

2000

# Globalization, Losers and Property Rights

Paul B. Thompson

Follow this and additional works at: <https://scholarship.law.umn.edu/mjil>



Part of the [Law Commons](#)

---

## Recommended Citation

Thompson, Paul B., "Globalization, Losers and Property Rights" (2000). *Minnesota Journal of International Law*. 38.  
<https://scholarship.law.umn.edu/mjil/38>

This Article is brought to you for free and open access by the University of Minnesota Law School. It has been accepted for inclusion in Minnesota Journal of International Law collection by an authorized administrator of the Scholarship Repository. For more information, please contact [lenzx009@umn.edu](mailto:lenzx009@umn.edu).

## Globalization, Losers and Property Rights

Paul B. Thompson\*

Jim Chen's stimulating essay "Globalization and Its Losers" should provoke many comments. I will briefly note a theoretical objection to his general approach and will then explore the implications of his position for the future of world agriculture. I do not question the economic logic of the "free trade" view. I agree that a more globalized market generally allows more efficient use of natural capital—sunshine, water, genetic diversity, fertile soils and the like. So-called free trade can be justified by two distinct and complementary rationales. First, by increasing efficient use of resources, it increases total wealth. Second, an arbitrary interference in an individual's right to exchange property with willing traders is contrary to the most basic principles of liberty.<sup>1</sup>

However, many free-traders presume that the doctrine stipulates one way of defining property rights and market structure, rather than another. They treat their favored conception of property rights as if it were a "natural" given, or at least inarguably correct. Generally, it tends to reflect the prevailing conception of property in each analysts' own domestic economy. In contrast, sophisticated economic, legal and philosophical analysis of property suggests that rights to access, use, and trade in or profit from private property represent a complex bundle of rights. Many different ways of composing the bundle are compatible with capitalism and free trade. The particular bundle adopted by any national state will reflect, in some combination, the political consensus on when property claims are legitimate (which subsidiary rights should be included in the bundle), the evolutionary history of the domestic legal system, and the distribution of market and political power, both at present and throughout the society's history.<sup>2</sup>

Clearly, one may argue that another society has reached superior institutions with respect to the twin goals of increased efficiency and maximizing personal liberty. In practical terms,

---

\* Professor of Philosophy, Purdue University.

1. Paul B. Thompson, *Ethical Issues for International Trade Standards*, CAHIERS D'ECONOMIE ET SOCIOLOGIE RURALES (forthcoming).

2. See generally RICHARD A. EPSTEIN, *TAKINGS: PRIVATE PROPERTY AND THE POWER OF EMINENT DOMAIN* (1985); CAROL M. ROSE, *PROPERTY AND PERSUASION: ESSAYS ON THE HISTORY, THEORY AND RHETORIC OF OWNERSHIP* (1994); ALLAN A. SCHMID, *PROPERTY, POWER AND PUBLIC CHOICE* (1987).

this means that one would support “harmonization” that moves in the direction of another society’s property institutions, rather than one’s own. This in no way contradicts the central claim of free-trade doctrine as it has been handed down from Smith and Ricardo. However, that doctrine rests on the assumption that goods being exchanged across international borders are equivalent to goods being exchanged in the domestic economy. It is a reasonable assumption in many circumstances, and especially with respect to trade in commodities where contractual obligations can be satisfied by *any* sample consistent with grades and standards. Cereal grains are generally a paradigm example of the commodity form, but many other foods (think of French wines, for example) resist the commodity form by reflecting the product’s provenance in its market identity and exchange value.

Many “free-trade” theorists also presume that one society’s institutions (usually the U.S.) will become the global standard for property rights. They wring their hands and assert that people just don’t see the benefits from global trade, but this simply begs the question. One may accept the “gains from trade” argument, yet object to the particular way in which property rights are being institutionalized in multi-national agreements. We can illustrate the problem with respect to agriculture by comparing a commodity-traders view of grain, meats, fiber and dairy products with a view that might more fully enable consumers to freely purchase the products most consistent with their values. The contrast can be drawn for illustrative purposes by overstating a real tension between U.S. and European views of what is and is not appropriate to include in the bundle of property rights that structure exchange in agricultural products. The reality is admittedly more complex than the following caricature, for neither the U.S. nor Europe is monolithic with respect to their views of commodity trading and consumer choice. Yet the tension revealed by exaggerating the differences between U.S. and European thinking is a genuine point of conflict in trade debates.<sup>3</sup>

U.S. commodity markets emerged through the development of railroads, grain terminals, slaughterhouses, and eventually international bulk shipping facilities. This market structure is only about 150 years old. Prior to that, farm products were shipped in the bags or bales that farmers and local buyers had

---

3. See INCORPORATING SCIENCE, ECONOMICS AND SOCIOLOGY IN DEVELOPING SANITARY AND PHYTOSANITARY STANDARDS IN INTERNATIONAL TRADE (Board on Agriculture and Natural Resources, National Research Council, 2000).

placed them in. It was possible to correlate quality with the specific grower, processor or shipper of any agricultural product, and hence possible to integrate a broad array of value judgments into a purchase decision. The emergence of railroad grain terminals where one farmer's production would be mixed with that of many others ended trade in agricultural products that preserve these characteristics as part of the product's identity. A commodity's identity consists entirely in its compliance with grades and standards administered both by government bodies, such as the U.S. Department of Agriculture, and quasi-private institutions, such as the Chicago Board of Trade.<sup>4</sup>

Arguably, the "commodity character" of the U.S. food system shapes production practices that favor not only efficiency, but also those efficient producers with the largest volume of production. Subsidy payments, allotments and baselines for various U.S. Department of Agriculture conservation and other payment programs are keyed to a producer's historical level of production. The U.S. Congress has also exhibited a persistent willingness to "bail out" agriculture with emergency payments when prices fall below the costs of production. As such, U.S. producers face less potential for losses from investments that expand production and increase yields than from limiting expenses or shifting to alternative crops and other value-added activities.<sup>5</sup> Chen's use of evolutionary models is appropriate here. In a market environment that demands commodities and a policy environment that rewards large-scale commodity sellers, large farms survive the risks of insolvency at a rate that exceeds that of small farms.<sup>6</sup> However, evolutionary rhetoric may conceal what is contentious about this trend, namely that the market structure and incentives are an artifact created by government, not natural or unchangeable characteristics of an ecological niche.<sup>7</sup>

An agriculture which has evolved according to these parameters tends to treat environmental impact as an external cost, one that should be incorporated into production decisions only to the extent that factors such as soil loss or pollution affect farm-

---

4. WILLIAM CRONON, *NATURE'S METROPOLIS: CHICAGO AND THE GREAT WEST* (1991).

5. WILLARD COCHRANE, *THE DEVELOPMENT OF AMERICAN AGRICULTURE* (1979).

6. Luther Tweeten, *The economics of small farms*, 219 *SCIENCE* 1037-1041 (1984).

7. See HAROLD F. BREIMYER, *FARM POLICY: THIRTEEN ESSAYS* (1976); Cornelia Flora and Jan Flora, *Public policy, farm size, and community well-being in farming-dependent counties of the plains*, in *AGRICULTURE AND COMMUNITY CHANGE IN THE U.S.* (1988).

ers themselves over the long run. Given this interpretation, the policy problem is one of altering the production environment so that pollution and resource depletion costs are internalized, that is, reflected in the farmer's cost of production. There are many policy instruments, including but not limited to regulation, for accomplishing this task. In this view, environmental compliance imposes new costs on producers (costs that had once been borne by future generations or society as a whole). Those who are most capable of bearing increased costs (and weathering the competition as prices settle out) are the winners, and these tend to be the larger and better-capitalized firms.<sup>8</sup>

In contrast to the U.S., European agriculture evolved under somewhat different parameters. Farmers were traditionally seen as producers of multiple goods. They were thought to be producing aesthetic, culture and environmental amenities, as well as food and fiber goods. The regional identity of foods was considered an essential component of their market value, and the legal system mediated disputes over terminology and regulated its use. Farms are viewed as the primary habitat for birds and wildlife, and are expected to reinforce cultural values both through their appearance and through educational activities such as "farm stay" vacations. Solidarity has also been sought through agriculture. The Common Agricultural Policy (CAP) was viewed as the linchpin of the early Common Market. Recently, Europeans have favored African banana growers as a form of reparation for abuses of the colonial era. European consumers may now discriminate on the basis of considerations such as "green," "animal welfare friendly" and "not genetically modified," none of which are meaningful in a U.S. context.

There are powerful economic incentives for increasing scale, and many European firms are aggressive participants in global commodity markets. Nevertheless, relatively smaller farms have been able to prosper in Europe partly because Europeans are willing to compensate their farmers for producing amenities such as cultural heritage and perceived environmental quality. This is done partly by subsidy and tax policy, but also through market structures that give European consumers confidence that their food expenditures are also purchasing a humane, culturally rich and becoming rural environment. The European market structure for wines or cheeses is a particularly apt example of bundling regional and cultural identity into food products. In the U.S., by contrast, anyone can market their sparkling wine

---

8. See A. RANDALL, *RESOURCE ECONOMICS* (1981).

as “champagne” or their cheese as “cheddar.” Europeans have expressed their willingness to pay for the cultural amenities of regional foods through their support for policies that structure markets so that regionally produced goods may be reliably obtained.<sup>9</sup>

It is not clear to me that either approach is a clear-cut winner over the other. On the one hand, trade in commodities places barriers on freedom to trade in complex bundled goods—one cannot “buy” reparation at the same time one buys bananas, for example. On the other hand, the provenance (or identity-preserved) view places barriers to trade in least-cost raw commodities. Each view seems to have evolved in response to different political and technological histories, and each has weaknesses as well as strengths. For example, Europeans seem more likely to impose questionable values on others. They may be doing this in rejecting products from developing countries without child labor laws. Yet if there are no public schools, children are arguably better off at work than on the street. An outright prohibition of child labor may be a moral imperative in the industrialized democracies of Europe and North America, but that fact does not justify universal application of that imperative, especially in countries where institutions of family work and childcare are quite different. On the other hand, the European style seems more democratic in two senses. First, more people are able to express a broader array of values in making their consumption decisions. Second, the procedure for establishing a provenance brings the multiple functions of agriculture before the public eye, and makes them subject of public debate. Having a debate about which elements to include or exclude from the bundle of values that consumers purchase may produce more durable consumer “buy in” for market policies. In contrast, few Americans play any discernable role in the establishment of commodity trading rules. That may make the American style both more elitist and more fragile. Any fair comparison would necessarily continue at some length.

Like many economic analysts, Chen appears to presume that what I have characterized as a U.S. market structure is “natural” or perhaps an instance of emergent order. If the latter, it is an order that emerged in an environment highly structured by law, policy and publicly funded agricultural research.

---

9. This is not to say that European agriculture is necessarily more sustainable or environmentally sound than U.S. agriculture. Comparative figures are not readily available.

Chen's analysis simply assumes the illegitimacy of any attempt to purchase environmental, cultural or social amenities by structuring markets so that these goods would be in the bundle of property rights exchanged in farm produce transactions. No argument for his view is forthcoming. Comparative advantage does not do it, for comparative advantage assumes that the characteristics of goods produced in different places are equivalent. And it is precisely the equivalence of these goods that is at issue in comparing alternative systems of property rights. Trade economists often say that overtly cynical protectionists promote the forms of product differentiation discussed above solely on the basis of self-interest. This would only be an argument against provenance if we could be sure that cynical commodity producers (and commodity traders) do *not* promote commodity-oriented policies on the basis of *their* self-interest. But this seems very unlikely. Any rationale can and will be expropriated by those whose interests happen to be advanced by it. The issue is whether independent conceptions of fairness, economic democracy and the public good support one way of configuring market structure over others.

Globalization does not, in itself, entail either approach to the definition of property rights. The computer industry, for example, has globalized by finding ways to tailor both hardware and software products to the needs and demands of local consumers, resisting the commodity form. The industry has invested in developing technology that balances the need for standardization with diverse consumer needs. Where privacy is a substantial concern, software and public policies have been developed to accommodate it without mandating industry wide uniformity.<sup>10</sup> In agriculture, U.S. commodity producers have tried to use GATT and now the WTO to require other countries to accept food products that, while meeting food safety standards, cannot be certified with respect to origin or method of production, and that preclude quality discriminations that cannot be verified by risk assessments of impact on human health or on the environment of the importing nation.<sup>11</sup> We cannot begin to debate the substantive issues until we see that the priority given to the U.S. commodity configuration of property rights rests on assumptions that themselves stand in need of defense. It then becomes possible to ask whether U.S. market structure is preferable *because* of low food prices, for example, or whether

---

10. BILL GATES, *THE ROAD AHEAD* (1995).

11. *Supra* note 3.

European market structure is preferable *because* it supports traditional, family-style farms.

Asking this question, it becomes possible to ask why family farms are worth preserving in the first place. The answer to that question may suggest that there is something like an agrarian meme, to follow Chen's metaphor, and that it would be prudent to ponder its elimination from the meme pool before deciding unequivocally for the commodity-production view of agriculture. Political theorists dating back to antiquity have argued that the loyalty of agricultural producers is crucial to the success of any regime. Manufacturers and traders may relocate when times are tough, but the farmer's reliance on land (an asset that cannot be moved from place to place) creates a somewhat permanent interest in the stability and security of the state. A given plot of land is irrevocably tied to the territorial state in which it happens to be located. This gives farmers an interest in the politics and defense of the state, as it limits their ability to relocate their assets when political winds change.<sup>12</sup>

Agrarian political theory makes many contestable claims, and it has been asserted in defense of some unsavory political movements. In my view, the most plausible reading of classical agrarianism is that farm population is most crucial during the early stages of state formation. Governments are prudent to protect the interests of landowners, be they a small hereditary elite, as in the 18<sup>th</sup> century English House of Lords, or diverse and widely dispersed yeomen, as in Jefferson's America. Those who derive their wealth from farming have interests more closely tied to the fortunes of the territorial state than others. Favoring landed interests also favors democracy when land holdings are widely distributed. As such, there are reasons to resist actions that concentrate land holdings, or that skew economic development toward wealth that is vulnerable to capital flight, at least during the early stages of state formation. Classical agrarian claims are less plausible in states where democratic institutions have taken root and where relatively few people participate in food production.<sup>13</sup>

If globalization were occurring in a world of states with well-established democratic institutions, the agrarian meme might have little function (at least in its classical formulation). But corruption and capital flight are serious problems in many

---

12. See V. HANSON, *THE OTHER GREEKS: THE FAMILY FARM AND THE AGRARIAN ROOTS OF WESTERN CIVILIZATION* (1995).

13. P. B. Thompson, *AGRICULTURAL ETHICS* (1998).

countries today. Perhaps agrarian political theory is not as quaint as liberal theorists of developed economies believe. Yet, there is more. Beyond its relevance to state formation, agrarian thought has always insisted on a multi-functional interpretation of agricultural production. Properly structured, agriculture is alleged to promote citizenship, democracy, community solidarity and stewardship, as well as bringing forth the goods needed for human sustenance. A neo-agrarian might add wildlife habitat, rural aesthetics and cultural identity to that list, while perhaps subtracting some of the claims that stress farmers' superior moral character. The point of a neo-agrarian view is to question whether policies that optimize only one of agriculture's functions (the production of commodities) capture everything we want from agriculture.

The neo-agrarian view might be more accurately described as multi-functional agriculture. It might be summarized as follows: agriculture is "special" (it differs from other sectors of the economy) because of the way in which environmental impact and sense of community are so intimately related to the means of production. Rather than seeing social and environmental impacts as externalities from farm production, we should see them as co-products. Since one cannot optimize two or more variables simultaneously, we should not presume that multifunctional agricultural production function can be optimized with respect to all of its co-products. We thus need a new approach to the evaluation of economic performance in the agricultural sector. For the time being, it is reasonable to keep our options open, and to resist the temptation to eliminate the agrarian meme from our cultural meme pool.

The commodity view treats agriculture as but one sector of an industrial economy among many. Each sector is expected to pursue efficient transformation of capital, labor and material inputs into salable products. Where markets fail to provide incentives for reflecting the costs of pollution, resource depletion or other environmental impacts, government intervention may be warranted. But the producer may remain intent on a one-dimensional approach to efficiency until these costs are internalized. I do not believe that what I have said here is sufficient to defeat the industrial-sector view of agriculture, or to defend a neo-agrarian view. But it would be unfortunate if the industrial-sector view of agriculture wins out just because trade theorists lack the imagination to ponder an alternative.