

**THE NOBLEST TRIUMPH: PROPERTY AND PROSPERITY  
THROUGH THE AGES. BY TOM BETHELL. NEW YORK:  
ST. MARTIN'S PRESS, 1998**

**A**ccording to the nursery rhyme, "There once was a little girl with a curl, when she was good, she was very, very good; when she was bad, she was horrid." Much the same can be said about this book.

What are the very, very good parts? It is a thorough, lively, and almost encyclopedic defense of private-property rights. In this benighted age, there are not too many of those around. Ranging far and wide, Bethell shows the benefits of private property throughout history and in virtually every corner of the globe. He demonstrates how the institutions of private property can solve environmental problems, were responsible for the success of the industrial revolution in England, how the lack of them accounted for the failures of the U.S.S.R., feudalism, and the third world. His explanation of the Irish famine is alone worth far more than the price of admission. Standing head and shoulders over many purely economic defenses of this institution, Bethell's book also demonstrates the virtues of property rights on political and moral grounds.

The horrid part of the book is that its case in favor of private-property rights makes needless compromises; it is hemmed in by a welter of caveats, restrictions, exceptions, and provisos. In light of these, a better title for it might have been "Two Cheers for Private-Property Rights," or "A Semi-Noble Triumph: Limited Property Rights and Prosperity Through the Ages."

**BACKGROUND**

Private-property rights (including self-ownership rights) may be articulated on three basic levels: logic; justice, and economic efficiency.

The first point is that it is self-contradictory to try to deny the concept of private-property rights. For the denier must use, at least, his vocal chords, chest cavity, etc., and have a place to stand (Hoppe 1993). If there are to be no private-property rights, whence came the critic into legitimate possession of the wherewithal necessary to make his very objection?

Second, justice. Without such rights, there can be no justice (Rothbard 1982). For justice, at least in the realm of law, consists of no more and no less than ensuring that owners of personal and physical property are allowed full use of them; injustice, in contrast, is limited to a denial of such a state of affairs.

There is no injustice that cannot be reduced to a violation of private-property rights.<sup>1</sup>

Third, economic efficiency. Even Chicagoans such as Bethell can be trusted on this one, for the most part. Our author, for example, weighs in heavily with his attacks on central planning (p. 142), foreign aid (pp. 208–15), welfare (p. 164), “social justice” (pp. 162–68), uncompensated “takings” (p. 181), land use regulations (p. 182), and support of the industrial revolution (pp. 87–91) and privatizing universities (p. 180). He knows, and tells us in loving detail, that those countries which have relied upon private property to a greater degree than others have also been more prosperous (pp. 12, 28, 337–38).

Bethell, moreover, correctly identifies the various aspects of private property as “the rights to use the thing and to exclude others from doing so, to alter its physical configuration, to enjoy its fruits, including its income, and, not least, to transfer the title of ownership to another” (p. 19). This means, or at least it should mean, that the owner should be allowed by law to do whatever he wishes with his legitimately held property, provided only that he does not thereby violate the equally valid private-property rights of others.

#### ANARCHISM

There are several key implications of a fearless and thorough-going analysis of private-property rights, however, on which Bethell fears to tread. One of them is anarchism.<sup>2</sup> Why anarchism? Why is the existence of a compulsory government the enemy of private-property rights? States do two things which take them out of the realm of free markets based upon private-property rights. First, they compel allegiance to themselves.<sup>3</sup> They demand that all people within a given geographical area subscribe to their system of laws, and pay taxes for this privilege. But Bethell said that private property confers “the rights to use the thing and to exclude others from doing so.” If so, then the individual surely has the right to exclude the government from the use of his property, without permission.<sup>4</sup> Second, a state demands a monopoly of power within its geographical area. That is, it will use force to crush any private agency daring to set itself up in competition with it, offering police, judicial, etc., services.<sup>5</sup>

<sup>1</sup>Again, I am limiting this to the legal realm. If I make a promise to you, but then break it, this might well be “unjust.” But since this does not involve an uninvited border crossing, or the initiation of violence, it is not taken cognizance of by the libertarian legal system as “unjust.”

<sup>2</sup>I would not bring up this issue in a review of a book ostensibly on private-property rights if not for his gratuitous attack on statelessness (p. 339).

<sup>3</sup>All throughout his book, Bethell waxes indignant about the use of force and compulsion as the enemy of freedom, liberty, and private-property rights (see, for example, pp. 76, 84, 137, 192). Why does this well justified antipathy not apply to the government?

<sup>4</sup>If, of course, the person agrees to deal with a protection agency, and pay it fees for protection, judiciary and other such services, then this is a private defense firm, not a government at all. See on this Hoppe (1993), Rothbard (1982), Friedman (1989), and Spooner (1966).

<sup>5</sup>In the view of Bethell (p. 25) “some goods are naturally managed by the states—those that

And what is Bethell's take on all of this? He (p. 339) asserts:

In most places and times [it] is obviously not true [that] . . . anarchy begets efficiency. There has been plenty of unproductive anarchy in the world. One only has to think, recently, of Haiti, Sudan, and Somalia. Nothing good has come of the institutional near vacuum in these countries.<sup>6</sup>

This is a bit of a departure for those who oppose the fully free society. For it concedes that at some times and some places society managed to function without the state.<sup>7</sup> But if we define anarchy as places without governments, and we define governments as the agencies with a legal right to impose violence on their subjects, then whatever else occurred in Haiti, Sudan, and Somalia, it wasn't anarchy. For there were well-organized gangs (e.g., governments) in each of these places, demanding tribute, and fighting others who made similar impositions. Absence of government means absence of government, whether well established ones, or fly-by-nights.<sup>8</sup>

#### EMERGENCIES

Nor is this merely a dispute over formal anarchism. Bethell makes excuses for governmental activity all throughout his book; preeminently, he makes exceptions to the rights of private property for "emergencies." For example, he states (p. 322): "The common law has long held that people may be entitled to trespass on others' rights in emergencies. And no doubt . . . [p]roperty rights should give ground when time is short."<sup>9</sup>

But one man's "emergency" is just another man's violation of private-property rights. Bethell is fully aware of just how subjective things can be when he (very perceptively) attacks Demsetz (1967) for overlooking subjectivism (p. 47), but when it comes to making exceptions for governments to violate private-property rights for this reason, he appears to lose sight of his own insight.

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are needed to provide for the common defense, for example, or for administering justice and enforcing the law. Such goods are natural monopolies."

<sup>6</sup>Elsewhere, Bethell (p. 12) equates anarchy with, of all things, "tyranny."

<sup>7</sup>Surely, the present situation of anarchy between the some two-hundred presently constituted nations of the world would have to be opposed by anti-anarchists such as Bethell. This logically implies that he favors a one-world government (with China and India, the most populous countries, together controlling global politics). If not, and I suspect not, then this author must rescind his opposition to anarchism.

<sup>8</sup>As Spooner (1966) shows, the only difference between a gang and a government is better public relations on the part of the latter.

<sup>9</sup>Bethell (p. 9) also sees "private property [as] a compromise between our desire for unrestricted liberty and the recognition that others have similar desires and rights." But this is a very perverse way to interpret liberty. Liberty, used in this context, is a synonym for license, for the right of the individual to do whatever he wants to do, even if it violates the equal liberties of others. Who, with this definition, could favor liberty? Who could be a libertarian? Surely, a more reasonable definition of liberty (utilized in this review) is the right to do with your own property whatever it is you wish, provided only that this doesn't interfere with anyone else's similar liberty. Nor is Bethell's dismissal of libertarianism only implicit. On the contrary, he (p. 25) goes so far as to characterize this philosophy, along with Marxism, of all things, as dogma.

Nor can any reasonably well-informed man be unaware of the fact that there are always emergencies. Consider that spate of advertisements inviting charity abroad: "Here is little Maria. She will soon die of lack of food. You can send her \$15 per month, or turn the page" (I paraphrase here). As I write this, the tragedy of Yugoslavian refugees, many of them children, are there for all the world to see on television.

Bethellnomics would appear to imply that all bets are off, private property wise, while there is an emergency anywhere in the world. For if emergencies justify governmental violation of property rights, and there are always emergencies somewhere in the world, even in each country, then statist deprivations on our sacred rights of private and personal property are always justified. This is a defense of our noblest triumph?

But we don't have to reach far and wide for a refutation of this Bethellian decline into socialism. He stands condemned on the basis of his own words. For in his well-taken critique of zoning and urban renewal as an affront to private property, he objects to the use of "the legislature's 'police power'—its authority to act on behalf of the public safety, health and morals" (p. 297). But what more is this police power, that he objects to in the context of zoning and urban renewal, than the self-same governmental power to act in emergencies?

### COMMUNALISM

Another problem with our author's vision of private property arises with regard to communalism. He states (p. 25): "Broadly speaking, there are three configurations of property rights: private, communal, and state." This is entirely erroneous. The truth of the matter is that there are but two divisions of property: just and unjust. Into the former category are placed both private individual and private communal.<sup>10</sup> Why? Because, as even Bethell acknowledges, legitimately held property is based on initial homesteading (Locke 1960, p. 86) and lawful title transfer.<sup>11</sup> If I homestead some land, or purchase it from the legitimate owner with money I have earned honestly, and then farm it by myself, Bethell will support me. But, if I turn around and share it with a bunch of communitarians, as did Robert Owen, I will get the back of the hand from Bethell. Our author goes so far as to link Owen with, of all people, the leaders of the U.S.S.R. He does this, implicitly, by considering the two in one section of his book. Section 5 is entitled "The New Man," with two chapters: "Robert Owen's Trinity of Evils," and "The Soviet Experiment." He does this explicitly with the following statement (p. 127): "In 1816, Owen opened his Institute for the Formation of Character, more or less anticipating Soviet developments 100 years later." More or less anticipating? The Soviets killed tens of millions of people, violating property rights on a truly gargantuan scale (Conquest 1986, 1990); as well, under forced collectivization, and the expropriation of practically

<sup>10</sup>Into the latter go both kinds of stolen property, individual, e.g., stolen by a single robber, and communal, stolen by gangs, whether "private" or governmental.

<sup>11</sup>In this context Bethell could well have cited Nozick (1974), but did not.

all goods, houses, factories, and means of production, these brutes violated the rights of physical property to a tremendous extent. Owen, in contrast, not only murdered no one, he engaged in his communalist experiments with his own money; he was joined in them by willing collaborators. Even Bethell admits (p. 125) that Owen “spent his own money on the cause in which he so firmly believed.”<sup>12</sup>

There is nothing intrinsically wrong with communalism. Yes, when combined with force, it is a particularly evil brew.<sup>13</sup> But take away the coercion, and it is rendered powerless, even, sometimes, beneficial. It is the same with practically anything. For example, there is nothing wrong with pizza. But if everyone were forced to eat this foodstuff, every meal, every day, numerous deaths would no doubt ensue, perhaps, even, who knows, equivalent to the loss of life which resulted from forced communism. Does this mean we should oppose pizza (communism)? Not a bit; only when it is imposed through force.

Owen’s New Lanark and New Harmony communes didn’t work in the sense that they only lasted for a few years. But no less is true of thousands of business firms which go bankrupt after a similar period of time. Would Bethell wish to condemn the latter in the manner he does the former? Soviets indeed!

Bethell can perhaps be interpreted as being on firmer ground in his discussion of the evils of communalism with regard to the Plymouth experience. After all, at least some people died—not in Soviet proportions, but there were a few. But even here, Bethell’s conflation of coercion and communalism does him in. For what was wrong with Pilgrim economics was not that “it sets up a system of rewards and punishments that puts the welfare of the community on a collision course with human nature” (p. 31). Rather, the problem was that this system of communism was done on a coercive basis.<sup>14</sup> Had this not been the case, had the Pilgrims been perfectly free to arrange economic matters on an individual basis, then, one of two things would have happened. Either they would have come to their senses and substituted private individual property for private communal property, given that the former was not successful. Or, and this is a very big or indeed, they would have stuck to their guns, gone down starving as they did, and we would have been forced to interpret this situation as one in which they all preferred death rather than the dishonor of not living communally. How else could such a situation possibly be analyzed, again, on the assumption that all involved were consenting adults?

But is communism of the voluntary variety always unsuccessful? Not at all, as even Bethell himself admits. For example, he acknowledges that this is indeed the system which most families utilize. As well, religious orders and organizations such

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<sup>12</sup>Bethell (p. 132) further states: “Owen . . . proposed that the Harmonites should form themselves into a Community of Equality right away, with the property—his property! to be shared in common” (emphasis added).

<sup>13</sup>Bethell recognizes the evils of initiatory force in the context of foreign aid and planning, but not when it comes to voluntary communal property (p. 192).

<sup>14</sup>Bethell (p. 35) describes the economic system as the “Crown-devised policy of joint possession” (emphasis added).

as monasteries, nunneries, Hutterites, Jesuits, etc., live by the maxim, "from each according to his ability, to each according to his need." Yet, such is our author's visceral and Chicagoesque antipathy toward allowing people to be free to choose their own paths in life, that he still cannot give up his opposition to capitalist acts between consenting adults of a socialistic variety. This sounds like a contradiction in terms, but only because Bethell cannot discern which system is the real enemy of the free society.

Consider, then, the following chart:

**Figure 1**

	Socialism	Capitalism
Coercive	A	B
Voluntary	C	D

Here, A stands for coercive socialism of the Soviet variety, and C depicts voluntary socialism of the kibbutz, commune, family, religious order, or Owen's New Harmony. D represents laissez-faire capitalism, where all economic action is based on legitimate private-property rights and voluntary contract, while B features the veneer of capitalism and private firms, but these are hedged in with a welter of government interferences with the market. Examples are Hitler's Germany, Italian fascism, and, of course, the present economic system of the United States.

Most commentators, Bethell specifically included, think that the crucial debate in political economy is between socialism and capitalism. This, in our terms, would place A and C on one side of the barricades, and B and D on the other. Nothing, however, could be further from the truth. In fact, the real contending parties are A and B versus C and D. It is not socialism versus capitalism, but, rather, a purely voluntary system which allows full sway to the choices of the owners of private property (whether they wish to use their holdings individually or communally it matters not one whit) vis-à-vis a coercive system where some people dictate how others can use their property rights. And again, it matters little whether there is a superficial coating of capitalism or socialism to which lip service is given.

Bethell misconstrues the enemy of freedom. He thinks it includes C, which is why he takes off after poor inoffensive Owen.<sup>15</sup> Our author offers a half dozen ad hoc defenses of his thesis, concerning the size of the commune, its religiosity, familial relations, etc. All of this is totally beside the point. In other words, were communalism per se a violation of property rights, then these things wouldn't matter at all. That these considerations actually do matter, are even crucial, only underscores the point that the commune is fully compatible with property rights.

Consider Bethell's analysis of sharing restaurant checks (p. 44):

When property is communally owned, there is no "mine" or "thine" by intention. Everything is "ours." This is likely to create dissension, as it did at Plymouth Colony. The lack of ratio between effort and reward "was thought injustice." Such an outcome may be expected when members have rights to equal shares in the product of a community. Those who contribute little will enjoy a free ride at the expense of those who work hard. We recognize the free-rider problem, even if we don't know its name. A group dividing the check equally at a restaurant will encounter it. Those ordering expensive items will come out ahead. Separate checks are the solution—the equivalent of privatization.

But suppose a group of friends at a restaurant reject Bethell's advice. Are they guilty of a private-property rights violation? Not even this author, presumably, would go that far. For these people have every right to share the check precisely as they wish. This is hardly the opposite of privatization; rather, it is the embodiment of the free society, in microcosm. Each of the diners decides this for himself; they all agree to allow "free riders" on a unanimous basis.

With this analysis Bethell has ceased being a commentator on political economy; he has taken on the role of the managerial consultant. He is advising people not to split restaurant checks, not to join communes, etc. But what business is it of his how people enjoy their private-property rights? As a presumed advocate of this system, he is supposed to be neutral on such issues. That he is far from neutral about them only lessens his claim to be a defender of our "Noblest Triumph."

#### MARKET FAILURE

But this is not the end of the mischief caused by his mistaken analysis. Because of it, Bethell is also led into the trap of accepting the doctrine of "market failure," at least when it comes to so called "free riders,"<sup>16</sup> "nonexcludability," "tragedy of the commons," and "public goods."<sup>17</sup>

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<sup>15</sup>Inoffensive, that is, in what he did, not necessarily what he advocated.

<sup>16</sup>It is no exaggeration to say that complaints about free riders form the core of Bethell's defense of private-property rights. He mentions them often: (pp. 31–32, 42, 44, 46, 49, 51, 54, 137, 157, 167, 268, 323).

<sup>17</sup>Market-failure doctrine leads a long and not very savory life in the history of economic thought. In addition to the three mentioned in the text other major accusations against the free market include monopoly, inequitable distribution of income, slow growth, unequal information. For critiques of this doctrine see Hoppe (1993), Hummel (1990), and Rothbard (1962).



The free-rider problem comes about, as alleged by most mainstream economists when all the benefits of an act cannot be confined to those who undertake their costs. Free riders, beneficiaries who do not pay their own way, cannot be excluded from the enjoyment thereof. Therefore, either the act will not be carried out at all, or there will be underinvestment in it, at least compared to the situation where this problem does not arise. And what does our free enterpriser Bethell add to this? He (p. 50) asserts that this problem "may be insoluble, in which case government action may be called for." Surely this deserves to rank amongst the all time malapropisms. If the free-riding problem is truly insoluble, how on earth are government bureaucrats going to solve it? Do they have magical powers?

The government solution, of course, is to force the recalcitrant non-paying beneficiaries to cough up their "fair" share of the costs through taxation. But this opens up a Pandora's box of difficulties. For one thing, how do we know that the free rider really benefits?

The most typical illustrative example is national defense. It is argued that we all benefit from the army, navy, marines, etc., in that they protect us against invasions from foreigners.<sup>18</sup> Says Bethell (p. 51):

Because a national defense system will protect those who don't pay for it, a privately financed defense system will immediately run into the free rider problem. As a matter of both justice and practical politics, therefore, the government intervenes and taxes are levied from all to pay for such goods.

But what of the pacifist? Can Bethell and the other advocates of this view seriously maintain that pacifists such as the Amish benefit from expenditures on military hardware, that is, in their own view?<sup>19</sup> According to the old adage, "One man's meat is another man's poison." Bethell, again, superbly wielded this subjectivist concept in his critique of Demsetz (1967, p. 47), only four pages earlier.

Further, if the government levies coercive taxes<sup>20</sup> on those unwilling to pay for defense, it will be doing for these hapless individuals exactly the opposite of what it is purporting to do for them. That is, the whole point of the exercise is presumably to protect the citizenry. This can hardly be done when, at the outset, the state initiates the very violence against them from which it is supposed, according to the theory, to be saving them.

Nor is it entirely outside the realm of the possible to exclude at least some of those who refuse to pay for service. All the government (or the private defense agency) need do is issue placards to its clients. Those without them, whether on their persons or their property, will be fair game for criminals, whether domestic or

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<sup>18</sup>As of this writing, the U.S. military is busily trying to bomb the Serbs back into the Stone Age, people who never even remotely threatened to invade us, let alone took even the slightest of baby steps in that direction.

<sup>19</sup>See on this Rothbard, 1962, pp. 883–90.

<sup>20</sup>And what other kind of taxation is there?



foreign. They would have to make their own private arrangement for protection, on the assumption they were not pacifists.

It is possible, too, to apply a *reductio ad absurdum* to this entire line of argument. If Bethell can assert, in the face of pacifists,<sup>21</sup> that everyone benefits from national defense, then I can claim, with equal justification, that we all gain from the things I enjoy, such as handball, chess, karate, libertarianism, Austrian economics, and baroque music. All people, whether they know it or not, benefit from these avocations, not only directly, themselves, but even when others engage in them. This is because their practice makes people “better persons,” and this, in turn, “spills over,” even to those “refusenicks” who do not directly participate. Therefore, I confidently assert, there is less than an optimal amount of investment in these things<sup>22</sup>; government must subsidize all those involved in these pursuits. The point is, by use of this “logic,” anyone can prove anything he wants.

Particularly disappointing<sup>23</sup> is Bethell’s defense of highway socialism<sup>24</sup>: e.g., his support for governmental, as opposed to privatized<sup>25</sup> vehicular thoroughfares. In his view (p. 51):

Road building has with reason been a government activity for a long time, mainly because the cost of collecting fees from road users has been high. The private purchase of right of way also runs into the problem that holdouts can command monopoly prices. But digital technology is reducing the cost of collecting tolls, and if, in the years ahead, clogged freeways are not cleared by user fees [collected by road scanners “reading” prepaid magnetic strips and deducting a toll] then ideology will surely have trumped technology.

This simply will not do. Private roads, too, have been around for a long time. Some of the first highways in the United States were built by private turnpike companies. The reason for their failure had little or nothing to do with the costs of collection being high. Rather, it was due to the fact that governments, the self-styled protectors of private property, refused to safeguard the toll houses of these corporations from physical attack.<sup>26</sup> Digital technology, universal product codes, have been in operation in grocery stores, pharmacies, supermarkets, and railroads,

<sup>21</sup>As well as traitors.

<sup>22</sup>Soap, too, by the way.

<sup>23</sup>See on this Block (1979, 1980, 1983a, 1983b, 1996b); Block and Block (1996); Cadin and Block (1997); Gunderson (1989); Klein (1990); Klein, Majewski and Baer (1993a, 1993b); Klein and Fielding (1992, 1993a, 1993b); Roth (1966, 1967, 1987); Rothbard (1973), Woolridge (1970).

<sup>24</sup>One hopes the context here, as well as in the case of “water socialism,” below, will make clear that we are referring to coercive and not voluntary socialism.

<sup>25</sup>Another self-contradiction. When it comes to Robert Owen, or “the tragedy of the commons,” or friends splitting restaurant checks, Bethell is adamantly in favor of privatization. Why not, then, real privatization in the case of streets and highways?

<sup>26</sup>Demsetz (1967) would likely claim that it was too expensive for the government to do so. This presumes that the state can discern just which enterprises it is appropriate to shield, and which not. But this is unconvincing. A police presence, in any case, was not required at every toll

etc., for some three decades now; only very recently has the government bestirred itself sufficiently to utilize these breakthroughs on the nation's highways. And when it does, for Bethell this is only a reason for allowing government managed highways to reduce traffic congestion, not for full privatization.

Worst of all, under statist management, some forty-thousand people per year lose their lives due to traffic accidents. Instead of accepting responsibility for this carnage, apologists for highway socialism are apt to blame it on speed, drunken driving, poor weather conditions, and a whole host of other reasons, none of them having to do with government management. But it is the failure of the statist highway managers to deal with these phenomena which is ultimately responsible for the massive fatalities.<sup>27</sup> We must realize that the same folks who bring us such great efficiency in the Post Office are also responsible for managing roads and streets. In any case, why a defense of government highways in a book devoted to private property?

And what of "rights of way" and "holdouts"? Bethell is off base on these considerations, too. In the United States there is a long history of private ownership of railroads. These, like roads, are very long, thin enterprises. If rights of way were not a sufficient reason for governmental trains, they are not, either, for highways. As to holdouts, these are precisely the people a book devoted to the noblest triumph ought to be defending, not denigrating. For holdouts are private-property owners, going about their business, refusing to sell to developers. In any case, there are many ways to deal with holdouts. One can build a road around, under or over them (Block and Block 1998). Ironically, Bethell himself touches upon yet another commercial technique in this regard: options. Only two pages after the above quote (p. 53) he mentions these, but only in the context of land assembly for Disney World in Florida. He doesn't seem aware of the fact that the private street builder, too, can avail himself of this course of action.<sup>28</sup>

#### LAW AND ECONOMICS

Coase is the litmus test for anyone who wants to be considered a defender of private-property rights. Bethell passes this test, although not with flying colors; rather, just barely. But he does pass, and this is an exceedingly rigorous test, at least for those with strong Chicagoesque tendencies, such as our author.

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gate, any more than a cop is needed at each store. It would have sufficed had government merely threatened to punish toll booth violators, should they be apprehended, the same sort of offer presumably made to every other property owner.

<sup>27</sup>In like manner, we do not blame the bullet, but the gunman, for the murder. Similarly, the restaurant manager is the ultimate cause of business failure, not the proximate causes of poor service, bad food, dirty floors, etc. It is the manager's job to improve these conditions.

<sup>28</sup>Consider the strategy of the highway owner who wants to build between points A and B. All he need do is to buy option to purchase land along five or six alternative routes. Only when he has a complete set of options for any one of them—with no holdouts—does he exercise his option and actually purchase the land.

What are the specifics? Coase, in 1960, took the economics profession by storm with his article "The Problem of Social Cost." It became the most heavily cited article of all time<sup>29</sup> and launched the *Journal of Law and Economics*, which, in turn, became a mainstay of the new subdiscipline, law and economics. The essence of Coase's message had to do with real-world positive transactions costs. Here, property under dispute (and this would mean all property, once Coasianism became the law of the land) should be given not to its rightful owner (indeed, the idea of rightful ownership, justice, etc., has no place in the Chicagoesque philosophy), who had either homesteaded it or purchased it from a person who had mixed his labor with the land (Locke 1960; Rothbard 1982; Hoppe 1993; Nozick 1974). Rather, the property should be given to that party who, in the judges' opinion, would make best use of it in the future and in that way maximize total wealth.

Suppose I were to "steal" your wallet (it is now necessary to affix quotation marks to this word, since its meaning changes violently in the Coasian world). The old-fashioned (pre-Coase) judge would enquire into the past history of this item. Were your credit cards and pictures of you and your family in it, and did this wallet have a bill of sale with your name on it, that would pretty much be the end of the matter. I would be the thief, you the rightful owner. However, for the judge under the baleful influence of Coase, the past would be irrelevant. Sunken costs, after all, hold no sway for the economist. On the contrary, the judicial enquiry would turn on the future. If I could prove I would make better use of the wallet and its contents than you (I would use it for good wealth maximizing purposes, you are a ne'er-do-well who will waste the money on wine, women, and song), then I would become the "legitimate" owner, that is, until someone else who could use it even more efficiently than I came and relieved me of it.

But this is not yet the bottom of the barrel as far as Coase and the "law and economics" movement is concerned. To add insult to injury to this thoroughgoing attack on private-property rights, the members of this school of thought saw themselves, and were widely perceived as, not critics of capitalism, but supporters. This is surely intolerable. It is one thing for a Proudhon, or a Marx, or a Stalin, to attack free enterprise. It is quite another, and altogether far more problematic, for those who march under the flag of the marketplace to be its most serious detractors.

Bethell, to his credit, sees through this scam. He summarizes this radical attack on the institution of private-property rights (p. 318): "Justice itself should be subordinated to efficiency—to economics." Characterizing this as a (p. 319) "strange doctrine," our author (p. 318) sharply rebukes Posner (1986), a leading Coasian, for the facile equation of justice and economic efficiency. He continues (p. 320):

The claim that inefficient situations sometimes exist within a private-property system, thanks to high transactions costs, seemed [in Coase's initial formulation] to legitimize

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<sup>29</sup>According to Cheung (1983, p. 20) between 1966 and 1980 it had garnered some seven-hundred citations; cited in Bethell (p. 315).

the rearrangement of all property rights by efficiency experts . . . It would render all property insecure and destroy the entire basis of the free-market system: exchange by consent. Thus, an exercise that began with Coase weakening the Pigovian rationale for government intervention went on to raise the possibility of a far more serious intervention.

Further, Bethell (p. 321) approvingly and correctly cites Simpson's (1996, p. 91) characterization of the Coasian system as "the end of the right of private property." Our author (pp. 321–22) is highly critical of Posner's (1986, pp. 128–29) analysis of *Ploof v Putnam* (1908) on the ground that the latter resorts to illegitimate interpersonal comparisons of utility.<sup>30</sup>

And yet despite the foregoing, Bethell's dismissal of Coasianism is not at all an unambiguous one. His blistering attacks on this system are marred by an admixture of actual praise. For example, he (p. 315) states: "The *Journal of Law and Economics* . . . was intended as an alternative to the strongly statist tendency of economics departments at that time." How can it be antistatist to undermine private-property rights? And again (pp. 316–17):

The Coase theorem drew attention to one of the key contentions in this book: that transferable [exchangeable] property rights are the key to economic efficiency, to amity between neighbors and to peaceful relations in society more generally. Coase's insight has since been reformulated as one of the most basic principles of economics: When goods are owned in a well defined way, and the rights to them are exchangeable, they will be purchased by those who value them most highly.

Well-defined? How can property be well-defined if ownership is based not on past considerations but on future ones? As Bethell has himself shown us, well-definedness and property rights, for Coase, are antithetical. On the contrary, Coasianism is the paradigm case of ill defined property rights. Yet another evidence of equivocation: Bethell (pp. 319–20) cites as critics of Coasianism only the likes of Horwitz (1980), Leff (1974), Michelman (1979), Dworkin (1977) and Simpson (1996), few of them, with the possible exception of the latter, as thorough-going in their rejection of this system as the libertarian Austrians (Block 1977, 1995, 1996a; Cordato 1989, 1992a, 1992b; Krecke 1992; North 1990, 1992; Rothbard 1990). For Bethell, it is almost as if there are critics of Coasianism in economics only from the left, not the right.

Bethell sees the flaws in Coase, but lets him off easily, certainly, compared to how he treats Marx and Proudhon. But the latter two proudly wore their (coercive) socialist garb. Not so, Coase and Posner, and their ilk. One interpretation of this might be that on an intellectual plane Bethell sees through this Chicago attack on property rights. He is himself so much a part of this movement that he cannot quite bring himself to as harsh a judgment as might be warranted.

<sup>30</sup>This is somewhat marred by Bethell's own transgressions in this regard (p. 320): "the level of inefficiency resulting from marginal impositions upon neighbors has never been established in practice. But it is surely low." How do we know this? How can we know this? Low, compared to what?

### HAYEK AS LIBERTARIAN

Hayek (1944) is characterized by Bethell (p. 147) as “a strong defender of private property.” By no stretch of the imagination is this true. Very much to the contrary, Hayek makes dozens of exceptions to the free enterprise system (Block 1996c). There are some who defend Hayek on the ground that his views must be taken in context—that, apart from Mises, he was the strongest defender of private property in the decades in which he wrote, and thus deserved to be categorized as a staunch defender of private-property rights even though he was in effect no such thing. But this defense simply will not do. Even apart from Mises, there were libertarians writing in the 1940s and 1950s who were more consistent defenders of property rights than Hayek. The list includes writers like Ayn Rand, Henry Hazlitt, Albert J. Nock, Garet Garrett, Frank Chodorov, Robert LeFevre, H.L. Mencken, Baldy Harper, Leonard Read, W.H. Hutt, Bruno Leoni, Benjamin Anderson, John V. Van Sickle, Wilhelm Röpke, Lionel Robbins, Peter Bauer, and Isabel Paterson. Why just limit it to these decades? What about Benjamin Tucker and Lysander Spooner, who wrote long before Hayek? Surely they were far more radical than he.

### HAYEK AS AUSTRIAN ECONOMIST

Bethell swallows whole the Hayek analysis of the failure of the Soviet Union. This view focused almost entirely on the inability of the central planners to obtain accurate information about the economy. First of all, much of it consisted of the knowledge of entrepreneurs specific to time and place; for example, the reliability and skills of various workers, the quickest way from this point to that, the honesty of merchants, the location of inputs, etc. None of this was readily quantifiable. Even and to the extent that it was, there would still be the difficulty of informational overload. Says Bethell (p. 142) in this regard:

The problem can be appreciated by thinking about getting a message into the Oval Office. Speech writers in the White House itself cannot easily do it. They can pass on their brilliant ideas to the chief of staff—who might not think them so brilliant. He has other messages to deliver, and the president is busy.<sup>31</sup> Most messages must be excluded. A whole White House bureaucracy has already been established to decide which things are urgent, which things can wait.

But in a planned economy, the planners were supposed to control minute details of faraway events. If a deputy commissar in Omsk needed Moscow's permission to switch a consignment of harvesters from one destination to another, he could wait—and ruin the harvest by abiding by the law.

In taking this stance, however, Bethell ignores the far more radical perspective of Mises. Worse, he claims (p. 144) that Mises's “more detailed criticism of planning . . . was really a variant of the problem of information.”

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<sup>31</sup>This line, I take it, was written before the advent of Monica-gate. Either that, or Bethell was too much “above the fray” to take note of it. I am not.

This is entirely fallacious. Mises (1966, 1969) went so far as to demonstrate that even if this knowledge problem could be solved the central planners would still face insuperable barriers. The real difficulty for Mises was one of appraisal and rational calculation, not the relatively superficial one of knowledge. Forget about information pertaining to manufactures, and also consumer desires. Without meaningful market prices, based on the value appraisal of thousands of entrepreneurs, the economic dictator wouldn't know whether it was more efficient to build his limousine, yacht, or palace out of gold, silver, copper, brick, wood, plastic, or whatever,<sup>32</sup> let alone how to deal with the myriad of other decisions made in an economy greater than the size of the Swiss Family Robinson.

### LAND REFORM

It is practically a shibboleth on the right that land reform is a pact with the devil, a plot to undermine private-property rights. Bethell certainly conforms to this pattern.

At a superficial level, evidence certainly abounds in support of this contention. Bethell (pp. 203–21) treats us to a survey of this policy as practiced in numerous countries all around the world. One error of his is to treat as successful all cases where the expropriation was peaceful (p. 206). What happened to justice? Merely because an act does not call forth outrage and resistance hardly renders it just.

A more basic methodological mistake is to treat all such transfers of property as if they were intrinsically a limitation on the rights of private property (p. 209) and never an instance of their implementation and protection. What raises Bethell's ire is land reform as an "immunization" (p. 208) against communism. If the only way to deflect this tyrannical system is to engage in land theft on a massive scale, perhaps there is not that much difference between the cure and the disease.

However, land reform can also, upon occasion, be properly interpreted not as an attack on the rights of private property, but as their main bulwark. Suppose A steals a farm from B, and then deeds it over to his son A1, whereupon, in due course, the grandson A2 inherits it from his father A1. Now, along comes B2, the grandson of the victim, and demands the return of this stolen property, e.g., land reform of a justified, that is, libertarian variety.

How is Bethell to reply? That all forced transfers of land are per se improper? But this would grant a stamp of approval to theft. If the robber or his heirs cannot be forced to relinquish their ill-gotten gains, this is a direct and utter violation of property rights. This insight is not confined to land. If it is true in that case, why not also for stolen cars, jewelry, money, television sets, etc. If we generalize, that will mean the absolute end to all private property.

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<sup>32</sup>For the definitive rejection of Hayek, in favor of Mises, see Salerno (1992). More generally, for the de-homogenization literature on Hayek and Mises, pointing to the serious differences between them, and to the inferiority of the former vis-à-vis the latter, see Salerno (1990, 1995), Block and Garschina (1995).

We need not be so theoretical. There are plenty of cases where land reform would support the rights of private property, not impair them. For example, consider the fall of the Berlin Wall and the end of the Soviet Union. There are now behind the ex-Iron Curtain thousands of acres of land, not to mention factories, houses, etc., which are occupied by people who cannot be considered their rightful owners, nor their heirs. Clearly, it would be just, it would be an implication of private-property rights, if these people were forced to vacate these premises, and cede them to those from whom they were initially stolen by the communists. One day, too, North Korea and Cuba will end their sorrowful decades-long experiment with communism and the same will apply there.

There are also cases closer to home. When the slaves were freed at the end of the Civil War, there was one very serious oversight: they were not compensated for the labor which had been in effect stolen from them. To wit, they had poured out their "blood, sweat, and tears" on those plantations, which were kept by their masters, and handed down to their own children. It would certainly be consistent with private-property rights, not a denigration of them, that this acreage be given over to the grandchildren of the slaves.<sup>33</sup> Of course, not any black person will do as a candidate to benefit from land reform below the Mason Dixon line. The burden of proof always rests with him who would overturn otherwise presumably legitimate property titles. This is why the reductio about overturning property theft from medieval or Roman times, to say nothing about caveman days, simply doesn't work. This libertarian version of property title transfer is naturally conservative. The further back in time you go, the harder it is to prove theft; and this is to say nothing of the absence of a written language and records.

But, at least, contrary to Bethell, this perspective does not entirely close down the possibility of land reform that actually promotes private-property rights.

#### TRADEABLE EMISSIONS RIGHTS

Bethell (p. 52) supports a tradeable emissions rights system, and goes so far as to characterize this as a "property mechanism." He states: "Air pollution can be controlled by giving emission permits to smokestack industries within a given air basin, and allowing these permits to be traded voluntarily."

This certainly fits well within the Chicago philosophy, but whatever such a scheme is, it is not compatible with property rights. Actually, it resembles nothing so much as the market socialist plan of Tito's Yugoslavia.

For pollution is a trespass. It is an uninvited border crossing of smoke particles, soot, or ground up and pulverized garbage. If this is not a violation of private-property rights, something about which the author of the *Noblest Triumph* could well be expected to object, then nothing is. But instead of calling for a ban on it, Bethell falls in

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<sup>33</sup>For a debate between Milton Friedman, David Friedman, Paul Heyne, who took, roughly, the Bethell position on land reform, and myself, see Block, Brennan, and Elzinga (1985, pp. 495–510).



with the compromisers, and advocates a system where polluters are allowed to engage in their nefarious activities, but only to a limited extent, covered with a veneer of rhetoric about a “property mechanism,” as opposed to a property right to be free of invasions.<sup>34</sup> Bethell’s colleague at the Hoover Institution, Anderson (1989, p. 19) is far more attuned to the essence of private property; here is his analysis of pollution:

We have tried many remedies in the past. We have tried to dissuade polluters with fines, with government programs whereby all pay to clean up the garbage produced by the few, with a myriad of detailed regulations to control the degree of pollution. Now some even seriously propose that we should have economic incentives, to charge polluters a fee for polluting—and the more they pollute the more they pay. But that is just like taxing burglars as an economic incentive to deter people from stealing your property, and just as unconscionable.

The only effective way to eliminate serious pollution is to treat it for what it is—garbage. Just as one does not have the right to drop a bag of garbage on his neighbor’s lawn, so does one not have the right to place any garbage in the air or the water or the earth, if it in any way violates the property rights of others.

What we need are tougher clearer environmental laws that are enforced—not with economic incentives but with jail terms.

#### FISH QUOTA

Based on his analysis of depleting fish stocks due to the tragedy of the ocean commons (p. 52), Bethell also supports marketable “fishing quotas,” the water based analogue to tradeable emissions rights. These would give each boat owner the right to capture “a certain percentage of the overall permitted catch.”

This would indeed address the “tragedy of the commons.” This tragedy, however, springs not from communalism, but rather from coercion. To wit, governments so far refuse to recognize private-property rights in bodies of water.

The problem with fish quotas is that the government still administers this system, and sets the overall level of the catch. The oceans still remain a no man’s land as far as real private-property rights are concerned. Why recommend a system with such an admixture of central planning? Why not go all the way to a radical private property stance and call for the privatization of oceans, rivers, lakes, streams, and seas<sup>35</sup> as well? Why this utter and total cave-in to the forces of water socialism?

This is a radical departure in today’s anti-property right context. The problem is that this book was supposed to help change all that; instead, it accepts the very philosophy it is presumed by most reviewers to be challenging.<sup>36</sup>

<sup>34</sup>For a defense against the argument that an outright ban on pollution would mean the end of industry and thus civilization, see McGee and Block (1994), and Rothbard (1990).

<sup>35</sup>And while we’re at it, let’s include the Arctic and Antarctica also, to say nothing of the moon, Mars, Venus and land on still other planets. Should socialism or capitalism be the order of the day regarding the frontiers of the earth and the heavenly bodies? Reading in between the lines of Bethell, the former is implied.

<sup>36</sup>Solomon (1999, pp. 43–47) mistakenly entitles his review of Bethell’s book “A Paean to Property.”

It cannot be denied that there are many and serious obstacles to ocean privatization. But chief among them is the refusal of analysts such as Bethell to apply to the seas the private-property rights lessons we have achieved at such great expense on land.

For example, it will be argued by the Demsetzes (1967) of the world that it is costly to entertain property rights in water, and until and unless these expenses sharply decline, this proposal is a chimera. Bethell (p. 47), to his great credit, has rejected this argument on grounds of subjectivity. But there is more to be said against it. Of course there are conceptual, philosophical, practical, technological, and legal problems associated with ending the tragedy of the commons on the oceans, which have been so far enforced by the world's governments. How can fences be built to demarcate an owner's property from that of his neighbors? What to do about wandering fish stocks which do not respect lines drawn in the water? How about sharks and other predators? Will different people own different levels of the ocean; e.g., surface transport, mid-level fishing, and mining at the ocean floor or below? How will homesteading work in an arena in which it has not yet been tried?

This is not the time or place to even begin to give definitive answers to these questions.<sup>37</sup> Suffice it to say that these are challenges of degree, not kind: there is not a one of them that has not been dealt with on the land. For example, before there was barbed wire, there were "human fences," e.g., cowboys (Anderson and Leal 1991), and cattle branding; neither buffalo nor cows respect property lines drawn in the sand; sharks are merely wolves and cougars without feet; there are disputes and resolutions to the conflicting demands on the land for low flying planes, farming, and mining.

The bottom line, though, is that it is in a book of this sort that we would expect, if not progress on these issues, then at least an acknowledgement that private property can potentially play a role in this sphere. After all, the ocean, which comprises some 75 percent of the surface of the planet, probably accounts for less than 1 percent of global GDP. This is surely a way to promote "prosperity through property," the subtitle of this book.

### CONCLUSION

In summary, this is a frustrating volume; it is close to libertarianism and Austrianism in many ways, yet doesn't quite make it.

Am I being unfair in characterizing Bethell as a Chicagoan? After all, there is not a good word from him on school vouchers, government money, antitrust, volunteer militaries to fight unjust wars, flexible exchange rates, negative income taxes, withholding taxes, and all the rest of the panoply of socialism emanating from this school of thought. Moreover, he does frontally attack stalwarts of the Chicago-inspired law and economics movement such as Coase, Posner, and Demsetz, even though, as we have seen, he pulls his punches. Perhaps most significantly, he avoids the facile Chicagoite equation of justice and efficiency.

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<sup>37</sup>For an attempt, see Block (1992).

On the other hand, he uncritically favors Public Choice (p. 282),<sup>38</sup> dismisses philosophical anarchism, sees monopoly as compatible with free markets (p. 51), buys into the public goods and free-rider market-failure arguments, ignores the contributions of libertarians such as Rothbard<sup>39</sup> and Hoppe who have devoted their entire careers to the defense of private-property rights, takes the Hayek side vis-à-vis Mises regarding central planning, accepts water and highway socialism, misunderstands communalism, and favors tradeable emissions rights.

At the end of the day, the best way to characterize him might be as a wannabe libertarian, or as a particularly good Chicagoan, or maybe even as a hybrid libertarian conservative.

The problem with Bethell, from my perspective, is that this is such a hardhitting book, so sound as we have seen in many ways, that it is likely to become the canonical text of private-property rights. Then, libertarians and Austrians shall be faced with the charge from critics of property, "Even Bethell concedes. . . . Even Bethell allows."<sup>40</sup> Libertarians and Austrians, in contrast, must be extremists or just plain wrong. No greater error could be committed than to ignore this truth.

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<sup>38</sup>For libertarian criticisms, see Rothbard (1997), DiLorenzo and Block (forthcoming).

<sup>39</sup>Not even to cite Rothbard once in his entire book is indeed a remarkable oversight. And this for two reasons, one public, the other private. The public reason is that Rothbard is the most eminent economist to have made private-property rights the bedrock of his philosophy. Why Bethell should totally ignore him is a puzzle on this ground alone. Second, I have in my hand a letter to me dated August 30, 1991, where this author asks my opinion of writings of Rothbard, David Friedman, and Paul Heyne, material from all three of whom would later be incorporated into his book. Bethell mentions the latter two, but not the former.

<sup>40</sup>Bethell (p. 141) reports that something of this sort has occurred with "Mr. Friedman, the American expert," whose imprimatur was used to support the accuracy of Soviet economic statistics in the 1930s.

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