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Two Interesting Posts on Property

Kevin Carson

November 13, 2005

First, Little Iguanodon has an interesting post on usufructory property:

If you think about usufruct, it doesn't seem that bad. You live in your house, play lawn darts in the back yard, plant a little garden? You own it, and the community will support your ownership of it, either through some sort of free-market court system or a voluntary jury. The same goes for your car, your wristwatch, your iPod, your dog, your socket wrench set, your collection of small bits of string in the junk drawer.

If you rent an apartment or a basement suite, congratulations! You now own a portion of the building, and are essentially a member of a condo association or part owner of a home. If you are a landlord, you are SOL. If you're lucky, the new owners will hire you as the maintenance guy.

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But how do you establish a claim? How long does it last after you wander away? What if you want to go on a six-month trip cataloguing butterflies in Brazil, and when you come back you find that some dirty hippy has moved into your house, because you weren't "using" it? This is one of the thorniest problems of usufruct, and I suspect it could only be worked out, somewhat imperfectly, by trial, error, and the creation of widely-acknowledged custom or common law.

Of course, any set of property rights rules will present similar practical difficulties. In any set of general rules, the devil is in the details. Under the Lockean system, the question arises of how much labor is necessary to appropriate a given set of natural resources. And every property system, Lockean included, entails a largely conventional set of rules for constructive abandonment. So to an extent, the differences between them are of degree rather than of kind. As "Hogeye Bill" Orton puts it [see **Note**], different systems of property rules differ in the "stickiness" of property: what's the threshold of abandonment?

Iguanodon continues:

Probably the easiest way would be to establish community claims offices, like the offices that monitored and licensed gold panners in the 19th century. If you find a vacant house, the first thing you do is wander down to the office. Is it really vacant, or has the owner just forgotten to mow the lawn, or gone on vacation for a few months? If it is vacant, register your claim and move on in. To cement your claim, you should, as Locke urged and old American common law had it, mix a bit of your labour with the land. Fix the place up a bit. Mow the lawn. Plant some carrots or tulips. After

a week or a month, the claims officer will wander by, see what you've done, and put a check mark next to your name. Home filled, usufruct-owner in place. (Anarcho-capitalists would no doubt see the claims office as a free-market, for-profit business, possibly with several competing officers, and the collectivists would much rather see a community effort to register property use/occupancy, but it amounts to the same thing in the end.)

Of related interest, Chris Dillow of *Stumbling and Mumbling* links to a series of posts by Chris Brooke of *The Virtual Stoa*, quoting at length from eighteenth century writer Thomas Rutherforth's critique of Locke in *Institutes of Natural Law*. Rutherforth questions, with a series of ingenious arguments, why the occupier's admixture of labor should be sufficient to remove a parcel of land from common status. According to this line of argument, labor appropriation is simply the criterion for possessory ownership of a resource whose ultimate ownership remains in common.

Of course, the Georgists and individualist anarchists, both of whom tend to agree with the latter generalization, will adamantly specify that "common" ownership and "collective" ownership are two different animals. Common ownership simply means an equal right of access to land, by all individuals severally. And through the law of equal liberty, the occupier must respect some ongoing negative liberties of the excluded. A Georgist would assert a strong version of this liberty, with compensation in the form of payment of site rent to the excluded. An individualist, on the other hand, would assert only a weak version of it, with the common right extending only to a social consensus on not recognizing the right of an absentee owner to enforce property claims to a parcel of land he is not actually occupying and using. So the individualist anarchist theory of

common rights to the land is much more residual than its Geor-
gist counterpart.

Now, a Lockean might respond that there is no basis for this original claim to common ownership, since mankind collectively has never staked a property claim to the earth through its labor. My response is that this argument confuses apples and oranges, i.e., two different senses of the term “ownership.” The second form of ownership, established by admixture of labor, exists only in the preexisting context of mankind’s original common right of ownership, and is a secondary set of rules for regulating individual possessory claims to the common stock.

Anyway, they’re both worth checking out.

Note—Most of Orton’s explication of the theory of property “stickiness” is on message boards and other occasional writing with iffy links, but I’ve attempted to aggregate it in a section of *Mutualist Political Economy*.