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The Perils of Utilitarian Property Rights Theory

Kevin Carson

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Brad Spangler directed me to this great Murray Rothbard quote:

Suppose that libertarian agitation and pressure has escalated to such a point that the government and its various branches are ready to abdicate. But they engineer a cunning ruse. Just before the government of New York state abdicates it passes a law turning over the entire territorial area of New York to become the private property of the Rockefeller family. The Massachusetts legislature does the same for the Kennedy family. And so on for each state. The government could then abdicate and decree the abolition of taxes and coercive legislation, but the victorious libertarians would now be confronted with a dilemma. Do they recognize the new property titles as legitimately private property? The utilitarians, who have no theory of justice in property rights, would, if they

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were consistent with their acceptance of given property titles as decreed by government, have to accept a new social order in which fifty new satraps would be collecting taxes in the form of unilaterally imposed “rent.” The point is that only natural-rights libertarians, only those libertarians who have a theory of justice in property titles that does not depend on government decree, could be in a position to scoff at the new rulers’ claims to have private property in the territory of the country, and to rebuff these claims as invalid.

This discussion of utilitarian property rights theory reminded me of article I read a couple years back presenting an anarcho-capitalist model of eminent domain: a powerful party seizes someone else’s property for a “better and higher use,” and then pays damages in court—essentially using local juries to assess payment for seized land after the fact. I’m almost certain I saw it at Anti-State.Com, but for the life of me I can’t track it down. I’m also pretty sure I remember who the author was, but since it doesn’t presently appear in his archives, I don’t want to unfairly charge him with it.

Here’s what bugs me about all the pseudo-Coaseian arguments that the origin of property titles doesn’t matter, because the market will sort them out to the most efficient users: it’s not much consolation to a peasant proprietor who could be supporting himself by subsistence farming, but is currently squatting in a Calcutta gutter with a begging bowl, that the land is being used more “efficiently” by Cargill. (Of course, my knowledge of Coase is completely indirect, mainly from his use in vulgar libertarian apologetics, since I don’t have the neoclassical math apparatus it takes to follow his argument in original form.) Peter Lawrence has pointed out that while the enclosure of common lands may have increased the “net efficiency”

of society, one group that definitely did not benefit from this increased output were the people whose land was stolen.