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WHAT CAN ONE JUSTLY "OWN"?

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*So Property began, twy-streaming font
Whence Vice and Virtue flow, honey and gall.*

Coleridge

THE central thesis of this article is as follows:—That the answer to the problem now so urgent in many countries about the competing claims of Private Enterprise and State Control must be sought not in any amended formula about "Rights of Property" (whether a Hoover reformulation of their sanctity or a Stalin denunciation of their imposture), but in appeal to experience of the two systems respectively at work. In different countries we have now a fairly extended record of this.

Yet there is plainly still disposition in both the great conflicting camps to hunt for some principle of "Personal and National Rights", some hard-and-fast rule (Marxian or anti-Marxian) by whose automatic application puzzles may be settled. Individualist and Socialist lose their tempers with each other, as they thus serve rival superstitions. It is the argument of this article that they are both wrong, though—as usual in such disputes—each has a measure of truth.

I

A century ago, Pierre Proudhon told a French audience that "All property is theft", and Thomas Babington Macaulay in a speech to the British House of Commons¹ described property as

¹ On the Reform Bill, July 5, 1831.

"that great institution for the sake of which chiefly all other institutions exist". Between these there is room for many an intermediate estimate. Probably the opinion on the subject held at present by Mr. Herbert Hoover and that held by Mr. Henry Wallace are equally remote from each other. It is just such a situation that presents a challenge to thought. As Carlyle once said (in his essay on Novalis) "No error is fully confuted till we have seen not only *that* it is an error, but *how* it became one."

The principle of ownership is constantly invoked in political and social dispute, and not seldom with equal force on different sides. Slavery used to be alternately condemned and approved by appeal to it. Insistence that a slave was someone's "property" elicited the fierce rejoinder that "No man can hold property in his fellow-man". A century ago in England the Game Laws were defended on the ground that ownership of land included ownership of every animal that ran across it, of every bird that flew over it, and of every fish that swam in streams intersecting it. There was even a claim to own the minerals embedded in the earth beneath one's landed estate. To the question how far one might dig down while still on one's own property, the answer was actually offered that the only limit would be set by the claim of an antipodean land-owner digging from "the other side" of the globe! About the same time in England a few daring spirits had begun to forbid the inclusion of his child's labor in the property of which a father might dispose. That there is still by no means agreement on some very fundamental issues about ownership in Britain, must have been obvious to all readers of speeches or articles composed for election campaigns there.

An aspect of the dispute constantly prominent is that relating to business relations. Everywhere the *ownership* of something is there touched. Dumas once reminded his readers that Mercury was the god of merchants and of robbers—classes, he added, which in modern thought had been separated, but which the ancients had ranged together.² Ruskin, in *Unto This Last*, raised the question why commerce was not regarded in England as fit occupation for a gentleman, pointing out that it there stood in public esteem notably below the work of the doctor, the soldier, or the clergyman. He hazarded the explanation that the English public commends occupations propor-

² Dumas, *The Count of Monte Cristo*, I, p. 192.

tionately to the degree of self-sacrifice they are believed to require, and that trade so long as it was judged wholly selfish would remain in a low class:

In true commerce, as in true preaching or true fighting, it is necessary to admit the idea of occasional voluntary loss . . . Sixpences may have to be lost, as well as lives, under a sense of duty . . . The market may have its martyrdoms as well as the pulpit, and trade its heroisms as well as war.³

Mixture of intellectual with moral considerations in thus judging a class may explain the curiously doubtful position of the lawyer in popular rating. Professions indeed have long been contrasted with trades by the element of disinterested enthusiasm for an ideal, intellectual or moral, which they involve. In proportion as this disappears, as it has so largely disappeared in popular estimate of "the corporation lawyer" (doing what he frankly describes as "a law business") the legal fraternity must be content with such consideration as rewards a dealer for profit in any other type of goods.

What, from the moral standpoint, is to be said about "property", and about concentration on acquiring it, is the topic of this article. There is no more intensely living question in the world of our time.

II

Ownership means, at least, the right to use and to prevent others from using. Whether it means also the right at pleasure to use up (and so to destroy), and the right to bequeath, is by no means so generally agreed. Nor is there agreement as to what sorts of things may be privately owned—as shown by the approval in some quarters and condemnation in others of the Soviet collective-farm system with accompanying severity towards the "Kulaks" who try to evade the State requisitioning of their farm produce. But wherever the institution of private ownership is recognized at all, the rights it confers, whatever their extent, are exclusive.

The rise of the "Middle Class" forced into the arena of debate many a question about property of which little had before been heard. To the advent of "the Machine Age" was due first the breakdown of what was left of feudalism, and next the intense workers' resentment against the new owners who, in superseding feudal caste, had also abandoned feudal conscience. No more arrogance of high descent, but also no more *Noblesse*

oblige! The new division in England, said Disraeli, was into two classes, "Wealth" and "Toil".⁴ Dickens wrote of the "Fathers of the Scrip Church" who had taken as rubric of a new ritual the great *Law of Supply and Demand*, with its new Golden Rule bidding one always to buy in the cheapest market and to sell in the dearest.⁵ While the changes signified by the 1834 Poor Law were developing the outburst of Chartism in England, causes of a like sort were preparing in Continental Europe for the rise of Marxism, and the issue of the *Communist Manifesto* in 1848. Plainly there was in progress a deep revolution in thought regarding rights and conditions of ownership. How long these would have continued without challenge in the public mind but for the difference so suddenly made to employment by the introduction of machinery, is disputable. But the new era of industrial distress whose origin was popularly (and correctly) traced to "the Machines" made an immediate reexamination of ideas on this subject inevitable.⁶

The formula of Supply and Demand, so dear to the School of Private Enterprise as against that of Public Ownership, was quickly subjected to modification by factory laws and laws to regulate the working of mines. But it is easier to point out how that formula is neglected or supplemented than to state the principle upon which these variations in practice rest. "Business is business", however peremptorily proclaimed, does not exclude all other considerations in actual commerce. Not everything which the public may demand will the conscientious trader supply, even though he may see a chance of large profit and apprehend little risk from legal impediments. He will not thus cater to orders in narcotic drugs, or traffic in chastity. He is ashamed to conduct a gambling saloon, however attractive the promise of such business. To manufacture and export idols for the worship of savage or half-savage tribes is spoken of with disgust by those who profess to have evidence that such a singular traffic exists. Again, there are callings which the common conscience pronounces quite proper in themselves, but disgraceful when carried on under certain conditions and in disregard of certain limits. Money-lending, for instance, when the usurer exploits for an enormous rate of interest the desperate necessity of his victim, or raising the price of goods to the level known as

⁴ Disraeli, *Sybil*, I, v.

⁵ Cf. *Hard Times*

⁶ It was Ricardo's published opinion that the tracing of unemployment to the introduction of machinery was no popular blunder, but economically correct.

"extortion" in a time of scarcity. Numerous troublesome questions arise about the obligation of strict truthfulness in advertisement.

III

The much lauded "historical method" is of very little service in clearing up difficulties here. We are bidden to trace the institution to its origin, and the Marxians profess to have done so. Apart from the fault now made plain by historians of culture, that the Marxians wrote much of this history out of their heads, as regardless of the historical facts as Rousseau was when he described "the Noble Savage", there is the objection (as clear in the case of property as in that of criminal justice or marriage custom) that questions of origin, even if they can be solved, are remote from questions either of present content or of validity. Anthropologists like Westermarek have uncovered much of antiquarian interest about the contrast for a primitive people between intra-tribal and extra-tribal theft; about the early distinction between stealing some sorts of goods or from some particular social class and stealing other sorts or from a different class; about the impunity conceded in tribal custom to appropriation of certain bare essentials of life wherever found by the destitute. Property, thus acknowledged in some sense from the beginning, would of course later exercise the ingenious minds of Roman lawyers to define its limits and conditions. The story of debate about such principles as *occupatio* and *usucapio* is always entertaining and sometimes instructive. It was inevitable, too, that the growth of law, with accompanying passion at least to get rid of moral problems (if not to settle them) by resort to legal terms, should bring to bear in this field a doctrine of "Natural Rights". Familiarity with rights conferred by statute, together with an instinctive recognition that statutes could not cover the whole of conduct (and must indeed themselves have a moral basis), resulted in the idea of "Nature" as the supreme Law-Giver, and of Nature's original code as identifiable—underlying all the "positive" systems of States. The confidence shown by the framers of American and French "Declarations" on this subject in the late eighteenth century must have come back in thought, with its pathetic suggestiveness, to every historically-minded reader of the U. N. "Declaration of Human Rights".

But it is an antiquarian interest, rather than solution of a problem, that is thus to be found. The question now agitating

countries both East and West, splitting the world into "Communist" and "anti-Communist" blocs, is in essence the moral question of property, and no adequate answer is to be got through mere research, however exhaustive, into the way in which property began. Questions about the administration of justice in criminal courts are not clarified by antiquarian lore about the beginnings of punishment in blood-revenge and the survivor's duty to a murdered kinsman's ghost. Modern geometry is not helped by psychological analysis of primitive man's spatial concepts. Nor is any real light cast on the present dispute between Individualists and Socialists by reflection on the effort of Roman lawyers to find technical terms for what they judged implicit in long-standing custom. As usual, such legal industry resulted in serviceable classifications, but also as usual it was mistaken (like the industry of mediaeval psychologists) for explaining where it had merely classified and named. Such limited acknowledgement seems all that is due to the accounts of property as determined by "occupation", "mixing one's labor", "transfer", "gifts", "bequest", "inheritance". Of these the last four depend, of course, on the validity of title held by the original possessor, and who shall determine a title on the basis of either having produced the object by one's labor or having mixed one's labor with it? The right of prescription seems, though legally convenient and indeed necessary for administrative purposes, at least liable to very gross abuse when it is advanced to secure one in undisturbed tenure of what was stolen long ago; and of "occupation" one may say with Sir Walter Scott that it means the unchallengeable right to hold a country for ever which belongs to the first who committed a buccaneering expedition across its borders. Socialist argument, that all the means of production, such as land, should be publicly owned, certainly cannot be refuted by any such appeal that whoever took possession first must hold it for ever.

But much is to be learned from this fruitless effort to find an axiom on property rights; much from discovering that the effort yields either inconsistent results or results to shock the moral sense. Each of the anthropologist's historic "principles" has entered more or less into modern moral ideas on the institution we are considering, and from the attempt to apply them simultaneously many a difficulty still takes its rise.

IV

Aristotle said that the State began as means of life and

continues as means of good life,⁷ thus (as in so much else) supplying a hint whose significance later thinkers were lamentably slow to realize. What makes the institution of property worth continuing is the value it is now found to promote, and which its originators may never have had in mind, either implicitly or explicitly.

Towards promotion of what Aristotle distinguished as "the good life" it has been found by trial that certain personal liberties and opportunities are conducive. Among these is the right to acquire and retain in one's exclusive possession what is known as "property". The power to accumulate in this manner has been found very different in different persons, and hence have arisen those social inequalities which it has been the declared aim of Communism (producing a "classless" society) to abolish. The attempt of the Bolshevik regime in Russia after the revolution of 1917 to equalize incomes lasted a very short time, being soon superseded by the "New Economic Policy", and one hears (subject, of course, to the discount one has to keep in mind regarding all news from *Behind the Iron Curtain*) that the contrast of wealth and poverty now to be seen between classes under the Soviet regime is such as in Tsarist days men like Marshal Stalin used to call "glaring and intolerable".

The Bolshevik design of harmonizing social classes by enforced equality of income was like the proposal in Plato's *Republic* to unify the State by mixing together all new-born children in a public nursery, so that none could be identified by parents as their own. Each remedy, in eliminating a source of discontent, would at the same time eliminate one of the most powerful stimuli of national effort. No doubt family jealousies, and jealousy of the rich in the hearts of the poor, tend to weaken the State. But, without the promptings of family affection or the spur of opportunity to acquire wealth, how far would the average man exert himself? The proportion that would work equally hard although unaffected by either the lure of reward or the fear of hardship is admittedly small. Six years ago, electoral campaign value was notable in that rolling phrase of the British Labor leaders "Guarantee of security from the cradle to the grave." But after a few years of trial the British people (like those with similar experience in Australia and in New Zealand) showed no such responsiveness to its charm.

"Free enterprise", whose value has been so attested in experience, involves the protection of private property, and what

⁷ Aristotle, *Politics*, Book I.

is necessarily involved in a method must be accepted if the method is to be used. Not upon any self-evident sanctity, but upon the consequences which have been found to ensue from its acknowledgement and its denial respectively, is the defence of this institution to be based. It will mean social inequalities, which in some degree seem inseparable from any system in which persons of very unequal capacity will have the incentive to maximum exertion. Bernard Shaw in his early period had a famous lecture on property which he delivered under the suggestive title "Thieves", and in the facetiousness of old age he predicted a column headed "Criminal Antecedents" for cases of inherited wealth in a census return. H. G. Wells, in *New Worlds for Old*, dwelt upon the scandal of suffering by the poor through private ownership by the rich of means of production, and raised the challenge "Why do you have 'owners'?" But it does not seem that either of these Socialist pioneers was insensible of the contribution to social culture through literary free enterprise, or would have favored compulsory equalizing of income for authors. As usual, the question where one extreme movement must stop is effectively met here by the question where the counter-movement will stop. The free enterprise which under some Socialist regimes (notably that tried in the early days of the U. S. S. R.) was disastrously forbidden could not anywhere be granted again its limitless scope of the past. Rewards of competitive skill may be amply sufficient as stimulants, without permission to monopolize, and to use simply for personal advantage, a natural resource. Compulsory equalizing of shares in industrial profits would no doubt reduce the amount available to be distributed, and there was much more than a mere rhetorical sting in Mr. Churchill's claim for the Conservatives that, unlike the Labor men, they were planning not only how to share wealth but how to obtain on the largest scale wealth which might be shared. At the same time, the most convinced believer in free enterprise must recognize that Commissioners of Public Utilities have an important function in protecting the community against those who would "corner" what is part of the inheritance of all. They are needed by what someone has well called the inadequacy of the private conscience in industrial leaders. "Put business in two words", says a disputant in *The Passionate Friends*, "and what is it? To keep something from someone else and to make him pay for it". Need for stern State intervention at certain points in such procedure should be obvious.

In such examination of cases, such fixing of boundaries between what should and what should not be privately owned, all our light must come from experience of consequences. Those who defend this doctrine are sure to be denounced as "opportunist", in contrast with "men of principle"—those devotees of unsifted dogma whom Ibsen burlesqued in play after play as "idealist". The reproach is hurled at every public leader who thus has to resist by turns the tyranny of cast-iron formulae pointing in opposite directions. David Lloyd George in Britain and F. D. Roosevelt in the United States had thus the difficult office of men who esteem justice and the public good as values more important than formal consistency. Such men know well that their inconsistency in form disguises firm fidelity to essential purpose, but they know also how quick will be the imagination of their detractors in devising some sordid motive for their change. Lloyd George once defended his French friend, Aristide Briand, against such insinuations, by referring to Briand's birthplace on the coast of Brittany and his early practice in seamanship. On that rocky coast, the speaker said, much "tacking" had to be done, the steering of "a straight course" would be disastrous for a ship, and what the Breton sailor had learned was being applied later in international navigation by the Minister at the Quai d'Orsay.

Such calculations regarding ownership have been called an exercise in "casuistry". Whatever we call it, the practice is universal, not least on the part of those who denounce it. Regarding casuistry De Quincey well said: "We may reject the name, the thing we cannot reject. And accordingly the custom has been in all English treatises on ethics to introduce a good deal of casuistry under the name of special illustration, but without reference to casuistry as a formal branch of research".⁸ Bishop Jeremy Taylor⁹ lamented that the provision of such applied ethic was so slight in Protestant as compared with Roman Catholic manuals, thus creating for Anglicans a situation like that of the days when there was no smith in Israel, and it was needful to resort to the forges of the Philistines "to sharpen every man his share and his coulter, his axe and his mattock." A characteristic mocking sentence from Disraeli presented the same contrast, between a Roman Catholic turning for relief in moral perplexity to his priest and a Protestant whose only help in such a case must come from his solicitor!¹⁰

8 De Quincey, *Speculative and Theological Essays*.

9 In the Preface to *Ductor Dubitantium*.

10 Disraeli, *Lothair*, pp. 74, 5.

It is indeed the issue of moral values that has to be faced in the present turmoil about Socialism, Communism, Individualism. Fundamentally, it turns on the kind of life we judge best worth promoting. This article is a plea not for the denial of intuitions of *good*, but for the acknowledgement that there is no intuition of *right* (that is, of the good fittest to be chosen among competing goods), and that the discernment of "right" involves calculation of consequences. The case of Property is but a single example, at present most conspicuous in the public eye.
