JLS JOURNAL OF LIBERTARIAN STUDIES
VOLUME 20, NO. 1 (WINTER 2006): 87–95

LAND-LOCKED: A CRITIQUE OF CARSON ON PROPERTY RIGHTS

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IN 1888, FRANCE'S LEADING libertarian periodical, Gustave de Molinari's *Journal des Économistes* (stronghold of Lockean property theory and proto-Austrian economics) published a largely favorable and appreciative (if somewhat condescending) review of the United States's leading libertarian periodical, Benjamin Tucker's *Liberty* (stronghold of Mutualist property theory and Proudhonian economics).[1] Tucker's journal returned the favor in 1904 by publishing a largely favorable and appreciative (if somewhat condescending) review of one of Molinari's books (Randall 1904). Since those days, dialogue between the so-called "capitalist" and so-called "socialist" branches of free-market libertarianism has declined.[2] The publication of Kevin Carson's *Studies in Mutualist Political Economy* provides a welcome opportunity to renew the conversation.

The economic and historical aspects of Carson's case I have left to be addressed by other contributors with greater expertise in the relevant fields; as a philosopher, I shall confine my attention to a philosophical point about property rights. Carson distinguishes "three main rival theories of justice in holdings among free market libertarians—the Lockean, the Georgist, and the mutualist." These three theories "agree that the only legitimate way of appropriating unowned land is homesteading by direct, personal occupation and

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[1]Raffalovich 1888; cf. Tucker 1888. Molinari edited the *Journal des Économistes* from 1881 to 1909.

[2]Though Murray Rothbard certainly drew explicitly on writers in the "socialist" branch (e.g., Benjamin Tucker, Lysander Spooner, Stephen Pearl Andrews, Clara Dixon Davidson) in crafting his own development of the "capitalist" branch.

alteration," but they "differ considerably on their rules for transfer and abandonment." This difference arises from the fact that, unlike Lockeans, for whom "admixture of labor permanently removes land" from the commons, Georgists and Mutualists "agree in seeing the land . . . as a common patrimony which cannot be permanently alienated from the commons in fee simple," and so regard "the individual's possessory or usufructory right" as a "stewardship on behalf of the general human community" (Carson 2004, pp. 198–99). Where Georgists and Mutualists do part company is on the nature and strictness of the requirements imposed by the general human community's residual rights; for the Georgists, the community properly plays an "active role in exercising its ultimate property rights over the commons" (as manifested, e.g., in Henry George's famous "Single Tax" on land values), whereas the Mutualists, in the tradition of Tucker,

> tend to see unoccupied land simply as an unowned commons over which mankind's ultimate ownership rights are latent, and which the individual is free to use as he sees fit without accounting to any proxy for collective rights; but the latent common right of the rest of mankind prohibits the individual from claiming more land than he can personally use at the expense of the common interest, and requires that his possessory title revert to the commons when he ceases to occupy and use the land. (p. 199)

Hence absentee landlordism, for example, is prohibited by the Mutualist theory.

Which of these three approaches to property in land should libertarians favor, and on what grounds? In Carson's view, while "the labor theory of appropriation" (not to be confused with the labor theory of value) common to all three theories is "plausibly deducible from self-ownership," where the theories differ none of their "alternative sets of rules for property allocation" can be "deduced logically from the principle of self-ownership alone" (pp. 200–01), and in particular "no system of transfer and abandonment rules can be logically derived even from an agreed labor standard of appropriation" (p. 214). Hence the choice among the three theories, Carson concludes, can be made only on "prudential or consequentialist grounds"; and here, he argues, the advantage lies with Mutualism.

Carson's case for the pragmatic advantages of Mutualism over its Georgist and Lockean rivals depends largely on economic and historical arguments whose assessment, as mentioned above, I have left for the other contributors to this volume. For present purposes, I wish to challenge Carson's claim that libertarian principles of self-ownership and original appropriation by themselves, apart from

consequentialist considerations, give us no reason to favor one theory of landed property over the others. Instead, I shall argue that only the Lockean approach is defensible from a libertarian standpoint.

As Carson rightly points out, both Georgists and Mutualists agree in seeing original appropriation as limited by land's status as the *common patrimony of the human race*. Actually, this would seem to be likewise true of any Lockeans traditional enough to accept (some version of) Locke's Proviso that original appropriation must leave "enough and as good" (Locke, *Second Treatise of Government*, Book V.) available to others (e.g., Nozick 1974; Schmidtz 1991)—though it is not true of those more thoroughgoing Lockeans who reject this Proviso (e.g., Rothbard 1998; Hoppe 1993). Hence it is this notion of a common patrimony that distinguishes Mutualists, Georgists, and Proviso Lockeans on the one hand from No-Proviso Lockeans on the other.

But can those theories that accept this "common patrimony" thesis do so consistently? I don't see how. According to what Carson calls the "labor theory of appropriation," which he grants is accepted in some form by all the competing theories under discussion, no one can be the first owner of a good except by homesteading the good through personal labor. Now the entire human race has not collectively homesteaded all the land on earth, so the entire human race cannot be the first owner of such land; hence the human race's residual property rights, if any, in the soil cannot be original; if such rights there be, they must be derived from an earlier owner—as the term "patrimony" anyway suggests.

Now Locke solved this problem handily enough by making the earth a gift in common to the human race from God, creator and first owner of the soil; but most libertarians nowadays are reluctant to ground their rights theories in controversial theology, and certainly Carson has shown no tendency to do so. But in the absence of a theological appeal it's hard to see from whom the human race could have received this "patrimony"; yet the human race cannot be the original owner of the soil either, since by the labor theory of appropriation original ownership involves homesteading, and thus the labor theory does not allow for original ownership of as yet unhomesteaded land. It follows that, again barring aid from theology, the labor theory of appropriation rules out the possibility of land's being a common patrimony of the human race, and in so doing, thereby rules out Mutualism, Georgism, and Proviso Lockeanism, leaving only No-Proviso Lockeanism standing.

Whether or not this shows that a "system of transfer and abandonment rules can be logically derived . . . from an agreed labor standard of appropriation," it at least undermines Carson's assumption that the homesteading principle gives no greater support to Lockean rules of transfer and abandonment than to Mutualist ones. If, as Carson affirms, Mutualism's disagreement with Lockeanism involves regarding land as a common patrimony, then the homesteading principle most emphatically finds against Mutualism and in favor of Lockeanism, specifically No-Proviso Lockeanism. If it is through homesteading that property rights arise, then un-homesteaded land *ipso facto* cannot come with property strings already attached.

Here Carson might reply that he interprets the homesteading principle to provide only *an* origin for property rights, not *the sole* origin. On this reading, it is through homesteading that land passes from its original state (a state of common ownership, for the Georgists, Mutualists, and Proviso Lockeans; a state of nonownership, for the No-Proviso Lockeans) to private ownership (full private ownership for the Lockeans, constrained private ownership, or stewardship, for the other groups), but land's original status as a common patrimony of the human race (as asserted, explicitly or implicitly, by all these groups except the No-Proviso Lockeans) is grounded on some other basis, perhaps consequentialist.

While this is certainly a possible position to take, I shall argue that it is inconsistent with self-ownership. Thus I take issue with Carson's claim that the "principle of self-ownership alone" is insufficient to decide among these rival theories of landed property.

It is easy to think of the right of self-ownership as, at least potentially, just one right among others, as though we might have self-ownership rights *and* some other rights in addition. But this would be a mistake. The right of self-ownership, as I understand it, is the right to use and dispose of oneself as one pleases, without coercive interference, so long as one refrains from coercive interference with the like self-ownership of others. It follows that the use of force is never justified except in response to an invasion of someone's self-ownership. But since rights are, by definition, legitimately *enforceable* claims, it further follows that there can be no rights *in addition* to self-ownership. For if there were such additional rights, then there would be claims other than self-ownership that could be legitimately enforced, which would mean that refraining from invading the self-ownership of others would no longer be sufficient to exempt one from liability to coercive interference. But self-ownership, as defined above, just is exemption from liability to coercive interference so long

as one respects the like self-ownership of others; hence the right of self-ownership is inconsistent with the recognition of any additional rights. (To put it another way, if the initiation of force is forbidden, then any legitimate use of force must be a response to force; but enforcing a right is by definition a legitimate use of force; so there can be no rights other than the right to be free from others' use of force.)

It follows that whatever property rights there are cannot be rights *in addition* to self-ownership, but must instead be specific *applications* of the self-ownership right itself. Now the homesteading principle, as Carson seems willing to admit, can be justified as an application of self-ownership. The essence of human personality is not the mass of material which composes our bodies—a bundle of stuff that in any case changes over time like Heracleitus' river, through accretion of new particles and discharge of old ones—but our activities and projects; indeed a human being's body itself is simply one of its owner's ongoing projects. By transforming external objects so as to incorporate them into my ongoing projects, I make them an extension of myself, in a manner analogous to the way that food becomes part of my body through digestion. What we transform in this way becomes so related to us that no one can subject *it* to her purposes without thereby subjecting us to her purposes and so violating our right of self-ownership; we make something into our property by causing it to have the same relation to ourselves that the matter composing our bodies has to ourselves.[3] As nineteenth-century economists Louis Wolowski and Émile Levasseur (1888) eloquently put it:

> This property is legitimate; it constitutes a right as sacred for man as is the free exercise of his faculties. It is his because it has come entirely from himself, and is in no way anything but an emanation from his being. Before him, there was scarcely anything but matter; since him, and by him, there is interchangeable wealth, that is to say, articles having acquired a value by some industry, by manufacture, by handling, by extraction, or simply by transportation. From the picture of a great master . . . to the pail of water which the carrier draws from the river and takes to the consumer, wealth, whatever it may be, acquires its value only by communicated qualities, and these qualities are part of human activity, intelligence, strength. The producer has left a fragment of his own person in the thing which has thus become valuable, and may hence be regarded as a

[3]It's not that we come to own our projects, whatever that would mean, but rather that we come to own physical things in virtue of incorporating them into our projects.

> prolongation of the faculties of man acting upon external nature. As a free being he belongs to himself; now, the cause, that is to say, the productive force, is himself; the effect, that is to say, the wealth produced, is still himself. Who shall dare contest his title of ownership so clearly marked by the seal of his personality?

This is the derivation of homesteading from self-ownership.

But there would seem to be no prospect of an analogous derivation of the human race's "common patrimony" in as yet un-homesteaded land.[4] How can the human race plausibly claim as *part of itself*, or an *extension of itself*, land that no human hand has yet transformed? How does this land become part of the human race's "common patrimony"? As Rothbard rightly wonders:

> It is difficult to see why a newborn Pakistani baby should have a moral claim to a quotal share of ownership of a piece of Iowa land that someone has just transformed into a wheatfield—and vice versa of course for an Iowan baby and a Pakistani farm. Land in its original state is unused and unowned. Georgists and other land communalists may claim that the whole world population *really* "owns" it, but if no one has yet used it, it is in the real sense owned and controlled by no one. The pioneer, the homesteader, the first user and transformer of this land, is the man who first brings this simple valueless thing into production and social use. It is difficult to see the morality of depriving him of ownership in favor of people who have never gotten within a thousand miles of the land, and

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[4]Herbert Spencer (1851, chap. 9) in effect attempted such a derivation, maintaining that if there were no such common patrimony, the entire surface of the earth could in principle pass into absolute private ownership, in which case those who owned no land could have no right to exist *anywhere*, and so no right to exist *at all*—which would seem to be incompatible with self-ownership; hence Spencer endorsed a quasi-Georgist position with regard to land. But as I have argued elsewhere (Long 1996a):

> Even when A has a right to recover some property in B's possession, there are limits to the harm A can inflict in exercising this right. If you swallow my diamond ring, I do not have the right to cut you open to get it out, possibly killing you or causing serious injury. If you are trespassing on my property, I do not have the right to shove you off my front lawn and onto the street at the *precise moment* that a truck is coming that would flatten you.

Hence Spencer is mistaken in thinking that under private ownership his hypothetical "lords of the soil" could legitimately deny nonowners a right to exist; and with the disappearance of the problem, the necessity of common patrimony as a solution disappears also.

> who may not even know of the existence of the property over which they are supposed to have a claim. (Rothbard 1994, p. 35)

Developing Rothbard's objection further, we may ask: just how far does this supposed common patrimony extend? To the center of the earth? The backside of the moon? The distant stars? If there turn out to be intelligent extraterrestrials, then does the entire physical mass of the universe become the common patrimony of all intelligent life, so that an alien civilization in the Andromeda galaxy can claim, just by existing, a residual property share in the cornfields of Iowa, and we likewise can claim, just by existing, a residual property share in the vapor mines of Antares (or whatever)? If we can have a right only to what can plausibly be claimed to be an extension of ourselves, then all such appeals to a "common patrimony" are shown to be baseless. This vitiates the case for Mutualism, Georgism, and Proviso Lockeanism, once again leaving only No-Proviso Lockeanism standing.

Let me close, however, with an eirenic suggestion. While, contra Carson, a public cannot acquire property rights just by existing, it is possible—as I and others have argued elsewhere—for a public to acquire property rights *via homesteading*:

> 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 efforts, but simply as a result of all the individuals walking by that way day after day. The cleared path is the product of labor—not any individual's labor, but of 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.[5]

Once a public has in such manner gained title to some piece of land, it becomes their common patrimony, and that public's preferences then become decisive as to the conditions under which it can then pass into private hands,[6] and likewise decisive as to what residual

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[5]Long 1996b; cf. Long 1998; Schmidtz 1994; Hobbs 2003; Holcombe 2005. It matters, on my view, that the villagers' use actually alters the land. If they simply used the land regularly without altering it, that would earn them an easement (since interference with ongoing use counts as aggression, even if the use is not literally continuous), but not a property right.

[6]For discussion of mechanisms whereby public land might become private see Long 1998; Hobbs 2003; and Holcombe 2005.

limitations, if any, will then apply (i.e., as restrictive covenants). Such a public could with perfect legitimacy decide on Mutualist, Georgist, or Lockean rules of transfer.

As Carson notes, it is important that different property-rights régimes in a libertarian society be able to coexist peacefully. Carson writes:

> Any decentralized, post-state society, following the collapse of central power, is likely to be a panarchy characterized by a wide variety of local property systems. For them to coexist peacefully, all three property systems must reflect the understanding of their most enlightened proponents. Those favoring each of the property systems must be willing to admit that it is not self-evidently true, or at least be willing to acquiesce to the system favored by majority consensus in each particular area. (Carson, p. 216)

As we have seen, only No-Proviso Lockeanism is defensible on libertarian grounds; however, a version of No-Proviso Lockeanism that allows for the possibility of a community's acquiring title to land, not by merely existing but by collectively homesteading the land (or for that matter by receiving it as a gift from some philanthropist), provides a basis for No-Proviso Lockeans to recognize as legitimate the property arrangements of Mutualist, Georgist, and Proviso-Lockean communities, and so to "acquiesce to the system favored by majority consensus in each particular area"—so long as that means a majority consensus *of the owners*[7]—without any compromise of, or loss of confidence in, their own No-Proviso Lockean principles.[8]

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[7]My point is that if a given piece of land is commonly owned by group X, then the process by which *that* piece of land can later be privatized may depend on the majority consensus *within group X*. The consensus of a *broader* community will not be relevant (except insofar as the owners deem it relevant).

[8]This paper has benefited from comments by Robert Murphy and George Reisman.

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