

# The Property Basis of Rights



THERE has been an attempt to separate property rights from other rights in this century. It has usually been done by labeling some rights as "human rights" and referring to others as "rights" of property. This distinction has been accompanied by the claim that "human rights" are superior to "property rights." For example, in the late 1950s when the McClellan Committee held Senate hearings on labor union activities, a labor leader put the matter this way: "Well, Senator, my primary concern was the safety and welfare of the people in that area. It simply was against my religion and against my principles and religion at this time to have placed property rights above human rights. . . . I think the

obligation was more to protect the human rights than the property rights at that particular time."<sup>1</sup>

The distinction did not go unchallenged. In the 1960s there was even a sort of slogan coined which called it into question. It went something like this: "Property rights *are* human rights." The idea had some appeal. After all, rights are not something ordinarily thought of as belonging to plants or the lower animals. If there is a right to property, it must be first and foremost a *human* right. That was not, of course, quite the distinction the critics of property rights were attempting to make. They referred to property rights as if they were rights belonging to property. Those who challenged this concept maintained, to the contrary, that property rights were really rights of human beings

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to property. Thus, "Property rights are human rights."

At the time, I not only agreed with this line of reasoning—I still do—and thought it stated the case adequately. However, further study and reflection have led me to a somewhat different conclusion. Property rights are not just another human right; such a statement understates the case. They are much more fundamental than that. Property rights are basic to all rights.

This relationship first occurred to me while studying the loss of rights in totalitarian countries. My general conclusion was that the loss of property rights either preceded or accompanied the loss of other rights. This was so in Hitler's Germany. It was so in Lenin's and Stalin's Russia. It has also been the case in other totalitarian countries. It is possible that some property rights could be retained while other rights, such as freedom of speech, freedom of press, freedom of religion, freedom of association and so on, would be severely curtailed or taken away. But it is now inconceivable to me that other rights could be maintained when property rights were gone.

This suggests to me that there is a causal connection between property and other rights. The historical connection can be seen not only in countries where rights have been lost but also in countries where they were being established. For example, in

England in the seventeenth and eighteenth centuries, real property was being made private and personal. At the same time, there was a movement for substantial freedom of religion. In the wake of the establishment of these came the protection of other rights.

### **Freedom Is Indivisible**

To my knowledge, no general theory has been propounded on the connection between property and other rights. True, the position has been often stated, sometimes accompanied by proofs or arguments, that freedom is indivisible. The meaning of the phrase is that you cannot pick and choose among basic liberties; you must buy the whole package or end up with none. There have also been assertions made that rights such as freedom of press are dependent upon private property. If there is no access to a printing press, the freedom to publish is empty.

Here and there, too, statements can be found which imply the central role of property. For example, here is one from John Stuart Mill:

... If the roads, the railways, the banks, the insurance offices, the great joint stock companies, the universities, and the public charities, were all of them branches of the government; if, in addition, the municipal corporations and local boards, with all that now devolves on them, became departments of the cen-

tral administration; if the employees of all these different enterprises were appointed and paid by the government, and looked to the government for every rise in life; not all the freedom of the press and popular constitution of the legislature would make this country free otherwise than in name.<sup>2</sup>

While Mill here entangled the matter with distribution of power among governments, it is reasonably clear that private property is a key factor in his position.

### Natural Rights

In general, though, little attention has been paid to the relationship among rights. The Founders of the United States tended to equate them, trace them to the same source, and worked to establish those they recognized as important rights. They were particularly concerned with those that government has been given to invading and violating. For example, Thomas Jefferson said: "There are rights which it is useless to surrender to the government and which governments have yet always been found to invade. These are the rights of thinking and publishing our thoughts by speaking or writing; the right of free commerce; the right to personal freedom."<sup>3</sup> They relied upon a received theory rather than propounding new ones.

They commonly referred to those rights which they accepted as natural rights. They were understood to

be a gift of God, implanted in the nature of things. As Alexander Hamilton put it, "the Deity, from the relations we stand in to Himself and to each other, has constituted an eternal and immutable law. . . . Upon this law depend the natural rights of mankind. . . ."<sup>4</sup> There were those who held that these rights were altered when man entered into society. The Founders did not concur in this view. Jefferson said that "the idea is unfounded that on entering into society we give up any natural right."<sup>5</sup> Hamilton declared that "Civil liberty is only natural liberty modified and secured by the sanctions of civil society."<sup>6</sup>

What are these natural rights? John Adams stated it this way in the Massachusetts Declaration of Rights:

All men are born free and *independent*, and have certain natural, essential, and unalienable rights, among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing, and protecting property; in fine, that of seeking and obtaining their safety and happiness.<sup>7</sup>

Jefferson said: "I believe . . . that a right to property is founded in our natural wants, in the means with which we are endowed to satisfy these wants, and the right to what we acquire by those means without violating the similar rights of other sensible beings; that no one has a right to obstruct another exercising

his faculties innocently for the relief of sensibilities made a part of his nature. . . .”<sup>8</sup> The United States Constitution along with the first ten amendments, and state constitutions of the time, provide a more complete list of what were reckoned to be the most essential rights, or the ones most likely to be interfered with. Certainly, the right to property was reckoned to be essential, as the above statements show, but the dependence of other rights on it was not made clear or elaborated.

### **The Socialist Concept of Rights**

It was not many decades, however, before the natural rights doctrine was challenged and began to be supplanted. The utilitarians turned away from the natural law basis of rights to justifying them by the social benefits to be derived from them. Democratic theory tacitly derived rights from the desires of the people. Socialists generally denied that there was any individual right to property, at least to productive property. Democratic socialism, which became the dominant intellectual creed of the twentieth century, not only downgraded, when it did not dismiss, private property rights but also devised a host of new rights. Many of these were in conflict with the right to private property.

Perhaps, the United Nations Declaration of Human Rights is the

most authoritative compendium of rights to come from the democratic socialist outlook. If it is not the most authoritative, it is surely the most complete. The Declaration runs to 29 articles, and many of these have several subheads, which may be thought of as distinct rights. If so, we may be entitled to something like 49 rights according to this document. The right to own property is mentioned in Article 17, but no reference is made either to the right to use it or to have the fruits from it. That is understandable within the context, for many of the other rights enumerated are adverse to property rights. However, many of the rights are not only in conflict with property rights but also internally inconsistent. For example, Article 26, which deals with education declares that “Elementary education shall be compulsory.” It goes on to say, however, that “Parents have a prior right to choose the kind of education that shall be given to their children.”<sup>9</sup> They have the right to choose, we are left to conclude, so long as they choose to have them receive an “elementary education.”

This brief summary of the development of ideas about rights does not begin to suggest the significance of the changes entailed. The origin of rights had shifted from natural law to society, to people, and, inevitably, to government. This development not only focused attention on

the origin of rights but also introduced ideas about what are rights. In the course of it, thinking shifted farther and farther away from any conception of the property basis of rights. It will be my contention here that this almost totally obscured the means for establishing any rights.

It is necessary, then, to explore the property basis of rights. A good place to begin is with a definition of right. A right is something to which one is entitled by virtue of being a man (generically). Whether it be called a natural right or a human right, it must be in accord with the nature of man and the human condition. Consistency requires, too, that one man's right not diminish the rights of others. In the final analysis, a right is what is right and derives its standing from the standard of justice. It is doubtful that a complete list of rights could be contrived, for right comes down ultimately to equity, to a law deeper and broader than the acts of legislatures and the precedents made by the courts. Right is a matter of principle, and like all principles, it is capable of numerous applications.

With that in mind, then, the relationship between property and rights can now be explored. The property basis of individual rights has at least two dimensions. One is conceptual. The other is in the effective ability to exercise rights.

Conceptually, all rights are either

*elaborations* or *extensions* of property rights. For example, in the United States a person has the right to order the disposition of his bodily remains after death, by will. The right to one's body is an elaboration of property rights; indeed, it may be the most basic property right. A will is written to dispose of one's property. Hence, the right to order by will what disposition shall be made of the body is an extension of the process.

### **Property Undergirds Rights**

Many rights are so closely tied to property rights that they are virtually indistinguishable from them. For example, the right to buy and sell or, more broadly, to trade freely, is a property right. It is an aspect of the ownership of property. Free speech and a free press are fundamentally property rights. We probably do not ordinarily think of them that way, because we think of them as something asserted when there is an attempt to interfere with them. Such a view treats of the exception rather than the rule, and tends to mislead us as to their character.

Speaking and other forms of publication are valuable and valued means of conveying information. They are, if you will, items of commerce. That is, many people are paid and even make a living from speaking, writing, and other forms of publication. That is, others want, and

will pay for, the information they have to convey. Teachers, preachers, public speakers, journalists, commentators, advertising men, and so on, come readily to mind. Speech is a property right in the market; others may not reproduce it without permission and can benefit from it ordinarily only by paying the price for it. Literature is a property, vouchsafed by copyright law.

The value of communication is in direct proportion to its accuracy, validity, and truthfulness. To put it negatively, an utterance obtained by compulsion, by twisting the arm, for example, has value only for a masochist. On the other hand, if one is prevented from speaking the truth as he understands it by fear of compulsion, the value of his communication is diminished thereby. Free speech and a free press are the necessary conditions for securing the property values in these, both for speakers and for hearers.

### **Individual Rights Are Extensions of Property Rights**

There is probably no way of conceiving of individual rights other than as either property rights or extensions of property rights. Our right to life stems from the fact that it is our *own* (and only) life. Our right to the disposal of our time stems from the fact that it is our *own* time. Our right to the use of our faculties stems from the fact that

they are our *own*. Remove from them the concept of private property and the claim to them goes as well.

The concept of property is not, of course, peculiar to our age. It has probably been around approximately as long as man, and even the lower animals appear to have an instinct for it, if they cannot actually conceive it. Actually, there have been many conceptions of property. Some societies have conceived of property rights in other persons, and have established slavery. Others have conceived of property rights in the services of others, and have established serfdom. Some have so dispersed property rights that hardly anyone could be said to own anything. We appear to be bent on a course in that direction today. Property rights in some societies have been assigned to various classes. It is interesting to note in all these cases that all other rights, to the extent that they were recognized, tended to be parceled out in much the same way as property rights.

This suggests to me that our conception of rights in general is tied to our conception of property. More specifically, as I have said, it suggests that our conception of individual rights is dependent upon a conception of private property. The reason for this, I believe, is that all rights are either property rights or extensions of them. It might be possible to establish what we think of

as rights to private property without establishing what we have thought of as other rights. But it is greatly to be doubted that the "other rights" could be established in the absence of rights in private property. That, as I understand it, is much like saying it would be possible to lay a foundation without building a house upon it, but one could hardly expect a roof to stand without walls to hold it up.

### How Rights Are Exercised

There is another reason for this connection. Private property is essential to the *exercise* of individual rights. To turn it around, in the absence of private property, the exercise of whatever may be proclaimed as rights will be dependent upon who controls the property.

This latter principle has been well illustrated in the Soviet Union in the matter of religion. The Soviet Constitution proclaims the right to the free exercise of religion. It is very nearly an empty right, however, because churches do not have the private property to facilitate its free exercise. All schools are governmentally owned and run, and religion may not be taught in them. Most seminaries were closed and much of church property confiscated in the wake of the Revolution. (The Kremlin, once the seat of Russian Orthodoxy, now houses the government.) There is a shortage both of

clergymen and of church buildings. Missionary efforts are severely circumscribed. Since productive equipment cannot be privately owned, the churches are entirely dependent upon a hostile government for Bibles, musical instruments, prayer books, song books, and other religious paraphernalia. The exercise of religion is clearly a privilege, when it can be done, not a right, in the absence of private property.

The same principle has been illustrated in American schools in recent years on a much smaller scale. The First Amendment to the United States Constitution declares, in part, that "Congress shall make no law respecting an establishment of religion, or *prohibiting the free exercise thereof. . .*" (Italics added.) The Supreme Court has prohibited various religious exercises in the public schools. These prohibitions rely upon the fact (or premise) that the public schools are governmentally owned and operated. The courts have said, in effect, that we may freely exercise our religion on private property, but not on that which is governmentally owned. Its exercise in the public schools was a privilege which has now been withdrawn.

But the exercise of any right requires the use of property. Without real property, there is no place to stand, sit, lie, walk, ride, or do anything. The making of a speech re-

quires a platform from which to speak, as it were. The publication of a book requires a printing press, of course, but much more besides. There must be a desk at which to sit or stand, pen with which to write, paper on which to write, boxes in which to place the manuscript, printing ink and paper, a store in which to display the book, and money with which to buy it. Freedom of assembly requires for its exercise a place within which to assemble. The right to the use of one's faculties depends upon property on which to use them.

It is true that property often serves an humble and unobtrusive role in the affairs of men. Frequently, it has only a subordinate part to play. Most of us would agree, I think, that the soup is more important than the pot in which it is cooked, the speech more important than the platform from which it is delivered, the sermon more important than the pulpit, the painting more important than the canvas, the words more important than the paper on which they are printed, and the man more important than the ground on which he treads. From such evaluations, we may conclude that property should be downgraded, that if there is a right to it, it should be a right made subordinate to all others.

We are apt to do much more than ignore the obvious when we think in

this way. The obvious is that without the container we can make no soup, without a place to stand there can be no speech, without a canvas (or other receptacle) there can be no painting, without the paper the words cannot be assembled, and without the ground the man has no place to walk.

### **Use Subordinates Property**

We ignore something more subtle and possibly more profound than this. We ignore the fact that it is the cook who subordinates the pot with his soup, that it is the preacher who subordinates the pulpit with his sermon, that it is the artist who subordinates the canvas with his painting, that it is the writer who subordinates the paper with his composition, and that it is the man who subordinates the ground by walking upon it. Every use by man of property is a subordination of it. When a house is built upon land the land is subordinated to that purpose. The farmer who clears, plants and tills the soil subordinates it to his purpose.

From these and other considerations, including a mass of historical evidence, I conclude that government as a mechanism cannot act to subordinate or downgrade the importance of property. Government as lawmaker is a mechanism. All direct efforts by government to place property in a subordinate place will

tend to have the opposite effects. Let us take the extreme case for illustrative purposes. Suppose that government confiscates all property, or as much of it as is possible. This will magnify the importance of property rather than reduce it.

### **Property Insecure when Government Intervenes**

The reason for this should be apparent. Man's necessity for property is absolute; his survival and all activities depend upon it. When government has control of it all, man's concern with it becomes preponderant, for his access to it is no longer secure. Not only does it magnify the importance of property but also of government. Total control over all property becomes the means for total control over men. The law which disposes property in this situation also disposes men. Indeed, the wedding of property to government turns the control over things into control over men. What may start out as an effort to subordinate property ends up as the subordination of man.

There are those who suppose that a government which has taken away the right to any significant private ownership of property could, nonetheless, confer a variety of individual rights upon the people. Indeed, there are many Westerners who believe that the Soviet Union, for example, could confer freedom of

speech, freedom of the press, and freedom of religion, say, on the people within its bounds. It could not do so and retain its control over all property. Above all, it could not establish these freedoms as rights.

The most that a government could do would be to lay down rules for access to property. To call such access a right, however, is a misnomer; it can at most be only a privilege, revocable at will, and available at the behest of those who have the power. In any case, in the absence of property, there are no means for contending with government. It is of little avail to have money in the bank, if the government owns the bank and can confiscate the funds of those who may choose to oppose it.

### **The Rules of the System**

Government cannot create rights. It can recognize them. It can provide a legal system within which rights can be defended. It can come to the aid of those whose rights are threatened. The property basis of rights indicates yet another role government can play, and it is a crucial role. Government can establish what property system will prevail among a people. It can determine who may own it, the extent to which it may be owned, whether and how it may be bequeathed, and so on. By the system it establishes for property, it will largely determine also what, if any, rights there can be,

who may enjoy them, and the distribution of them. For example, if it establishes a class system of property control, as there was in Medieval Europe, it can only establish rights as belonging to classes. If it establishes bureaucratic control over property, then such rights as there may be will belong mainly to the bureaucrats.

There may be a natural right to the private ownership of property. I believe there is. It arises in this way. A person who uses his own materials, his energy and ingenuity, and his tools, to construct something is the rightful owner of it. It follows, too, that a person who contributes any of these elements to make some article of use owns that portion of it appropriate to his contribution. (That he may have agreed to the disposal of his interest for a consideration is but an elaboration of the principle.) Nor do I doubt that the private ownership of land is the most effective means of securing their other property to owners, though the right to land does not arise naturally.

My main point here, however, is somewhat different from this. It is that there is something like a natural law of relationships between property and other rights. This law has nothing to do with the relative value we may assign to various rights. Nor can it be altered by any determination of ours as to what

rights should have preeminence. The law is not causal in nature; rather, it is consequential. That is, the law does not cause us to adopt any particular course of action, but it does determine the effects once the direction has been taken. Indeed, that is my understanding of all natural law as it applies to man.

### **All Rights Depend on Property**

The law may be stated in this way. All rights are dependent upon property. They are dependent upon property for their conception, their delineation, and their exercise. It follows from this that the system of property ownership will determine what rights can be effectively established within a society. Since a right cannot be firmly established unless it is tied to a property base, changes in the property system will tend to be reflected in the rights that can be exercised. And, the right of the individual to the ownership of private property is essential to the establishment of individual rights.

Even those asserted rights which are in reality government privileges masquerading as rights depend on property. For example, the United Nations Declaration of Human Rights asserts that "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing, and medical care and necessary so-

cial services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age, or other lack of livelihood in circumstances beyond his control."<sup>10</sup>

Food, clothing, shelter, medical care, and so on are certainly property. Thus, the "rights" named depend on property for their exercise. In these cases, however, it is the property of others that is involved rather than that of the claimants. If governments establish these "rights" they must fulfill the claims by confiscating the property of those who possess it and conferring it upon the claimants. That such action is an assault upon private property there should be no doubt. That governments which simultaneously assert the right to private property and then confiscate it to fulfill other rights have adopted contrary principles there should be no doubt. Their assertions of "rights" are in conflict with each other. But my main point is that anything which is established as a right depends on property.

### The Vital Link

All attempts to exorcise property from rights and privileges, then, are in vain. Any claim to a right or privilege is, in some sense, a claim to property. It is possible, of course,

to downgrade private property. But in the process, individual rights are unavoidably undercut. By analysis, we can distinguish various sorts of property, i.e., real property, chattels, tangible and intangible, productive and personal. In like manner, we can distinguish a great variety of rights by analysis. Analysis is a great aid to precise thought, but that which can be arrived at by analysis should not be confused with the reality from which it is drawn. Property and rights are inseparable in reality because of the property basis of rights. ☉

### —FOOTNOTES—

<sup>1</sup>Quoted in Sylvester Petro, *Power Unlimited* (New York: Ronald Press, 1959), p. 100.

<sup>2</sup>John Stuart Mill, *On Liberty*, Alburey Castell, ed. (Northbrook, Illinois: AHM Publishing Corp., 1947), pp. 112-13.

<sup>3</sup>Edward Dumbauld, ed., *The Political Writings of Thomas Jefferson* (New York: Liberal Arts Press, 1955), p. 57.

<sup>4</sup>Richard B. Morris, ed., *Alexander Hamilton and the Founding of the Nation* (New York: Dial Press, 1957), p. 9.

<sup>5</sup>Dumbauld, *op. cit.*, p. 55.

<sup>6</sup>Morris, *op. cit.*, p. 13.

<sup>7</sup>George A. Peek, Jr., ed., *The Political Writings of John Adams* (New York: Liberal Arts Press, 1954), p. 96.

<sup>8</sup>Dumbauld, *op. cit.*, p. 49.

<sup>9</sup>Henry S. Commager, ed., *Documents of American History*, II (New York: Appleton-Century-Crofts, 1962), 553.

<sup>10</sup>*Ibid.*

# COMPETITION

COMPETITION occurs when one strives to do better, qualitatively or quantitatively, something which others are doing. It also happens when one provides a unique good, or service, or one which provides an acceptable substitute for a going thing. Since many risks are inherent in any endeavor, and no one can predict, with certainty, what resources will be required to bring it to a successful conclusion, the individual (personal or corporate) is justified in charging for his efforts all the market will bear. His customers will tell him soon enough if he is charging too much either by trading elsewhere, or doing without his product. There is no competition where everyone wins.

To the consumer, there are no indispensable goods excepting air,

water, and minimal living space. The former two are free goods, excepting the cost of storage and delivery of the water. Basic living space has never been an issue in civilized societies outside the rarity of banishment. As for all the rest, including food and shelter, the options are too manifold to permit anything being called indispensable. This marks the ultimate power of the consumer and assures us that the producer, or entrepreneur, can never take advantage of him.

When competition for the favor of the consumer has created the immense variety of goods and services now available in our society, the simplicity of this process becomes obscure. Pundits, intellectuals, politicians, and those who are low in the competitive scale are spurred by envy of this cornucopia of material wealth. They find rationalization for their envy in such ideologies as

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