

# Free-for-All on South Central Farmers

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The South Central Farmers have created quite a tempest in the libertarian blogosphere. Before I get into the meat of my post, be forewarned that this is a long one, and I spend a long part of this post surveying the extended arguments at several blogs. So my own assessments are way, way, way down there near the bottom.

Rad Geek links to an *L.A. Times* story on the disputed urban farm:

The site has a contentious history. The city acquired the land from Horowitz through eminent domain in the 1980s for a planned trash incinerator, but the project was stopped by neighborhood opposition.

After the 1992 riots, the city leased the land to the Los Angeles Regional Food Bank, which began the community garden. In 2003, the city sold the land back to Horowitz for about \$5 million.

But the farmers did not leave. In the last three years, and particularly in recent weeks, the farmers have pleaded to stay despite Horowitz's plans to sell the land for development.

A nonprofit group tried to buy the land and preserve the farm. But it announced last month that their fundraising effort was \$10 million short of Horowitz's \$16.3-million asking price.

Some in the community support him, arguing that the area would benefit from the jobs that would come if the land were developed.

But according to Rad Geek, the *LAT* story neglects some important aspects of the story. He links to another, earlier account in *The New Standard*:

In 1985–86, the land was taken via eminent domain from private owners by the Los Angeles Department of Public Works for development of a trash-to-energy incinerator called the Los Angeles City Energy Recovery (Lancer) Project. The largest of the private owners was the Alameda-Barbara Investment Company, which owned approximately 80 percent of the land taken for the Lancer project.

The people living near the proposed incinerator site – most of them African American – mobilized against Lancer. At the center of the environmental-justice struggle was the newly formed community-based nonprofit organization Concerned Citizens of South Central L.A., which demanded public hearings and a health-risk assessment of the Lancer project, both of which were granted by the city. In 1987, the City Council and mayor agreed to terminate the incinerator project.

The city retained ownership of the Lancer site. In June 1994, after canceling a plan to sell it to a public-housing corporation for the creation of 316 affordable town homes, the city sold the land to the L.A. Harbor Department for \$13.3 million.

In court filings, Ralph Horowitz, a partner in former property owner Alameda-Barbara, claims to have engaged in talks with the city to regain the land title at about this time. Central to his argument is a claim that the city had attempted to sell the land in violation of his right to repurchase the land should the city sell it for non-public or non-housing purposes within ten years of the condemnation. (This right was established in the 1991 final order of condemnation of the property.)

Meanwhile, the land was sitting unused, and in July 1994 the Harbor Department granted a revocable permit to the L.A. Regional Food Bank – a private, nonprofit food-distribution network housed across the street from the Lancer site – to occupy and use the site as a community garden.

While poor families were cultivating the land and building community there, the L.A. City Council and then-Mayor Richard Riordan began in the late 1990s to discuss conversion of the site into an industrial park as part of Riordan's Genesis L.A. economic-development program. Concerned Citizens of South Central, which had fought against the Lancer incinerator project, is listed in a 2001 report created for the mayor's office as endorsing the proposal for the Lancer Industrial Park.

In 2001, Horowitz sued the city for breach of contract and shortly received a letter from City Attorney Rocky Delgadillo's office, stating the city had denied his claim.

The farm continued to grow.

Then, in April 2002, operations began on the Alameda Corridor, a rail-cargo expressway linking the ports of Los Angeles and Long Beach to the inland transcontinental rail network that runs alongside the South Central Farm. This made the site valuable real estate for commercial or industrial development, pitting the environmental and social value of the community garden against the profit potential of developing the land for global-trade use.

In closed negotiations in 2003, the City of L.A. settled with Horowitz, selling him the land for just over \$5 million – less than half the amount for which the land was sold to the Harbor Department in 1994 and less than the \$6.6 million the City Council described as “less than fair-market value” in its cancelled 1991 sale to the Nehemiah Public Housing Corporation. As part of the 2003 settlement, Horowitz agreed to donate 2.6 acres of the site for a public soccer field. The City Council approved the closed-session agreement between Horowitz's attorneys and City Attorney Del-

gadillo's office. Councilmember Jan Perry, who represents the 9<sup>th</sup> Council District, in which the farm is located, began seeking alternate sites to relocate the gardens.

Patrick Dunlevy, an attorney representing the farmers, says that despite repeated requests, he has never seen documents detailing the negotiations that led up to the signed settlement agreement. "There are exchanges of letters between counsel, but nothing about the nitty-gritty of the negotiations and nothing indicating why the city decided to keel over and settle the lawsuit when they were from all appearances about to win by having the court dismiss the case."

Shortly after the settlement, on January 8, 2004, Horowitz gave written notice to the Food Bank that their revocable permit to occupy the land would "terminate as of February 29, 2004."

Upon learning of their imminent removal from the land, the farmers filed a lawsuit arguing that the city's closed-session settlement with Horowitz violated their rights, and they were granted an injunction allowing them to remain on the land until the case was resolved. When an appellate court ruled against them in June 2005, they appealed to the California Supreme Court, which in October 2005 refused to hear their case.

On March 1, 2006, Horowitz issued an eviction notice, which would be stayed pending resolution of a separate lawsuit filed by the farmers. The basis of this last legal challenge is that the city's behind-closed-doors settlement with Horowitz constitutes waste "for two reasons," attorney Dunlevy told TNS. "The city sold it to the developer for far less than what it was worth, and the city sold it to settle a meritless lawsuit." While that case moves through the courts, the farmers and their allies are seeking political solutions.

Currently, Horowitz is engaged in negotiations with the Trust for Public Land, which hopes to buy the land for public community-garden use.

Rad Geek argued that the state's seizure of the land rendered the land unowned, and that the farmers who homesteaded it and first mixed their labor with the undeveloped land in the interim period were the rightful owners.

In response to the predictably visceral sympathy for Horowitz expressed at Mises Blog, Brad Spangler entered the fray in the comments. He expressed the same opinion as Rad Geek on the property rights of the farmers, as homesteaders of unowned land under Rothbard's version of Lockeanism. Among the most controversial of his arguments were these:

That land became morally "unowned" and "abandoned" the instant the official title passed to the city. The first non-state users/occupiers to "mix their labor" with the land (as Locke would have put it) become the owners, morally...

...while that land was in the possession of the state, it became unowned and thus able to be homesteaded by non-state third parties, such as the farmers. They homesteaded it while it was unowned, making it their property, morally.

As I will discuss in my assessment of the controversy below, these arguments are problematic, and at least deserve further examination before they can be accepted.

David Reynolds, at the view from below, also wrote an eloquent defense of the farmers.

And finally, the story provoked a heated debate at *Reason Hit&Run* after Jesse Walker posted on it. In the discussion there, several commenters seemed to operate on the legalistic assumption that any title is good on the face of it. For instance, smalls:

I don't think Horowitz should be made into the bad guy here. As long as eminent domain is legal, he hasn't done anything wrong. If you have a problem with eminent domain (which I do), then take it up with the SCOTUS.

...and Ayn Randian:

Simple fact: Horowitz, through a company OWNED the land; city took land (legally, but not morally right) and OWNED it...it was theirs to give. Yet again, a problem with government, but it's Horowitz's land because it was the city's to give. Period.

...and Ayn Randian again:

A pure definition of homesteading is when you occupy land unowned by anyone, even the government. Now, we can go round and round and say the government can't really own anything because it's really our money, yadda yadda. But, as odious as eminent domain is, it's the law, and legally speaking there was an owner, and you can't homestead owned land.

...and Wozzle:

Anyway, the city owned the land, even if it lay unused, even if they obtained it through eminent domain. They sold it to Horowitz for \$5 million, which benefited the entire population of Los Angeles. Case closed.

In response to the last remark, our own good ol' quasibill retorted:

Each sentence violates principles of libertarian thought so profoundly that I'm guessing you got your concept of "libertarian" from Insta-sellout.

As for me, well, *shee-it*. If I seriously bought into all that "the law is the law, and if you don't like it change it, but until then keep obeying it" bullshit, I'd have become a fucking *Republican*.

kevrob also threw in a quote from Locke's *Second Treatise* on the homesteading process. Several commenters, while acknowledging that Locke might be edifying for an audience of middle class white people who had been safely prepared for such esoteric doctrine, seemed to consider it wiser to keep him safely "locked" away until the present danger had passed. After all, as useful as Locke may be at times for rich white guys, we don't want him putting funny ideas into the heads of those people.

Ayn Randian, especially, was upset about all this newfangledy stuff about Locke and the common law of adverse possession. Why just imagine: if you own a vacant tract of undeveloped woodland, and go ten years without bothering to inspect it, and somebody raises vegetables on it while you fail to make any reasonable effort to assert your title, somebody might actually construe that as "abandonment." Mercy me! To joe, who had commented favorably on the Lockean doctrine, Ayn Randian fumed:

Like it or not, joe, your position is garbage; land is an object, with boundaries (ask a surveyor) that is owned...you have a deed/title and it's worth money. It's the same as any other good, and if you own it, that's it...you can let it sit for 100 years as far as I am concerned, because it's yours to do with as you please.

That's what ownership means. You know, I always rolled my eyes when people complained about the leftward tilt of Reason. Now I am not so sure.

In other words, anything the state says is a land title is a land title, even if it declares David Rockefeller Duke of New York and grants him the entire state as a fiefdom. And there's no such thing as abandonment or salvage in a legitimate private property system. Anyone who says otherwise is Che Guevara. So I guess Locke's now up to replace Kant as the most evil man in history. Wouldn't be surprised if Randian is also some kind of Galamboid who thinks we ought to be paying royalties to the inventor of the alphabet.

What Ayn Randian calls property rights, Jerry Tuccille preferred to call "land-grabbism":

Free market anarchists base their theories of private property rights on the homestead principle: a person has the right to a private piece of real estate provided he mixes his labor with it and alters it in some way. Anarcho-land grabbers recognize no such restrictions. Simply climb to the highest mountain peak and claim all you can see. It then becomes morally and sacredly your own and no one else can so much as step on it. [*The Libertarian Forum*, November 1, 1970]

#### **My Assessment:**

To the extent that Rad Geek's and Brad Spangler's cases rest on Rothbard's radical Lockeanism, I would advise caution. One of Rothbard's disciples who also favored homesteading of state property, Hans Hermann Hoppe, would have denied that state seizure extinguished the original owner's title. Hoppe argued that state industry in post-Communist systems should be treated as the property of the labor force working it, because it was either predominantly capital accumulated under state ownership, or built from scratch under state ownership; land, on the other hand, should go to the original pre-Communist owners or their heirs, if they could be identified. So at least in cases of simple, uncompensated seizure, Rothbardianism is shaky ground for arguing that original property titles cease to exist.

But there are several other issues that I didn't really see addressed in all the debate, that weaken Horowitz's case considerably.

First: just what were the relations between the municipal government and the real estate firm in that eminent domain deal in the first place. Here in Northwest Arkansas, where local government itself is pretty much a showcase property of the big real estate agencies, it's pretty common for government to offer a sweetheart eminent domain deal to some politically connected landowner, sometimes taking property off the hands of a distressed owner for far more than its market value. At various times, city or county governments have bought land from their cronies for, among other things, a public golf course and a new county courthouse.

Second, the fact that the original owners received some money at least goes partway to stealing the fire from their moral claims to have been robbed. Certainly any forcing of a sale by the state is illegitimate, as is its arbitrary assignment of a standard market price to something the owner may subjectively value at a far higher rate. But Horowitz and his real estate associates were paid

at least what the going price was for land in that neighborhood, so they're far from the victimized status they'd deserve if it were taken without compensation. And since as a real estate company they were holding it for purely speculative purposes, and sentimental value played little or no role in their subjective valuation of it (as it might have with a family business or home), the price they were paid is more suitable as a proxy for its "real" value than in many such cases. So even if the eminent domain "purchase" was far from a legitimate market purchase, the money paid for the land certainly weakens anyone's claim to be the rightful original owner at the expense of the farmers subsequently homesteading and developing it.

Considering the inflation in real estate prices since the 1980s, and comparing the \$5 million that the original owners were paid to Horowitz's asking price today, it sounds like the original owners may have got a pretty sweet deal when the land was first condemned. That takes us back to that bit about political collusion between local governments and E.D. "victims." I wouldn't be at all surprised if Horowitz had made out like a bandit when the city originally bought the land, and then again when he bought it back at a sweetheart price.

At any rate, uncompensated seizure and compensated E.D. condemnation should be considered entirely different categories when it comes to assessing the legitimacy of any claims to have the land "restored." On that basis, I agree with Rad Geek and Brad Spangler that the farmers were homesteading unowned property. The original title wasn't extinguished by government seizure as such, in my opinion; but the fact that something approximating market value was received by Horowitz (and more importantly, as we see below, that the land had never been developed) is enough to extinguish the title, at least to the point that considerable weight is added to the claims of the farmers.

Given this, it follows that the subsequent title acquired by Horowitz, in negotiation with the city, was null and void because the city had no legitimate claim to negate the property rights of the farmer-homesteaders. Certainly to claim, as Paul D. did in the Mises Blog comments, that "[m]orally, the plot has been Horowitz's all along, even though the city appropriated it," strains Rothbardianism past the breaking point.

We've yet to consider, among the considerations that were left out, the most important of all: the fact that the land was undeveloped at the time it began to be farmed. I don't even need to defend the farmers on the basis of Ingalls-Tucker occupancy-and-use tenure, because as *The Times* was so helpful as to inform us, the land was undeveloped (at least, as Rad Geek points out, until the farmers homesteaded it). Note the effusive propaganda on the jobs and economic benefits to come from having the land "developed." As Rothbard argued, the first owner of a vacant tract of land is the homesteader who alters it in some way with his labor. All previous holders of title to unimproved land are simply the equivalent of feudal lords or tax-farmers, who in effect impose a tax on the rightful first owner. This is an example of how most of the titles to vacant land that we Tuckerites consider illegitimate are also illegitimate by radical Lockean standards.

Spangler (after acknowledging, in response to commenter Peter's quote from *The Ethics of Liberty*, that he'd overstated Rothbard's position on the unowned status of state assets whose original owners could still be found), brought up the same point himself:

Another important question:

Was the land really "owned", in a moral sense, by the investor groups if it had never been put to any use in the first place?

If the farmers were the first to ever really do anything with that land, then they would surely be the rightful owners in a moral sense — that is, if it had never actually been homesteaded at all in the first place by Horowitz and associates, regardless of what machinations have occurred with regard to the official title to the plot.

Does anyone know the development status of the land prior to the eminent domain seizure in 1985?

And as he argues later in the same thread, it's fairly common for such vacant land to have never been legitimately owned: vast tracts of vacant land were originally claimed by the state, distributed to its cronies, and then passed from one politically-connected speculator to another without having ever been actually homesteaded. The fact that one such sizeable tract still exists in an urban area like Los Angeles just backs up Albert Nock's observation on the undevelopment of land in old settled areas resulting from political appropriation of the land:

If our geographical development had been determined in a natural way, by the demands of use instead of the demands of speculation [that is, appropriated by labor], our western frontier would not yet be anywhere near the Mississippi River. Rhode Island is the most highly-populated member of the Union, yet one may drive from one end of it to the other on one of its "through" highways, and see hardly a sign of human occupancy.

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