
Communications et Commentaires

ROADS, BRIDGES, SUNLIGHT AND PRIVATE PROPERTY: REPLY TO TULLOCK

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1. Introduction

On September 1, 1992 at the Mont Pèlerin Society meeting in Vancouver, B.C., Canada, Gordon Tullock approached my young son (then, aged 14) and I in the hallway. He had a bone to pick with me. He stated he had heard that I favored the privatization of roads, streets and highways, and that if this were true he was going to show me the error of my ways. I confessed that this was indeed the case.¹ He proceeded to outline his objection.

Under full privatization, he charged, it would be possible for a firm to own a highway stretching from, say, Boston to Los Angeles. I agreed. Professor Tullock continued with the claim that it would then be possible for the owner to "split the country in half," something that even the south couldn't attain in the Civil War. How could this be accomplished? Simply by the owner refusing to build exits or entrances, or to allow any other road to bisect his own, either by building a bridge over it, or a tunnel under it. Naturally, Tullock conceded to my initial reply, this would not make much economic sense, as such a highway would hardly maximize profits. Nevertheless, he insisted, his scenario constituted a *reductio ad absurdum* for road privatization.

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¹ At that time, I had already published on this topic Block-1979, Block-1980, Block-1983a and Block-1983b. Subsequently I have published Block-1996, Block/Block-1996, and Cadin/Block-1997.

During the next few years, my son and I discussed practically nothing else apart from this challenge. I wrote up the result of our many many discussions and we published this as Block and Block.² The gist of our response to Tullock was that it would indeed be possible, even plausible, for other entrepreneurs to build tunnels under this “monopoly” road, or bridges over it, and that this would be fully consistent with the libertarian notion of homesteaded private property rights.

Now, in Tullock³ our debating partner once again defends his position of road socialism,⁴ and presumably uses it to attack the notion of private capitalistic highways we offered in Block and Block.⁵ I say “presumably”, since this is the usual pattern. When someone criticizes your views, and you reply, you usually defend your views, and use them to criticize those of your intellectual opponent.

But in this case, try as I may, I find it difficult to discern in Tullock⁶ any reference to his original point (private roads could cut the country in half), or, indeed, any answer at all to our response to this charge.

Nevertheless, I am enough of a traditionalist to want to respond to what purports to be a critique of an article of mine, even though, in this case, that is only a very rough approximation of the truth. As it happens, there is some correspondence between Tullock⁷ and my own work on highway privatization; however, this refers not to Block and Block,⁸ Tullock’s presumed target, but rather to Block.⁹

With this introduction, I press on to a consideration of Tullock.¹⁰

2. Homesteading

Tullock correctly identifies the source of my own inspiration for private property with the Lockean oriented homesteading writings of Rothbard.¹¹ Here, in order to bring unowned land into ownership, one must “mix one’s labor with the land,” *e.g.*, homestead it. But the University of Arizona professor is very much in

² Block/Block-1996.

³ Tullock-1998.

⁴ It seems harsh, even to me, to characterize Gordon Tullock, who has done more work than most economists to defend the institutions of private property and free enterprise, as a “socialist.” However, the shoe seems to fit, at least in this one case. After all, he does advocate that only government, and not the marketplace, should be allowed to own and manage highways. Were he to have done so for practically any other good or service (*e.g.*, steel, the post office, autos, etc.) there would be no question but that this was socialism. Why, then, in this case does it appear so harsh to characterize these views in this manner? Perhaps it has to do with the widespread and deeply ingrained feeling of inevitability of state roadways, and the utter impossibility of any private alternatives. Good antidotes to this view include Block-1979, Rothbard-1973, Woolridge-1970, Gunderson-1989; Klein-1990; Klein/Majewski/Baer-1993a, Klein/Majewski/Baer-1993b; Klein/Fielding-1992, Klein/Fielding-1993a, Klein/Fielding-1993b; Roth-1966, Roth-1967, Roth-1987, Pirie-1986, Poole-1988, Poole-1994, Poole-1998.

⁵ Block/Block-1996.

⁶ Tullock-1996.

⁷ *Ibid.*

⁸ Block/Block-1996.

⁹ Block-1979.

¹⁰ Tullock-1996. All otherwise unidentified page citations refer to this one article.

¹¹ See Rothbard-1973, Rothbard-1982; also see Hoppe-1993, McGee-1994, Machan-1986, Machan-1995, Benson-1993.

error in stating that the homesteading principle no longer applies “in the present day world ... (since) ... there is practically no such (unowned) land available, hence you have to buy” (p. 589).

First of all, there are vast tracts of land which have never been homesteaded in northern Canada, Siberia, and Alaska, to say nothing of Antarctica. And this applies as well to the gigantic Sahara and other deserts of Africa, Russia, China and elsewhere. Secondly, there are large reaches of land west of the Mississippi which are claimed by the U.S. government, and administered by the Bureau of Land Management. These, too, have never been *homesteaded*. When and if we arrive at the free society of capitalism, these lands will be revealed as unowned, and thus ripe for homesteading. Third, there are still airplane and bridge paths which could be owned, as well as subsurface rights, for mining and tunneling. Fourth, even were it true that there were absolutely no more land on the surface of the earth¹² that is unowned, and that, hence, if you want to own some of it “you have to buy,” homesteading theory would still be of relevance for public policy considerations. For example, it is on the basis of homesteading that libertarians decide issues of reparations.¹³

Tullock seems to attack homesteading theory as based on theft: “If you look back at the chain of title of almost any existing piece of land you will find that some time in the past there was a forcible disposition of a previous owner” (p. 1). This, unhappily, cannot be denied. It is a sad commentary, however, not on homesteading, but on man’s inhumanity to man.

As well, he objects to this doctrine on the ground that some of its proponents, *e.g.*, Locke, “wrote the constitution for the Colony of South Carolina, which displaced (by force) a number of indians” (pp. 1,2, material in brackets inserted by present author). This, too, fails as a critique, as it amounts to no more than an argument *ad hominem*. Stalin, presumably, believed that $2+2=4$. That he did so no more casts doubt on this mathematical truism than does anything negative that can be said about Locke¹⁴ undermine homesteading.

As we have seen, this doctrine is still of importance in these cases, perhaps even more so as it can point in the direction of justified reparations for such past misdeeds.¹⁵

¹² We pass over the fact that according to homesteading theory, the oceans, rivers, seas, and lakes of the planet are also fair game. As well, this applies to the moon, to Mars, to the asteroids, and indeed any other real estate which may one day become available for human utilization.

¹³ See Block-1992, Block-1998.

¹⁴ It is hard to see why we should blame Locke for the actions of the South Carolinians

¹⁵ The libertarian starting point in all such cases is that possession is nine points of the law; *e.g.*, the burden of proof is on those who would transform extant property titles. This is unfortunate for the Indians, who kept no written records, and for thefts which occurred in antiquity, for which no written records have survived, since it will be all the more difficult to meet this burden. However, libertarian homesteading theory may well have important implications for more recent theft, such as that which occurred to the Japanese Americans during world war two, and even for the children of black slaves in America, who might reasonably claim what is now the property of the children of southern plantation owners who benefitted from this outrage (on this see Block-1998, Block/Brennan/Elzinga-1985, and Rothbard-1982).

3. Railroads and canals

Professor Tullock offers us a brief economic history of U.S. railroads and canals. "Basically, there was a general permission for anybody to build another railroad across an existing railroad, normally by condemning a right of way..." And ditto for roads and canals. So far, so good. But then he concludes from this situation "No one seems to have tried building a very high bridge or drilling a tunnel under existing railroads..." *Of course* no one in his right mind would consider doing any such thing when the government stood ready to violate private property rights through condemnation. Anyone who did would tend to bankrupt himself, while his competitors availed themselves of the coercive power of the state.

But this does not at all counteract the point made in Block and Block,¹⁶ as Tullock implies. Our point was merely that if a highway owner refused to allow "breaches" in his road (*e.g.*, entrance and exit ramps — cloverleaves — so that traffic could flow north and south even in the face of an east west ocean to ocean highway), then it might well pay for other road firms to engage in the extra bridge or tunnel expenses necessary to overcome this difficulty. Tullock's was totally a *hypothetical* critique of our model of private road ownership. Thus it is to hit somewhat below the belt to claim that since *in reality* "No one seems to have tried building a very high bridge or drilling a tunnel under existing railroads..." that this negatively impacts our point.

4. Real private ownership enthusiasts

Tullock characterizes "The Block's position as being that of real private ownership enthusiasts." They just don't let the government have any power" (p. 590). This, presumably, he does not mean as a compliment. Strange, this, coming from the pen, well, the word processor, of an economist celebrated as a free market advocate. As it happens, this is a very accurate depiction of the views of one of the authors he is criticizing, but only a rough approximation of the other. In any case, it is rather beside the point of Block and Block,¹⁷ the point of which was to show not that it would be unwise to give the government any power, but only control over roads, streets and highways. Surely, objecting to highway nationalization,¹⁸ monopolization by government, should not count as an "enthusiasm," *e.g.*, the archaic synonym for "hysterical."

And what of the charge that me and my co-author "think that the courts are not part of the government"? According to Tullock, this is because we "have the courts making the decisions of how far up or how far down ownership extends,"

¹⁶ Block/Block-1996.

¹⁷ Block/Block-1996.

¹⁸ Responsible for the deaths of some 30,000 or more Americans on an annual basis for many decades (see Block-1979).

instead of relying upon the legislature which has an equally poor record for making "bad errors" (p. 590). We nowhere accept the view, forsooth, that the courts are not part of the government. Nor do we wish them to decide the extensions of ownership. Rather, we favor the view that this be determined on the basis of homesteading: you can only own so far down or up as you can mix your labor with. Of course some institution has to *interpret* this; and who else but the courts? The legislature, in contrast, is not in the business of *applying* natural (homesteading) law, but rather with enacting new legislation. As far as I am concerned, we have had more than enough of the latter; we could do with a bit of the former.

5. The blockade

Professor Tullock charges that "if you had private and total ownership of roads, it would be possible to purchase all of them around a given plot of land." If so, the owner could "collect the full rental value of the enclosed land" (p. 590).¹⁹

This very point was anticipated in my article of 1979.²⁰ Here is how I addressed it

"Thirdly, in the rare case of a holdout who possesses an absolutely essential plot, it is always possible to build a bridge over this land or to tunnel underneath. Ownership of land does not consist of property rights up to the sky or down to the core of the earth; the owner cannot forbid planes from passing overhead, nor can he prohibit a bridge over his land, as long as it does not interfere with the use of his land. Although vastly more expensive than a surface road, these options again put an upper bound on the price the holdout can insist upon."

At this point I would only add that Tullock's treatment suffers from being a static as opposed to a dynamic one. That is, he treats the problem as occurring *after* the trapped homeowner has built his house. Now, in effect, he must surrender its entire value to the encroaching road owner. Had our author stopped to ask about the motivations of the home owner for building in the first place, he would have realized that the highway corporation would have to entice him into doing this. And the only way it could accomplish this task would be by contractually ensuring him that it would never do any such thing.

¹⁹ Our author states, "Incidentally, the Blocks seem to think that I believe that owners of the roads would prohibit people from crossing rather than charge them a toll." He now regrets saying anything that could be so interpreted.

But he need not. He stated this in our conversation not as a likelihood as to what a private owner would do, but what he could do, the better to refute our notion of private road ownership. Obviously, any rational profit seeking road owner would do no such thing. But he certainly would have the power to do so if he wished, under the legal provisions of a private property rights oriented free society which allowed private ownership. It was the burden of Block/Block-1996 to show that even in this unlikely scenano the case for privatization need not be embarrassed.

²⁰ See Block-1979, p. 218.

6. The road map

Tullock “normally challenge(s) proponents of private roads to draw a road map in which competitive roads are shown” (p. 590). This is possible, he concedes, in the case of limited access highways, but we won’t be able to say for sure “until we have at least ten years of experience” (p. 590). However, we have had limited access toll highways for *centuries!* Indeed, the first highways were private turnpike toll roads.²¹ Surely, according to his timetable, we should long ago have attained the information necessary to answer this question.²²

It is entirely another matter, for Tullock, when it comes to “minor roads” (p. 590), by which I assume he means city streets, byways, alleys, avenues, lanes, etc. Here, he repeats his “challenge,” which “no one has ever met” (p. 590) to illustrate this schema on a map. And he underscores the importance of doing just that: “I would not like the only road from my house to be owned by a monopolistic income maximizer.”

There are two alternative competing definitions of competition and monopoly which have currency in the economics literature. According to the mainstream or neoclassical one,²³ competition requires that a homogeneous good be sold by thousands of small “competitors,” each of whom earns zero profits since there is full information about all aspects of the business and entry and exit are costless. Monopolistic elements enter whenever any of these conditions are missing altogether or even attenuated. There is no possible way that private roads could be competitive in *this* sense. Indeed, there is serious question whether *any* industry can fit this bill. The main reason for this definition is to support anti trust legislation.

Fortunately there is an entirely different definition of competition and monopoly, a far more reasonable one. In the Austrian view,²⁴ a competitive industry is one in which there is free (not costless!) entry; that is, no law exists which prohibits newcomers from taking part. How many firms actually choose to conduct business, and what proportion of total industry sales or employment or profit or anything else they account for, is strictly irrelevant. An industry can be competitive in this sense with one, two, a dozen, a hundred or a thousand firms in it, as long as there is no restricted entry. In contrast, a monopoly is a company that enjoys legal barriers which keep out actual and potential competitors.

²¹ See Block-1979, Klein-1990; Klein/Majewski/Baer-1993a, Klein/Majewski/Baer-1993b, Klein/Fielding-1992, Klein/Fielding-1993a.

²² It cannot be denied that private turnpikes only started centuries ago, but did not remain in business all during that time. They failed, for the most part, when governments refused to uphold laws against theft of services, by not punishing those who avoided payment for road usage. However, these private roads did last for far more than a mere 10 years. As well, if we count railroads as “roads”, then we have another large source of empirical information of the sort Tullock is seeking.

²³ Which need not be cited since it is so prevalent within the profession

²⁴ For an Austrian critique of neoclassical monopoly theory, see Armentano-1972, Armentano-1982, Armentano-1991, Armstrong-1982, Block-1977, Block-1982, Block-1994, DiLorenzo-1997, Boudreaux/DiLorenzo-1992, High-1984/1985, McChesney-1991, Rothbard-1970a, Shugart-1987, Smith-1983.

It will be clear from this Austrian definition that *monopolistic* roads are necessarily *governmental*, while *competitive* ones are necessarily *private*. Thus, Gordon, in his fear of a monopoly road owner surrounding his house, is rather misguided. He already has one such!

But what about this author's fear that the "monopolistic" income maximizer would take advantage of him, by charging him such high prices for access to his home that the entire value of it would be dissipated? As we have seen, this is a non issue. If a private road owner completely surrounds Tullock's house, of course no one else can compete, but this would be due to the fact that the relevant private property rights would already be owned, and, thus, not available to another competitor. Since there would be no legally prohibited entry, apart from this, Tullock's scenario would count, for the Austrians, as a competitive one. However, it is extremely unlikely that any homeowner would put himself in such a position without contractually obligating this competitive road owner to specify an attractive, *e.g.*, competitive, price for access *before he purchased the house in question*. Thus, full competition takes place in the dynamic Austrian, not the static, neoclassical sense.²⁵

7. Private "governments"

Tullock himself mentions yet another competitive scenario: his own "Sunshine Mountain Ridge Homeowners (*sic*) Association" (p. 591). This is competitive in precisely the sense specified. The Sunshine Association had to compete with all other condominiums in the neighborhood in order to attract would be homeowner Tullock. Although a private road owning concern, they must have guaranteed to our author that he would be permitted access to the home they were trying to sell him; he wouldn't have made the purchase unless the package deal (home plus access) was worth more to him than the sale price.

Does Tullock admit defeat, since here is the quintessential case of what Block and Block²⁶ specified: a viable private competitive road owning firm which does not exploit its customers? He does not. Instead, he claims that Sunshine "behaves just like a government." It features "collective ownership ..., and functions by holding elections among the individual owners" (p. 591).

In other words, when his challenge is met (I can draw a "map" of the private Sunshine roads which are not limited access highways, but rather "minor" traffic arteries), he attempts to escape unscathed. This really will not do. The Sunshine Association is no more like a government than a fish is like a bicycle. Yes, both organize elections. But so does the local chess, bridge or flower club. Would Tullock also characterize these as governmental? I wouldn't put it past him.

²⁵ This is of course not the "perfect" competition of the neoclassicals. It is the rivalrous competition of the Austrians.

²⁶ Block/Block-1996.

Anyone who can so mischaracterize political economic reality as to label a private club, a totally voluntary association as a government, is capable of practically anything.

States Schumpeter²⁷ in this regard: "... the state has been living on a revenue which was being produced in the private sphere for private purposes and had to be deflected from these purposes by *political force*. They theory which construes taxes on the analogy of club dues or of the purchases of the services of, say, a doctor only proves how far removed this part of the social sciences is from scientific habits of mind" (emphasis added).

There is all the world of difference between the club dues and entry fees "imposed" by the Sunshines of the world, and the taxes levied by the government. In the former case, they sell Tullock a house, and the rights to use their road; but this is their own private property, and they have every right to ask whatever price they wish. In the latter case, government forces the Tullocks of the world to pay taxes for "services" they may or may not favor. If they refuse to enter this "deal," they are threatened with incarceration.

But isn't the government just like a gigantic club, in that we all had initially agreed to the Constitution, under which government asks us to uphold our end of the bargain and pay whatever taxes (club dues) a majority decides? Not a bit of it. This response is simply not available to Tullock. For the simple fact of the matter is, none of us now living, nor even at the beginning of the United States, signed any such document.²⁸ Do we not give voluntary assent to the government merely by continuing to live where we are, and to pay taxes? No more than we would give assent to a highwayman²⁹ by paying him under at the threat of a gun; no more than do we give consent to robbery in the inner cities by continuing to live in these dangerous areas.

8. Compulsion

Tullock has an easy answer to the question he has posed for himself. Is there a problem with a "monopolistic" private owner (for the Austrians, a veritable contradiction in terms)? Well, then, "we just compel owners of roads to permit people to cross them" (p. 591). How convenient. At least for the compeller, if not the compellee. But how to reconcile this with a much vaunted reputation as a free market advocate.

According to Tullock, "... not even the Blocks would favor a monopoly owning all of the roads in the near vicinity of their homes. In essence, they would

²⁷ Schumpeter-1942, p. 198.

²⁸ A handfull of men signed the Declaration of Independence, a very different document. Even had these few signed the Constitution itself, how could that commit the millions of others alive at that time to "club" membership.

²⁹ Spooner-[1870/1966].

be converted into renters or their landlord would be" (p. 591). We have already seen how innocuous is the Sunshine Association's ownership of such streets.

In any case, what is wrong with renting houses, if that is the preference of the private "monopoly" street owner? Alternatively, if the occupiers of the homes want to own, not rent, all they need do is patronize a different private "monopoly" road firm. In such a way is competition brought to bear in this industry.

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