In Defense — Such As It Is — of Usufructory Land Ownership

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I may be writing under false pretenses. Although I was invited here to make a case for the "occupancy-and-use" or usufructory land property theory of P.J. Proudhon, J.K. Ingalls and Benjamin Tucker, I'm going to devote most of this article to what it has in common with other libertarian land rights theories.

Although I still favor the occupancy-and-use standard, I do so much less stridently than I once did. I believe that what the principled land rights theories have in common is more important than what separates us.

I still agree with Bill Orton's argument, stated about ten years ago, that no particular set of property rules can be logically deduced from self-ownership and nonaggression. (His arguments were set forth on several now-defunct libertarian message boards, but you can find his website here.[1]) Orton argued that the basic principles of self-ownership and nonaggression were compatible with any number of different property rules systems. Those principles had to be applied to a particular property rights template to determine who the "aggressor" and "victim" were in any instance. In a mutualist, occupancy-and-use system, a self-styled landlord attempting to collect rent would be the aggressor, invading the property rights of the occupant-user. But in an identical instance, in a non-Proviso Lockean system, the occupant – or squatter – might well be considered the agressor.

Since no particular set of land property rules can be deduced from fundamental moral axioms, they must be evaluated on utilitarian or practical grounds: i.e., the extent to which they maximize other, fundamental moral principles.

The chief normative values I believe a property rights regime should optimize are to guarantee to the greatest extent possible the ability of the owner to recoup her labor input (in the form of buildings and improvements) from the land, and to minimize the amount of overall privilege and rent extraction.

All the principled systems of land property rules – occupancy-and-use, non-Proviso Lockeanism, and Georgism – are designed to take into account, in one way or another, a unique characteristic of land: its immobility. The occupant of a piece of land cannot pick up the labor

[1] http://www.ozarkia.net/bill/

she has embedded in it, in the form of buildings and improvements, and take it with her when she decides to quit it. These different property rights systems all seek to maximize the land owner's ability to recoup her sunken labor when she quits her property.

The other value to be optimized – the minimum possible rent extraction – assumes a fundamental distinction between natural and artificial property rights. A natural property right is a direct extension of the act of occupancy and use, and follows directly from it. It results from natural scarcity – i.e., the exclusion of others requires no act beyond maintaining one's own occupancy, and follows from the finite nature of tangible property. By the very act of maintaining personal occupancy, one unavoidably excludes other claimants. And natural property rights maximize the individual's right to the product of her own labor.

An artificial property right, on the other hand, results from artificial scarcity. It requires the active intrusion of the coercive state to prevent others using their own tangible property as they see fit. For example, the enforcement of "intellectual property" rights requires the invasion of another's property to make sure she is not using her own hard drive, or pen and paper, or lumber and nails, to combine material elements under her own ownership in a pattern on which some other party has been granted a monopoly. Artificial property rights enable their holders to extract rent from other people's labor, merely by threatening to obstruct or impede their productive activity unless they pay tribute.

Thorstein Veblen referred to privileges or artificial property rights as "capitalized disserviceability": that is, one collect income, not by productive efforts or positive contributions, but by extracting tribute in return for not impeding the productive efforts of others.

Maurice Dobb, the 20th century Marxist thinker, illustrated the principle with a special class of toll gate owners granted rights by the state to collect tolls from those passing along major highways. The revenues weren't for actually maintaining the highways, mind you – just for refraining from obstructing access to them. Under the standard marginalist paradigm of John Bates Clark, the "marginal productivity" of such toll gates would be whatever they added to the final price of goods, and tolls paid to the gate owners would be payment for the "factor of production" of allowing free passage on the roads.

The purpose of all such artificial property rights, or monopolies — whether holding vacant land out of use, enforcing copyrights and patents, enforcing oligopoly cartels and the attendant price markup, or enforcing local laws that require the unnecessary rental of stand-alone commercial property or other unnecessary capital outlays to undertake small-scale enterprise — is to compel the laborer to work extra hard to support a rentier in addition to herself.

The overall effect is a drag on the system, at every level of production, comparable to that of severe edema in a person with congestive heart failure. At every level — as the English market socialist Thomas Hodgskin noted almost 200 years ago — productive resources are held out of use on which laborers might have comfortably supported themselves, because they are not productive to support a parasite in addition to the laborer. At every level, artificial overhead is added to the production costs of what would otherwise be lean and agile forms of activity. At every step in the production process, the economic actor is laden with tolls and tributes and burdens of all kind, like those imposed by the Handicapper General in Kurt Vonnegut's short story "Harrison Bergeron."

I believe occupancy-and-use best serves both the maximization of individual recoupment of labor and the minimization of rent extraction, compared to the other principled land property systems. Although both the non-Proviso Lockean and occupancy-and-use systems prohibit hold-

ing undeveloped land out of use, the Lockean system permits the owner of developed land to quit it and subsequently hold it out of use, or charge rent for access to land she is not herself using. So Lockeanism permits the holding out of use of land – a good which is for all intents and purposes fixed in supply, and given free with the Earth – to a greater degree than occupancy-and-use.

The major principled land rights theories all differ fundamentally from the actual system of property law (which I call utilitarian or bastard-Lockean) extant in most Western countries, in one way that they share in common: they hold the only legitimate manner of initial appropriation of vacant land to be personal occupancy and use, or alteration of the land – in Locke's terms, the admixture of one's labor with the land. That is, they all regard absentee ownership of vacant and unimproved land as morally repugnant. And this one difference from the actual regime, shared by all, would – if fully implemented – have more practical effect on lowering the gross rent of land than any other difference between them.

Implementing this shared principle – voiding out all absentee titles to vacant and unimproved land, and all titles traceable to such original title – would probably go more than halfway to eliminating gross landlord rent. It would eliminate both what is called feudal or quasi-feudal land tenure, and the engrossment of vacant land.

Both non-Proviso Lockeanism and occupancy-and-use would destroy the Latin American hacienda or latifundia system, and return the vast majority of land in the Third World to the peasant cultivators who either are currently excluded from it (the landless or land-poor peasants who are excluded from the 80% or more of land held out of use on haciendas), or are paying rent on land that they have developed with their own labor.

In Western countries like the United Kingdom, vacant land held by the Crown or the landed nobility would be immediately opened up for unrestricted homesteading free of charge, and all tenants paying rent based on titles traceable to feudal grants would instantly become owners. In the United States, all vacant land held out of use by absentee title would likewise become freely available, and all tenants or mortgage payers on land held by the heirs or assigns of illegitimate grantees (like the Southern California real estate still held pursuant to the railroad land grants) would be held free and clear by the present occupants.

By a simple stroke of the pen, hundreds of billions – on a global scale, trillions – of dollars worth of rent would be abolished, and kept in the pockets of those currently paying it.

In many ways, the difference between the occupancy-and-use standard and non-Proviso Lockeanism is one of degree. Bill Orton, as we saw above, argued that Lockeanism differed from occupancy-and-use mainly in its degree of "stickiness": that is, the length of the time period required for abandonment. Even non-Proviso Lockeanism has rules of constructive abandonment – salvage, adverse possession, etc. – under which land or goods left unused by a previous occupant are presumed to be unowned after some lapse of time.

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."

The non-Proviso Lockean system, likewise, would go a long way toward minimizing the forms of differential rent – based either on location or fertility – that the Georgists attempt to deal with through land value taxation. The opening up of undeveloped urban lots to unrestricted homesteading, free of charge, would probably have a significant effect on rental values. Depending on the practical definition of the threshold of labor-admixture required for appropriation of a

given quantity of land, and the length of time required for constructive abandonment, a greater or lesser share of vacant lots might be opened for homesteading. For example the land occupied by the South Central Farmers in Los Angeles, under relatively modest standards for constructive abandonment, might well be presumptively owned by the local residents using it.

And a great deal of differential rent is, arguably, an externality of subsidized public infrastructure. The current model of suburban sprawl and monocultural development is heavily subsidized by freeways which are not fully funded by tolls, roads which are extended at taxpayer expense to new subdivisions, and below-cost utilities provided to suburban developments at the expense of rate-payers on older, centrally located neighborhoods. Abolish these subsidies, provide roads and utilities to new subdivisions at full cost, and eliminate zoning mandates for monocultural development, and the new development would likely follow the old railroad suburb of small, mixed-use communities with residential areas in easy walking, bike or public transit distance of commercial centers. Under those conditions, as a matter of simple geometry, differential rent would be far less. The larger a particular community, and the greater the distance between commercial and residential property, the greater the differential rent. In a world of relocalized manufacturing, permaculture, and walkable mixed-use communities, the World Trade Center would likely have become a roost for pigeons.

Some critics of occupancy-and-use raise practical issues about its disadvantages. Some, like whether letting a portion of one's land lie fallow, or making an extended stay elsewhere might leave one's home open to adverse possession, are dubious at best. Others, like the difficulty of an owner-occupant who must quit her property under adverse circumstances, and as a result faces difficulties in recouping the full value of the labor sunk in her property in the form of buildings and improvements, are entirely valid.

Regarding the spurious hypotheticals, we can start by assuming that a mutualist land-rights regime would exist in a community of small owners whose primary concern is to minimize the evil of large-scale absentee ownership. Given that civil disputes would be judged by local juries of such small owner-occupants, it seems unlikely that their practical application of the law would be such as to put themselves in danger of having their house squatted every time they went out to buy a quart of milk. It seems a matter of basic common sense that the rules worked out in the case law of such communities, by such juries, would define the length of time required for constructive abandonment so as to prevent such inconveniences.

Regarding the legitimate criticisms, I can only say that all principled land theories have practical drawbacks. And these drawbacks all result, for the most part, from the difficulties attendant on mixing one's labor in a fixed medium – the soil – from which one cannot pick it up and take it along when one leaves. This difficulty affects all the principled land systems, in different ways. In a mutualist system, the person who must sell her land under urgent time pressure to quit it, like the necessity of permanently moving away for family reasons, would have difficulty recouping the full value of her buildings and improvements. Anyone deciding to move elsewhere for any reason at all, even relatively non-urgent, would probably have less bargaining power as a seller than someone under comparable conditions in a non-Proviso Lockean community. But Lockeanism has its own difficulties. A tenant who rents a property for several years and uses soil amendments and green manuring to improve the fertility of a garden will likewise lose the value of her efforts when she stops renewing her lease. Such difficulties result, unavoidably, from the peculiar nature of land.

Finally, I doubt that any particular system of land rights rules will be universally adopted in a post-state society. I expect the collapse of the centralized state, and of the giant corporations which are dependent on it, to come about from internal contradictions rather than the conversion of a popular majority to any particular form of anarchist ideology. The successor society will be a panarchy including local enclaves of every imaginable sort – and this will extend to local property rights regimes.

And I expect these local enclaves will eventually work out a modus vivendi based on the mutual recognition of one another's property rights rules – mainly because the cost of enforcing property rights claims in a community which hold those claims to be repugnant will exceed the value of the property rights claims themselves.

Imagine an anarcho-capitalist community (Rothbardville) based on non-Proviso Lockean rules. An individual appeals to the community's protection agency to enforce her property claim in a neighboring community which holds to the Ingalls-Tucker occupancy-and-use property rules, and collect rent from an occupant who refuses to recognize her title to the property. Given the enormous cost of enforcing such a claim in a community which regards it as repugnant, the anarcho-capitalist protection agency would likely have an exclusionary clause for such claims, or require the payment of an additional premium that would exceed the rental value of the property. In the mutualist community of Proudhonia, the mutual defense association would likely have a similar exclusionary clause for owner-occupants seeking protection from self-styled landlords in the anarcho-cap community.

My guess is that the overall level of enforcement of absentee ownership, in a post-state society, would be significantly less. Under capitalism, the state provides exogenous enforcement of property rights claims even in cases where the cost of enforcement exceeds the value of the property rights claim. That is, state enforcement of absentee title in many cases is a positive externality to the holders of such titles. So a good many titles, which in many cases are exceeded in value by the cost of enforcing them, would be unenforceable in practice in a society where the full cost of enforcement was paid by the title holders. And for rural areas, given the comparatively low value of property and the high cost of excluding squatters, occupancy-and-use would likely be the default rule.

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