

Morris R. Cohen

## Property and Sovereignty

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### Property as Power

Anyone who frees himself from the crudest materialism readily recognizes that as a legal term property denotes not material things but certain rights. In the world of nature apart from more or less organized society, there are things but clearly no property rights.

Further reflection shows that a property right is not to be identified with the fact of physical possession. Whatever technical definition of property we may prefer, we must recognize that a property right is a relation not between an owner and a thing, but between the owner and other individuals in reference to things. A right is always against one or more individuals. This becomes unmistakably clear if we take specifically modern forms of property such as franchises, patents, good will, etc., which constitute such a large part of the capitalized assets of our industrial and commercial enterprises.

The classical view of property as a right over things resolves it into component rights such as the *jus utendi*, *jus disponendi*, etc. But the essence of private property is always the right to exclude others. The law does not guarantee me the physical or social ability of actually using what it calls mine. By public regulations it may indirectly aid me by removing certain general hindrances to the enjoyment of property. But the law of property helps me directly only to exclude others from using the things which it assigns to me. If then somebody else wants to use the food, the house, the land, or the plow which the law calls mine, he has to get my consent. To the extent that these things are necessary to the life of my neighbor, the law thus confers on me a power, limited but real, to make him do what I want. If Laban has the sole disposal of his daughters and his cattle, Jacob must serve him if he desires to possess them. In a regime where land is the principal source of obtaining a livelihood, he who has the legal right over the land receives homage and service from those who wish to live on it.

The character of property as sovereign power compelling service and obedience may be obscured for us in a commercial economy by the fiction of the so-called labor contract as a free bargain and by the frequency with which service is rendered indirectly through a money payment. But not only is there actually little freedom to bargain on the part of the steel worker or miner who needs a job, but in some cases the medieval subject had as much power to bargain when he accepted the sovereignty of his lord. Today I do not directly serve my landlord if I wish to live in the city with a roof over my head, but I must work for others to pay him rent with which he obtains the personal services of others. The money needed for purchasing things must for the vast majority be acquired by hard labor and disagreeable service to those to whom the law has accorded dominion over the things necessary for subsistence.

To a philosopher this is of course not at all an argument against private property. It may well be that compulsion in the economic as well as the political realm is necessary for civilized life. But

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we must not overlook the actual fact that dominion over things is also *imperium* over our fellow human beings.

The extent of the power over the life of others which the legal order confers on those called owners is not fully appreciated by those who think of the law as merely protecting men in their possession. Property law does more. It determines what men shall acquire. Thus, protecting the property rights of a landlord means giving him the right to collect rent, protecting the property of a railroad or a public service corporation means giving it the right to make certain charges. Hence the ownership of land and machinery, with the rights of drawing rent, interest, etc. determines the future distribution of the goods that will come into being-determines what share of such goods various individuals shall acquire. The average life of goods that are either consumable or used for production of other goods is very short. Hence a law that merely protected men in their possession and did not also regulate the acquisition of new goods would be of little use.

From this point of view it can readily be seen that when a court rules that a gas company is entitled to a return of 6% on its investment, it is not merely protecting property already possessed, it is also determining that a portion of the future social produce shall under certain conditions go to that company. Thus not only medieval landlords but the owners of all revenue-producing property are in fact granted by the law certain powers to tax the future social product. When to this power of taxation there is added the power to command the services of large numbers who are not economically independent, we have the essence of what historically has constituted political sovereignty.

Though the sovereign power possessed by the modern large property owners assumes a somewhat different form from that formerly possessed by the lord of the land, they are not less real and no less extensive. Thus the ancient lord had a limited power to control the modes of expenditure of his subjects by direct sumptuary legislation. The modern captain of industry and of finance has no such direct power himself, though his direct or indirect influence with the legislature may in that respect be considerable. But those who have the power to standardize and advertise certain products do determine what we may buy and use. We cannot well wear clothes except within lines decreed by their manufacturers, and our food is becoming more and more restricted to the kinds that are branded and standardized.

This power of the modern owner of capital to make us feel the necessity of buying more and more of his material goods (that may be more profitable to produce than economical to use) is a phenomenon of the utmost significance to the moral philosopher. The moral philosopher must also note that the modern captain of industry or finance exercises greater influence in setting the fashion of expenditure by his personal example. Between a landed aristocracy and their tenants, the difference is sharp and fixed, so that imitation of the former's mode of life by the latter is regarded as absurd and even immoral. In a money or commercial economy differences of income and mode of life are more gradual and readily hidden so that there is great pressure to engage in lavish expenditure in order to appear in a higher class than one's income really allows. Such expenditure may even advance one's business credit. This puts pressure not merely on ever greater expenditure but more specifically on expenditure for ostentation rather than for comfort. Though a landed aristocracy may be wasteful in keeping large tracts of land for hunting purposes, the need for discipline to keep in power compels the cultivation of a certain hardihood which the modern

wealthy man can ignore. An aristocracy assured of its recognized superiority need not engage in the race of lavish expenditure regardless of enjoyment.

In addition to these indirect ways in which the wealthy few determine the mode of life of the many, there is the somewhat more direct mode which bankers and financiers exercise when they determine the flow of investment, e. g., when they influence building operations by the amount that they will lend on mortgages. This power becomes explicit and obvious when a needy country has to borrow foreign capital to develop its resources.

I have already mentioned that the recognition of private property as a form of sovereignty is not itself an argument against it. Some form of government we must always have. For the most part men prefer to obey and let others take the trouble to think out rules, regulations and orders. That is why we are always setting up authorities; and when we cannot find any we write to the newspaper as the final arbiter. While, however, government is a necessity, not all forms of it are of equal value. At any rate it is necessary to apply to the law of property all those considerations of social ethics and enlightened public policy which ought to be brought to the discussion of any just form of government.