minimum conditions on safety at work. For instance, the employer must provide and maintain a working environment that is safe and without risk to the health of the workers; and workers must use safety equipment with care and act according to prescribed instructions to safeguard their health and protect themselves against injury.

Accordingly, most labour law in the Western countries forbids the re-negotiation of these conditions on safety, even against the worker's will. Indeed, the worker may prefer a higher wage at the expense of safety at work. From the perspective of positional competition, this prohibition on re-negotiating minimum safety conditions at work is efficient because it reduces the emergence of social costs related to positional competition.

iii) Encouraging cooperation among positional competitors

Because of the social costs due to the consumption of positional goods, the policy-maker may encourage cooperation and collaboration among agents (i.e. positional competitors). That is, the wasteful competition for positional goods represents a problem of coordination among agents. For instance, in the case of employment contracts, workers' choices lead to a Pareto inefficient equilibrium with a lower level of safety at work and nobody consuming a positive level of positional goods. Workers may coordinate to move to a Pareto-superior equilibrium (where nobody still consumes a positive level of positional goods but all parties have higher levels of safety at work). This implies that cooperation among agents (e.g. workers) may improve the efficiency of individuals' choices (e.g. in terms of labour safety).

In other words, the labour laws which sustain worker unions and collective bargaining could encourage coordination/cooperation among workers and, because unions take the negative effects of positional competition into account, reduce the substitution of non-positional goods for positional goods.

3. Legal positions as positional goods

While in the preceding section we argued that legal norms may diminish inefficiencies due to positional competition, in this section we illustrate how legal norms in turn create positional concerns.

	Jural correlatives			
Dominus	Claim	Liberty	Power	Immunity
Servus	Duty	No-right	Liability	Disability

Figure 3: Fundamental legal conceptions

According to legal theorists such as Wesley N. Hohfeld and Old Institutionalists like John Commons, each jural relation is linked to a jural correlative (Pagano 2000; Vatiero 2010; Fiorito and Vatiero 2011). The above table displays the eight fundamental conceptions with which all legal problems may be stated: claim, duty, liberty, no-right, power, liability, immunity and disability.

Claim/Duty relation. In a simplified situation with two agents, say a Dominus and a Servus, a *claim* means that the Dominus has a state-sanctioned assurance that the Servus will behave in a certain way toward Dominus. However, this occurs if and only if the Servus has the *duty* to engage in such behaviour with respect to Dominus. That is, a duty is the legal position of the Servus, who is commanded by society to act for the benefit of Dominus, and who will be penalized by society for disobedience. Hence, the correlative of a claim is a duty.

Liberty/No-Right relation. Liberty stands for one's freedom from the claim of someone else. Similar to the claim-duty relationship, the Dominus has a liberty to behave in a certain way toward Servus if and only if the Servus has *no-right* toward the Dominus to prevent the Dominus from behaving in a certain way. No-right is therefore the legal correlative of a liberty of another party.

Power/Liability relation. Power is the legal ability to do certain acts that alter legal relations. The Dominus's power is when the Dominus's own voluntary act will cause new legal relations between the Dominus and the Servus, against the Servus's will. This implies that, whenever a power exists, there is at least one other human being whose legal relation will be altered when the power is exercised. The person whose legal relation will be altered is under a *liability*.

Immunity/Disability relation. Finally, *immunity* is any legal situation in which a given relation vested in one person cannot be changed by acts of another person. Correlatively, the one who lacks the legal ability to alter the other individual's legal relations is said to be under a *disability*.

The correlative nature of legal positions means that each legal position is available to an individual if and only if a corresponding legal position is occupied by some other individual. In particular, legal positions are adversarial in nature (see also Vatiero 2013A). For instance, claims of one individual imply, at the same time, duties for some another individual, and vice-versa. That is, the set of actions that defines the claims of the Dominus imposes duties on some individual(s), e.g. the Servus. This brings about the consumption of legal positions with opposite signs: claim by the Dominus, as his/her desired output, and duty by the Servus, as his/her costly input. In a similar

manner, the power-liability relationship consists of Dominus's benefit (i.e. the power) as well as Servus's cost (i.e. liability). Hence, any utility deriving from rights and powers must jointly relate with dis-utility deriving from duties and liabilities (see Figure 4).

Claim/Power	**Duty/Disability**
Benefits	*Costs*
Desired output	*Costly input*
Utility	*Disutility*

Figure 4: The adversarial nature of legal relations

Unlike traditional economic goods, jural positions inevitably involve consumptions and utilities with opposite signs. *Everyone* cannot consume claims, liberties, powers and immunities; for some individuals, the exercise of these jural positions must imply the exercise of 'unfavourable' correlative jural relations (i.e. duties, no-rights, liabilities and disabilities). Because of their adversarial nature, we can represent jural positions as positional goods (see also Pagano 2000; Vatiero 2013A).

This means, moreover, that the definition of rights, duties, powers, etc. with the purpose of mitigating positional concerns, as illustrated in the previous section, can in turn create positional concerns because judicial positions are positional goods. Following Coasean main contribution, no institution is a 'free lunch' (Grillo 1995; Pagano 2012; Vatiero 2013B; Pagano and Vatiero 2015). Thus, in the case of positional goods one should take into account benefits deriving from an institutional arrangement able to mitigate positional competition and reduce related social costs, but also the costs involved in that institutional arrangement which is in turn characterized, owing to the adversarial nature of legal relations, by positional concerns.

4. Conclusions

Positions matter in the choices and happiness of agents. People constantly compare themselves to their environments and care greatly about their relative positions, which impact on their choices.

The consumption of positional goods may produce social costs. On the one hand, agents may substitute a non-positional good with a positional good; on the other hand, as an arms race, positional competition may waste the economic resources of positional competitors. Both consequences lead to suboptimal equilibria.

Law and Economics scholars should investigate legal remedies for social costs due to competition for positions. They should take serious account of the fact that legal remedies are not free lunches. In this regard, future research could investigate the costs and benefits that would derive from the definition of a Coasean market (Cf. Medema 2014 and Bertrand 2015 in this encyclopaedia) for positional goods.

References

1. Bertrand E. (2015), "Coase and property rights," in Marciano A. and G.B. Ramello (Eds.), *Encyclopedia of Law and Economics*, New York: Springer.
2. Carlsson F., O. Johansson-Stenman and P. Martinsson (2007), "Do you enjoy having more than others? Survey evidence of positional goods," *Economica*, 74:586–598.
3. Clark A.E., P. Frijters and M.A. Shields (2008), "Relative income, happiness, and utility: An explanation for the Easterlin Paradox and other puzzles," *Journal of Economic Literature*, 74(2):425-467.
4. Dari-Mattiacci G. and A.E. Plisecka (2012), "Luxury in Ancient Rome. An economic analysis of the scope, timing and enforcement of sumptuary laws," *Legal Roots, The International Journal of Roman Law, Legal History and Comparative Law*, 1:189-216.
5. Fiorito L. and M. Vatiero (2011), "Beyond Legal Relations: Wesley Newcomb Hohfeld's influence on American Institutionalism," *Journal of Economic Issues*, 45(1): 199-222.
6. Fiorito L. and M. Vatiero (2013), "A joint reading of positional and relational goods," *Economia Politica - Journal of Analytical and Institutional Economics*, 30(1): 87-96.
7. Frank R. H. (1985a), "The demand for unobservable and other nonpositional goods," *American Economic Review*, 75(1):101–116.
8. Frank R. H. (1985b), *Choosing the right pond: Human behavior and the quest for status*, New York: Oxford University Press.
9. Frank R. H. (2008), "Should public policy respond to positional externalities?," *Journal of Public Economics*, 92:1777–1786.
10. Frank R. H. (2012), *The Darwin Economy*, Princeton: Princeton University Press.
11. Frey B.S. and A. Stutzer (2002), "What can economists learn from happiness research?" *Journal of Economic Literature*, 40:402-435.
12. Grillo M. (1995), Introduzione, in Grillo M. (ed.), *Impresa, Mercato e Diritto*, Bologna: Il Mulino.
13. Hirsch F. (1976), *The social limits to growth*, Cambridge: Harvard University Press.
14. Hopkins E. and T. Kornienko (2004), "Running to keep in the same place: Consumer choice as a game of status," *American Economic Review*, 94(4):1085–1107.
15. Marciano A. (2016), "Economic Analysis of Law," in Marciano A. and G.B. Ramello (Eds.), *Encyclopedia of Law and Economics*, New York: Springer.

16. McAdams R. H. (1992), "Relative preferences," *Yale Law Journal*, 102(1):1–104.
17. Medema S. (2014), "Coase Theorem," in Marciano A. and G.B. Ramello (Eds.), *Encyclopedia of Law and Economics*, New York: Springer.
18. Pagano U. (1999), "Is power an economic good? Notes on social scarcity and the economics of positional goods," in Bowles S., Franzini M. and U. Pagano (eds.), *The Politics and the Economics of Power*, London: Routledge, pp. 116–145.
19. Pagano U. (2000), "Public Markets, Private Orderings and Corporate Governance," *International Review of Law and Economics*, 20(4):453-477.
20. Pagano U. (2012), "No institution is a free lunch: a reconstruction of Ronald Coase," *International Review Economics*, 59(2):189-200.
21. Pagano U. and M. Vatiero (2015), "Costly Institutions as Substitutes: Novelty and Limits of the Coasian Approach," *Journal of Institutional Economics*, 11(2)—Coase memorial issue: 265-281.
22. Schneider M. (2007), "The nature, history and significance of the concept of positional goods," *History of Economics Review*, 45:60–81.
23. Solnick S.J. and D. Hemenway (1998), "Is more always better? A survey on positional concerns," *Journal of Economic Behavior and Organization*, 37(3):373–383.
24. Solnick S.J. and D. Hemenway (2005), "Are positional concerns stronger in some domains than in others?" *American Economic Review*, 95(2):147-151.
25. Vatiero M. (2009), *Understanding power. A Law and Ecnomics' approach*, Saarbrucken: VDM-Verlag.
26. Vatiero M. (2010), "From W. N. Hohfeld to J. R. Commons, and beyond?," *American Journal of Economics and Sociology*, 69(2):840-866.
27. Vatiero M. (2013A), "Positional goods and Robert Lee Hale's legal economics," *Journal of Institutional Economics*, 9(3):351-362.
28. Vatiero M. (2013B), "Alla ricerca di regole (e istituzioni) efficienti," *Rivista Critica del Diritto Privato*, 31 (1): 123-138.
29. Veblen T. (1899), *The Theory of the Leisure Class*, New York: MacMillan.

IdEP Economic Papers

The series IdEP Economic Papers, ideally continues the work of the "Quaderni della Facoltà" the publication of which began in 1998 and ended in 2013.
For a complete list of the Quaderni see: http://econpapers.repec.org/paper/lugwpaper/

IdEP Economic Papers also gathers the legacy of the CEPRA Working Papers, published from 2012 to 2013.
The full list at: http://econpapers.repec.org/paper/lugwcepra/

2014:

No. 01
F. Mazzonna, F. Peracchi, *Unhealthy retirement? Evidence of occupation heterogeneity*

No. 02
L. Di Giorgio, M. Filippini, G. Masiero, *The relationship between costs and quality in nonprofit nursing homes*

No. 03
F.C. Billari, V. Galasso, *Fertility decisions and pension reforms : evidence from natural experiments in Italy*

No. 04
M. Jametti, M. Joanis, *Elections and de facto expenditure decentralization in Canada*

No. 05
M. Jametti, *Weathering the global financial crisis : is direct democracy of any help?*

No. 06
U. Pagano, M. Vatiero, *Costly institutions as substitutes : novelty and limits of the Coasian approach*

No. 07
R. Parchet, *Are local tax rates strategic complements or strategic substitutes?*

No. 08
R. Ippoliti, M. Vatiero, *An analysis of how 2002 judicial reorganization has impacted on the performance of the First Instance Courts (*Preture*) in Ticino*

No. 09
F. Mazzonna, P. Salari, *Short term effects of public smoking bans on health*

2015:

No. 01
S. Galletta, *Direct democracy, partial decentralization and voter information : evidence from Swiss municipalities*

No. 02
I. Sarman, *Second homeowners' intention to move : an integrated ordered logit model with latent variable*

No. 03
M.J. Roe, M. Vatiero, *Corporate governance and its political economy*

No. 04
M. Filippini, M. Koller, G. Masiero, *Competitive tendering versus performance-based negotiation in Swiss public transport*

No. 05
O. Giuntella, F. Mazzonna, *If you don't snooze you lose health and gain weight : evidence from a regression discontinuity design*

No. 06
M. Filippini, B. Hirl, G. Masiero, *Rational habits in residential electricity demand*

2016:

No. 01
S. Galletta, *Law enforcement, municipal budgets and spillover effects : evidence from a quasi-experiment in Italy*

No. 02
S. Galletta, A. Redonda, *Corporate flat tax reforms and businesses' location choices. Evidence from Switzerland*

No. 03
M. Filippini, W. Greene, G. Masiero, *Persistent and transient productive inefficiency in a regulated industry : electricity distribution in New Zealand*

No. 04
M. Vatiero, *On the (political) origin of "corporate governance" species*

No. 05
E. Gentili, G. Masiero, F. Mazzonna, *The role of culture in long-term care*

No. 06
M. Vatiero, *Learning from the Swiss corporate governance exception*

No. 07
F. Cavalcanti, G. Daniele, S. Galletta, *Popularity shocks and political selection : the effects of anti-corruption audits on candidates' quality*

2017:

No. 01
P. Bello, *Exchange rate fluctuations and border crossings : evidence from the Swiss-Italian border*

No. 02
E. Gentili, F. Mazzonna, *What drives the substitutability between native and foreign workers? Evidence about the role of language*

No. 03
G. Daniele, S. Galletta, B. Geys, *Abandon ship? Party brands and politicians' responses to a political scandal*

2018:

No. 01
G. Masiero, F. Mazzonna, O. Verbeek, *What drives the rise of antidepressant consumption? Evidence from Switzerland*

No. 02
U. Pagano, M. Vatiero, *Positional goods and legal orderings*