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November 8, 2015

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would make the engrossment of a majority of the land by absentee landlords much less likely than at present.

And that's even more true of left-libertarian Lockeans, who from what I've seen, support relatively low thresholds of abandonment that favor the rights of occupants in cases like the South Central Farm in Los Angeles — not to mention placing high burdens of proof on ownership claims to things like vacant lots in urban areas.

So in practical terms, I see mutualists and principled Lockeans as united by more things than divide us.

Notes:

costs to third parties, and thereby make the enforcement of their authority and privileges artificially cost-effective.

So for example, a mutual defense association or an-cap private security firm in a Lockean community will probably have an exclusion clause against enforcing the collection of absentee landlord rent against an occupant in a mutualist community, or protecting landowners against collection of land rent in a Georgist community — or for that matter, restoring a dispossessed factory owner in a syndicalist or communist community. Likewise, mutual defense associations in occupancy-and-use communities will likely refuse to protect occupants of land in a Lockean community against rent collectors.

And occupancy-and-use is the likely default for most thinly populated rural areas simply because the likely economic potential of land in such places will be insufficient to justify the costs of enforcing absentee title against squatters.

Conclusion

I consider a system avowedly based on occupancy-and-use, in which a piece of land becomes open for homesteading after some reasonable period of vacancy, to be the most desirable because it explicitly takes occupancy-based ownership as its goal and facilitates it with a minimal amount of ajudication or other complications. Nevertheless, I believe that a principled Lockean system with even a relatively high time threshold and burden of proof for constructive abandonment, by opening up all vacant and unimproved land for immediate homesteading, would go a long way towards reducing the average rent of land and enable a significant share of the population to live free from rent altogether. The combined effect would increase the difficulty of acquiring large contiguous tracts of land, and greatly reduce the "compound interest" effect of land rent growing on itself. In so doing, even a strictly Lockean regime

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Lockean and mutualist property are "the same thing … with different parameters" for the length of time necessary to establish abandonment.[1]

And the wide range of possible stickiness standards in non-Proviso Lockeanism itself is evidenced in a striking manner by the fact that the non-Proviso Lockean majority of left-libertarians at ALL and C4SS tend to have significantly lower standards for constructive abandonment, and to give occupants of land left out of use for a considerable time a greater benefit of the doubt, than is typical of those on the libertarian-right.

VII. Enforcement

It seems likely that land property regimes will be polycentric to the extent that majority mores vary from one locality to another, because absent a single legal regime enforced by a large territorial state, property claims will depend on the willingness of local communities to enforce them. And in a polycentric legal regime in which all enforcement is financed endogenously (by the beneficiaries, as opposed to externalizing the cost on society at large through exogenous funding from general revenues), the enforceability of one's property claims will depend on whether the potential economic value of the property is sufficient to justify enforcement costs.

Non-state enforcement of property rights regimes is subject to the same prohibitive transaction costs that James Scott attributed to the enforcement of state governance in non-state spaces, in *The Art of Not Being Governed*. All forms of governance carry transaction costs. States (and state-protected economic ruling classes) differ mainly in their ability to shift those

[1] Quoted material originally appeared on message boards at Anti-State.com. It's quoted here from Chapter Five of my book *Studies in Mutualist Political Economy* (2007).

presumed to still be somebody's private property, despite being vacant and unused for decades, because it was once somebody's property and ownership was never formally transferred to someone else). Even if the owner explicitly declared their intent to return and resume possession at some indefinite future time, it would eventually be necessary after some duration for the community to assume that the owner had changed their mind, or perhaps died, without notifying anyone; otherwise appropriation would be irreversible and a growing share of vacant land whose owners had left it would fall under the dead hand of presumed ownership for all future time.

So — again — in practice, the fact that standards for constructive abandonment would be to a large extent a matter of local convention, with a wide range of possible thresholds for abandonment from the most liberal to the most stringent, means that Lockeanism and occupancy-and-use really differ only in degree rather than in kind. Or to put it another way, Lockeanism *is* occupancy-and-use, but with somewhat more lenient occupancy requirements for maintaining ownership than most explicit occupancy-and-use advocates call for.

Bill Orton, somewhat unusually for a self-described anarcho-capitalist, described it as differing degrees of "stickiness."

In both systems [i.e., "sticky" (Lockean) and "non-sticky" (socialist/usufruct)], in practice there are well-known exceptions. Sticky property systems recognize abandonment and salvage; usufruct allows for people to be absent for some grace period without surrendering property, and of course allows trade. You might even see the two systems as a continuum from high to low threshold for determining what constitutes "abandonment."

It falls to me, in this opening salvo in a symposium on occupancy-and-use land tenure, also known as usufructory property, to write a defense of it. Theoretical advocates of it go back, in some form, at least to Godwin and Paine in the Western tradition. I'm sure it's also been advocated by earlier Western writers, as well as non-Westerners I'm unaware of. I was exposed to it mainly through the individualist anarchist Benjamin Tucker's arguments in his journal *Liberty*, and through Josiah Warren and Joshua King Ingalls (from whom, along with Proudhon, Tucker himself got the doctrine). The basic idea is that not only must land be occupied and put into use to be legitimately appropriated, but continued occupancy is required to maintain ownership (with obvious commonsense exceptions for traveling, letting some land periodically lie fallow, and the like).

Although I've promoted occupancy-and-use much more stridently and uncompromisingly in my younger and less mellow days, in this article I'll be stressing its areas of commonality with other libertarian ideas of land tenure.

I. The "P-Word"

Before I even begin to address substantive differences between occupancy-and-use and other property rights systems, I need to clear up some semantic differences over the word "property." The difficulties arise mainly from certain social anarchists whose kneejerk reaction to any use of the word "property" is to quote Proudhon's famous dictum "Property is theft" and make accusations of "anarcho-capitalist entryism," without bothering to consider how the word is being used.

It's a shame there's even a need to say this, but "property" is a word that's used by different people to mean different things. I can heartily agree with Proudhon that property is theft, as he meant the word "property," while also recognizing the in-

dispensability of "property" in the sense of a set of social rules governing priority of access to scarce material resources. In that latter sense, there's never in history been, nor will there ever be, a society without property rules. The purest libertarian communist or syndicalist society imaginable would be unable to exist without property rules of some sort; even in such a society, some random individual off the street couldn't just wander into People's Machine Shop No. 37 and start fiddling around with a milling machine.

Those who object to the word "property" itself mistake the map for the terrain. It's the same kind of uncritical fixation on words, without context or shades of meaning, that leads Birchers to insinuate (based on Marx's discussion of "lower" and "higher stages of communism" in *Critique of the Gotha Program*) that social democracy is "really" a temporary stage on the path to Soviet-style communism.

Generally speaking, the principled theories of property in land all make distinctions analogous to the one Proudhon made between "property" and "possession" — although they don't draw the line at the same place.

Thomas Hodgskin, both a classical liberal advocate of free markets and an early figure in the socialist movement, distinguished (in a book entitled, appropriately enough, *The Natural and Artificial Right of Property Contrasted*) between the "natural rights of property" (which resulted in one's property in the product of one's labor, and in land which one was cultivating) and the kinds of "artificial rights of property" which gave the owner a right to extract rents from the labor product of other people. In the case of property in land, the cultivator's right to the land they were actually putting to use to feed themselves was a natural property right; the absentee property claims of the British landed nobility and gentry, on the other hand, was an artificial — and illegitimate — property right.

Franz Oppenheimer, another free market socialist of sorts, made a similar distinction in *The State* between "natural" and

actual users, and zoning regulations that mandate the artificial separation of residential and commercial property in different areas of the city, will have the effect of increasing differential rent. On the other hand, funding freeways and public transit entirely with cost-based user fees, extending utility hookups to new neighborhoods at full cost, and eliminating legal barriers to mixed-use development like neighborhood commercial centers, will all tend to reduce differential rent by bringing living space and work/shopping space closer together.

Of course some residual amount of differential rent, both from superior fertility and favorable location, will always exist. But I believe that opening up vacant land, together with eliminating subsidies to sprawl, will reduce the amount of differential rent to acceptable levels. The remaining rent will be "unfair," in the same sense as the higher incomes that continue to go to those with unearned superior innate abilities even after legal privilege is abolished. But the use of land value taxation to eliminate this residual amount of rent, in my opinion, would be a cure worse than the disease.

VI. Are We All Mutualists?

At the most general and theoretical level, Lockeanism and occupancy-and-use would seem at first glance to be poles apart in their requirements for maintaining ownership of a piece of land. Mutualists require ongoing occupancy and use as a criterion for ownership, whereas Lockeans consider a piece of land permanently appropriated by initial admixture of labor — regardless of whether occupancy is maintained — until the owner quits claim to it through death, gift or sale.

But in practice, any practical Lockean system in the real world will have to include standards for constructive abandonment, lest a major part of the world's land wind up in a status analogous to "orphan works" under copyright law (that is,

means as land value taxation. I don't rule out, as a matter of principle, the possibility of community land ownership and community collection of rent in a stateless society. But, because it would make everyone's continued possession of the land they occupied and used contingent on their ongoing ability to pay land rent to the community, it would in practice put the entire community of occupier-users in a permanently precarious position. My goal, in giving the occupier-user security in possession against the absentee landlord, is not to put them instead in a new position of insecurity of possession in relation to the community.

I believe that most of the benefits of a land value tax could be achieved more simply by 1) immediately throwing all vacant and unimproved land currently held out of use open for homesteading, and thereby effectively shifting the margin of cultivation inward; and 2) closing all positive externalities that result in rising land values. The first item needs little explanation. As vacant land in developed areas is opened up to in-fill development, the portion of rent on favorably situated land that results from artificial scarcity will vanish. And as a larger share of the population is able to live in closer proximity to work and shopping and the relative share of the population in less favorably situated areas shrinks, the differential rent in the most favorably situated areas will diminish.

The second is a little less obvious. The differential rent accruing to in-lying commercial real estate is largely a function of the distance between it and the people who want to get to it. The greater the distance that must be travelled by those who live furthest from the in-lying commercial areas, the greater the rent that will accrue to locations situated closer to them. So anything that promotes sprawl — greater average distances between things, and the spatial separation of commercial from residential areas — will also inflate location rents on in-lying property. It's a matter of simple geometry. Subsidies to freeways or to mass transit from sources other than charges to the

"political appropriation" of the land. One naturally appropriated land by putting it to one's own direct use; one politically appropriated vacant land by enclosing it with no intention to use it oneself, and charging tribute from those who who actually put it to use. The great majority of property in land, Oppenheimer argued, had its origins on political appropriation. Albert Jay Nock, heavily influenced by Oppenheimer, used "labor-made" and "law-made property" in an almost identical sense.

Some of the individualist anarchists, over the course of their intellectual careers, sometimes called for the abolition of "property" (in Proudhon's sense) and at others defended "property" (based in personal possession and use), without any real change in their substantive position.

II. Areas of Commonality

In this article, my comparisons will be between occupancy-and-use tenure and other principled theories or rules systems for property in land. In the category of "principled" theories or rules I include occupancy-and-use, both Proviso and non-Proviso Lockeanism, and Georgism — basically everything but the legally defined property rights currently in place in the West and much of the rest of the world. Although I don't discuss them much here, I also include syndicalist and libertarian communist property rights systems and the like, to the extent that they see occupancy and labor as the source of possessory rights and defend individual or group possession against invasion. By the standards of any of the property rights systems mentioned, the great majority of existing titles to land are illegitimate.

By the very fact of being principled — i.e., attempting to deal in a just way with certain objective characteristics unique to land — the various principled systems will have consider-

able areas of commonality which I will stress throughout this article.

All principled theories of property rights in land are unsatisfactory attempts to secure individuals' rights to their labor product when it is mixed with land — in the same manner as when they mix their labor with natural resources to create movable objects — given the unique difficulties presented by land. The difficulties are that 1) land itself is non-replicable and there is a finite supply of locations, and 2) once mixed with the land, a person's labor is no longer movable if they decide to pull up stakes and leave. I will put off discussing the difficulties arising from the irreversibility of mixing one's labor in the land until a later section.

As for the finite supply of locations, this unique aspect of land is reflected in the fact that no principled system of property rules in land allows an absentee owner to simply engross and fence off empty, undeveloped land without putting it to use, in order to collect rent from those who do put it to use. All the principled systems have the same standard of initial appropriation of virgin land: occupancy and use, or (in Locke's phrase) mixing one's labor with the soil.

Georgism is an outlier in this regard, in that for practical reasons it recognizes existing de jure property titles descended from illegitimate appropriation, but uses land value taxation to achieve the same results as actual redistribution of illegitimately held land. Nevertheless Henry George himself acknowledged in principle (and backed it up with historical examples in *Progress and Poverty*) that initial appropriation by any means other than admixture of labor was illegitimate, and his disciples Oppenheimer and Nock examined in much greater detail the history and economic effects of illegitimate appropriation.

V. Mutualism vs. Georgism

I should begin by expressing my admiration for a great deal of Georgist analysis of rent, even if I'm lukewarm at best about their proposed solutions. The Ricardian theory of differential rent, which (expanded to include differential location rent as well as fertility rent) is the basis for Georgist analysis, is a contribution of classical political economy that marginalist economics — in subsuming land under capital — discarded to its own detriment. The Ricardian/Georgist theory of differential rent performs an important explanatory function, and modern marginalism is inferior to classical political economy insofar as it has abandoned it for the sake of theoretical elegance.

And virtually every Austrian critique of the Georgist position that I've seen displays a fundamental failure to grasp what the actual Georgist arguments are. The most common such Austrian critique, by far, cites things like multi-story buildings and offshore platforms as examples of "new land" being created, as a challenge to the classical assumption that land — or rather, locations favorably located to any particular area — is finite. In fact, multi-story buildings and offshore platforms are illustrations of *exactly what Henry George meant* by differential rent. When the existing supply of prime locations, which can be used as-is with little or no additional cost in labor or capital to make them usable, are used up, it becomes necessary to expand the margin and develop previously unused locations that become usable only with greater outlays of labor and capital (by such means as adding more stories to buildings at a greater cost per square foot than the first story). The greater the cost in labor and capital in making this so-called "new land" compared to the original locations which were provided free by nature, the greater the unearned differential rent accruing to those original locations.

Nevertheless, I part ways with the Georgists when it comes to their preferred solution of socializing land rent by such

labor well in some cases at the expense of protecting it poorly in others.

For example, under a mutualist occupancy-and-use system an owner may sell a piece of land by taking money at the time of actual transfer of possession; but the requirement to maintain possession and transfer at the actual time of sale will obviously reduce the owner's bargaining power and make it more difficult to recoup the value of buildings and improvements during the time of ownership. On the other hand, under a Lockean system a tenant who cultivates land on a rental property must abandon whatever improvements they make to the soil during their time of tenancy.

Some practical critiques of occupancy-and-use tenure, though, are erroneous if not disingenuous. The frequent strawman version of occupancy-and-use put forward by critics, in which the owner's claim is endangered every time they leave the property, is obvious nonsense. Whatever the specific conventions for determining abandonment in a given community, they will reflect the precedents set by local juries, or by whatever other judicial arrangements are worked out by one's neighbors. And given that any system of rules worked out will reflect the interests of a community of small occupier-owners, it will have the overriding aim of avoiding the growth of large-scale absentee ownership while being designed to function practically without causing unnecessary inconvenience to the average member of the community. It beggars common sense that a free jury of the vicinage, a commonly accepted dispute mediator, or any other judicial machinery representative of a local population of small occupier-users, would create a set of case law that opened the average person up to a risk of dispossession whenever they took a long vacation.

III. The Issue of Communal Property

Although there is some continuity between the founding core membership of the Alliance of the Libertarian Left and Center for a Stateless Society, and Samuel Konkin III's old left-Rothbardian Movement of the Libertarian Left, the ALL/C4SS itself is not by any means an officially Austrian or Rothbardian organization. I myself came from a strongly socialistic Tuckerite individualist position and favor occupancy-and-use tenure in land, and several of our other writers come from social anarchist traditions. Nevertheless I think Rothbard's non-Proviso Lockeanism is probably represented more heavily among our writers than any other single position.

And the version of that position espoused by its representatives at C4SS, at least, illustrates another area of commonality with other traditions further to the left: A respect for common or communal property. Roderick Long, for example, argued in 1996 in favor of non-governmental "public property" — that is, "property that the public at large [is] deemed to have a right of access to."

Consider a village near a lake. It is common for the villagers to walk down to the lake to go fishing. In the early days of the community it's hard to get to the lake because of all the bushes and fallen branches in the way. But over time, the way is cleared and a path forms — not through any centrally coordinated effort, but simply as a result of all the individuals walking that way day after day.

The cleared path is the product of labor — not any individual's labor, but all of them together. If one villager decided to take advantage of the now-created path by setting up a gate and charging tolls, he would be violating the collective property right that the villagers together have earned.

* * *

Since collectives, like individuals, can mix their labor with unowned resources to make those resources more useful to

their purposes, collectives, too can claim property rights by homestead.

Although I'm not a non-Proviso Lockean or an adherent of Austrian economics, I argued on the same basis as Roderick for the legitimacy of the village communal property in open field systems that once predominated in much of the world. In settled areas that have been agricultural since before recorded history, it is likely that villages first introduced field agriculture by breaking the surrounding land in common and followed some regime of periodic redivision into furlong strips from the very beginning, and likewise plowed and harvested in common gangs. In other cases (as noted by Kropotkin in *Mutual Aid*), nomadic groups (for example migrating Celts and Germans in northern Europe) or colonists from villages that had grown too large established new villages in waste areas and broke the land as a communal effort.

In such cases the land was initally appropriated by communal act of homesteading, with no defined individual rights to specific plots other than the customary number of strips in each field that might be allocated to a particular household (but without specification as to where in the field they might be from one redivision to the next). And in such cases, any private enclosure of an aliquot share of land by an individual or household, without the unanimous consent of the village, would be a violation of everyone else's collective property rights in the land as a single unit. For this reason, Stolypin's so-called "reforms" in Russia were just as much a violation of the *Mir*'s communal property rights as was Stalin's forced amalgamation of them into collective farms.

Several of us at C4SS are students and admirers of Elinor Ostrom (Steven Horwitz, who participated in our last mutual exchange, also displayed a welcome respect for the Ostroms' work on natural resource commons).

This willingness to recognize the joint homesteading of land and natural resources (in such historical forms as village

open-field systems, common pasture and waste, public rights of way and town commons, common fisheries, etc.) is a refreshing contrast to the all too many right-libertarians who insist that property can only be owned by individuals (most notably Ayn Rand's claim that the theft of Native American tribal land by European settlers was justified because they didn't believe in any "legitimate" form of property rights).

A right-libertarian who insists that only individuals can legitimately own property would be hard pressed to defend the corporate form as it's existed in American law for the past century and a half. A share of stock is not, legally speaking, a share of property in the corporation. The corporation's assets are not the property of the shareholders, severally or jointly. They are, rather, the collective property of a fictional legal person known as the corporation, ownership of shares in which bestow some extremely limited (and often mostly theoretical) rights of governance over what is in practice a self-perpetuating oligarchy like the Politburo. The directors and senior management are not agents of the shareholders, legally speaking, but administer the collective property of the corporation on behalf of the fictional person they represent.

IV. Practical difficulties

To repeat my earlier statement, all principled theories are unsatisfactory attempts to secure the individual's rights, to the greatest extent possible, to her labor which is mixed in with the land. I say "unsatisfactory" because every property rights regime in land, given the unique nature of the case, is insufficient in some regards and superior in others. Because land is not portable and labor mixed with it in the form of buildings and soil improvements, etc., can't be unmixed with it, any particular property rights regime must protect a user's embodied