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Cato Unbound Discussion on Property Rights and the State

Ilya Somin • December 13, 2010 11:42 am

The Cato Unbound website has organized a discussion of property rights and their relationship to the state. The lead essay is by economist Daniel Klein. Here is his main thesis:

Libertarians and conservatives say that Obamacare forces you to buy health insurance. Folks of the left are apt to shrug at calling it *force*. If they engage the matter and object to calling it force, the objection entails something like the following: "No one is forcing you. If you don't want to buy health insurance, fine, leave the country. No one is stopping you." [1]

The left may continue: "There are no natural property rights. Property is a set of permissions, a bundle of rights, determined by the government and delegated to you by the government. When a rearrangement of the bundles would be good, that's what the government should do. 'Your' property rights are simply whatever permissions result from the process."

Let's enter into that way of thinking, follow through on it, and surface its presuppositions.

Although they may not be fully conscious of it, progressives and social democrats are saying that everything is owned by the state. Or, perhaps, that the substructure upon which topsoil, buildings, and other things sit is owned by the state. Either way, simply by being in the United States, you voluntarily agree to all government rules.

There are responses by Matthias Matthijs (who criticizes Klein from the left), economist David Friedman (famous law and economics scholar and son of Milton), and yours truly. My contribution criticizes the argument that government has the right to reallocate property rights at will because it supposedly "created" them, but also expresses some

skepticism about Klein's assumption that this view is as widespread on the left as he suggests. In my view, the modern left-liberal case for extensive government regulation of property rights is more focused on their consequences than their origins:

Daniel Klein's essay effectively criticizes a longstanding argument in favor of government control of the economy and society: the idea that the state is entitled to broad power to redistribute property rights because it "created" them to begin with. As Matthias Matthijs describes it in his response essay, the argument holds that "there is nothing 'natural' either about laissez-faire capitalism or private property rights; they were both enforced by the state in the first place."

In my response, I will add some points to Klein's critique of this claim. I also consider a closely related justification for government power over the property rights that Klein also mentions: the assertion that wide-ranging state control is justified because the people have "consented" to it, either by voting in elections or merely by choosing to live in the area controlled by the state. Both arguments are seriously flawed. However, consequentialist justifications for activist government are not so easily dismissed.

Categories: Property Rights

21 Comments

1.

frankcross says:

I don't think you can say that the state didn't create property **rights**. Private property practices exist without a state, but I don't think they are truly rights.

Consider illegal activities. There are property practices involved in the illegal drug trade, but I don't think they are truly rights. (Quote)

December 13, 2010, 12:10 pm

2.

JakeD says:

Federal judge Henry E. Hudson has found ObamaCare "mandate" unconstitutional!

<http://abcnews.go.com/Business/wireStory?id=12382839> (Quote)

December 13, 2010, 12:26 pm

3.

Scott Fruehwald says:

Then there are those of us who think that property rights are natural rights. See A Biological Basis of Rights at <http://ssrn.com/abstract=1440247> (Quote)

December 13, 2010, 12:46 pm

4.

Byomtov says: