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Léon Faucher, "Property I" (1852)
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Editor's Introduction

Léon Faucher (1803-54) was a journalist, writer, and Deputy for Reims (1846). He was active in the Constituent Assembly during the 1848 Revolution, becoming Minister for Public Works. During the July Monarchy he wrote for *Le Constitutionnel*, *Le Courrier français*, and was one of the editors of the *Revue des deux mondes* and the *Journal des économistes*. Faucher was appointed to the Académie des sciences morales et politiques in 1849 and was active in L'Association pour la liberté des échanges. He wrote on prison reform, gold and silver currency, socialism, taxation, and economic changes which were sweeping England. His collected writings were published in 2 vols. as *Mélanges d'économie politique et de finances* (1855-56).

This article was written when the memory of the socialist experiments of the 1848 Revolution were still fresh in the minds of the political economists. Faucher castigates the economists for taking the right of property for granted, for assuming it as a given, and not making its defence a foundation of their work. He also criticises the natural law theorists who followed Grotius and the Benthamite utilitarians for arguing that the civil law created a right to property rather than protecting what already existed prior to the emergence of the state.

Faucher's explanation for why the great minds of jurisprudence and economics had neglected to defend the right of property more vigorously is that property itself was undergoing the same kind of evolution as liberty and the industrial economy were. The new kind of society which was emerging in France after the Revolution of 1789 and as the industrial revolution was underway, was creating new kinds of individualized property which had not been seen before and which needed defining and defending in a new way. This he thought had become the new research agenda for the political economists. Neither land nor labour were the sole or even the most important ways by which property was being created in the new economy. Entirely new forms of property like intellectual property and services were emerging which made the old focus on landed wealth (by the conservatives) and the unskilled labour of the workshop (like the socialists) much less important. In his view, in the new economy "property ... would show itself abundant under new forms."

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“Property I” (1852)¹

I. RIGHT OF PROPERTY.

Political economy inquires into the principles which preside over the formation and distribution of wealth. It takes for granted the existence of property, which is its starting point; it considers it as one of those primary truths which manifest themselves at the origin of society, which are everywhere found impressed with the seal of universal consent, and are accepted as necessities of the civil order and of human nature, without even dreaming of discussing them.

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Read the fathers of economic science: they are almost uniformly silent on this great question. The chief and oracle of the physiocrats, Quesnay, who understood and enlarged upon the social importance of property, does not take the trouble to define it, except in a treatise on natural law. Turgot, the statesman, philosopher and economist, Turgot, who in his work on the distribution of wealth, has thrown brilliant light on the origin, has nothing to say on the principle, the right or the form of property. The master of masters, the author of the "Wealth of Nations," Adam Smith, scarcely makes mention of it, without doubt because he saw in it no subject for discussion. J. B. Say decides

debate on this subject to be futile, and undeserving the consideration of the science. "The speculative philosopher," he says, in the fourteenth chapter of his book, "may busy himself in finding out the real foundations of the right of property; the juriconsult may lay down the laws which govern the transmission of things possessed; political science may show what are the surest guarantees of this right; but so far as political economy is concerned, it considers property simply as the strongest incentive to the production of wealth, and pays little attention to what establishes and guarantees it." In other place (vol. ii., chap. iv.) he says: "It is not necessary, in order to study the nature and progress of social wealth, to know the origin of property or its legitimacy. Whether the actual possessor of landed property, or the person by whom it was transmitted to him, obtained it by occupation, by violence, or by fraud, the result, as regards the revenue accruing from that property, is the same."

At the time when J. B. Say wrote, the problem which absorbed and agitated men's minds was the production of wealth. The European world felt itself poor; it began to understand the productiveness of labor, and craved wealth. Credit extended its operation; commerce spread in spite of war; and manufacturing industry, developing rapidly, presaged already the marvels which have since marked its course. Production in its different forms was the great business of the time. This rising tide carried all with it, population, labor, resources. All had a clear road to travel with their goal before their eyes, nor did they stop to revert to their own situation or that of others. Property seemed then a sort of common stock from which all, with a little effort, might draw in abundance, and which would reproduce itself unceasingly. No one dreamed of calling the right to it in question. The silence of economists is but a translation of the rational indifference of public opinion on the subject.

At a later period, population having increased in all the states of Europe, the value of land and the rate of wages having generally risen, personal property, thanks to the progress of commerce and industry, equaling or nearly equaling immovable property, and competition, which affected every kind of work and all

¹ This article first appeared as "Propriété" in the *Dictionnaire de l'Économie Politique*, ed. Charles Coquelin and Charles Guillaumin (Paris: Guillaumin, 1852-53), 2 vols. Vol. 2, pp. 460-473. It was translated into English and included in *Lalor's Cyclopaedia of Political Science, Political Economy, and of the Political History of the United States by the best American and European Authors*, ed. John J. Lalor (Chicago: M.B. Carey, 1899) in 3 vols. Vol 3 Oath - Zollverein. Chapter: PROPERTY <<http://oll.libertyfund.org/title/971/63517>>. The American editor cut some of the text and indicated where he did this with **. We use ...

investments, reducing profits as well as the outlets for human activity, the problem of the distribution of wealth came to the front. The number of poor persons seemed to increase with the number of the rich. It was even believed, for a time, that industrial civilization tended to increase the inequality which naturally exists among men. In this transition period, which still continues, sects were formed to preach to those discontented with the social order; we know not what sort of a future, the first step to which was the abolition or transformation of property.

Favored political revolutions, those fatal doctrines which at first held subterranean sway in some sort until they had hardened the hearts and corrupted the minds of the people, broke loose in the streets of France; the arguments used against society served to load the muskets and point the bayonets of revolt. At first it was necessary to defend social order by armed forces; and now, whether we be economists, philosophers or jurisconsults, we all understand that our duty is to point out in such a way as shall convince the most incredulous, that society, having force on its side, has also reason and right in its favor.

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II. OPINIONS OF PHILOSOPHERS AND JURISCONSULTS ON PROPERTY.

Until our time the question of property had been abandoned to philosophers and jurisconsults. The usefulness of their labors is incontestable; they prepared the ground and paved the way for political economy. If they did not always completely observe and demonstrate the nature of things, they had at least had glimpses of it. It was Cicero who showed that the earth became the patrimony of all by labor, and proved that the person who attacked this right of appropriation violated the laws of human society. After him Seneca, although he exaggerated, in accordance with the ideas of his time, the rights of sovereignty, yet recognized that property was an individual right. *Ad reges, protestas omnium pertinet, ad singulos proprietatis.*

Nevertheless the person would wander from his road who sought to find in the writings of philosophers or jurisconsults, either a complete theory of property, or even an exact definition of it. Grotius, who is in the front rank of doctors of natural and international law, has given in a few lines a history of property from which communism might draw its arguments. According to this author, after the creation God conferred on the human race a general right to everything. "This was done," he says, "that each might take for his use whatever he wished, and consume what it was possible for him to consume. [...] Matters remained thus until, from the increase in the number of men as well as of animals, the land, which was formerly divided by nations, began to be divided among families, and since wells are a supreme necessity in dry countries, and are not equal to supplying a large number, each appropriated what he was able to seize."

Charles Comte [1] remarks that the publicists of this school, Wolf, Pufendorf and Burlamaqui, confined themselves to paraphrasing the ideas of Grotius. All supposed that, in the origin of societies, men, to satisfy their wants, had only to take what they found ready at hand, that the earth produced without labor, and that appropriated was nothing but occupation or conquest.

Montesquieu did not understand, any better, the part played by labor in the formation of individual property. "Just as men," he says (book xxvi., of the "Spirit of the Laws,") "abandoned their natural independence to live under political laws they renounced the *natural community of goods* to live under civil laws. The first laws gave them liberty, the next

property." Montesquieu, the only publicist since Aristotle who undertook to base the laws of social order on observation, was nevertheless unable to prove among any people, however primitive, the existence of that supposed community of goods which, according to him, has its origin in nature. The most savage tribes, in ancient as in modern times, had a very definite idea of mine and thine. Property and the family have everywhere served as the foundations of order, and law has only confirmed, by giving expression to them, relations already established.

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Blackstone does not go farther than Montesquieu, whose ideas agree with those of J. J. Rousseau, on the state of nature. Bentham himself, the writer who, more than any other, departed from the accepted ideas of his times, declares that property does not exist naturally, and that it is a creation of the law.

There is some consolation for proprietors in Bentham's assurance, that property will perish only with the law. As human society can not exist without law, and since the end of the law would be the end of society, property may safely count on a long lease of life. Besides, Bentham, following the example of Montesquieu, confounded the idea of property with that of the guarantees which property receives from civil and political laws, guaranteed fitly represented by taxation. The best refutation of Bentham's theory is to be found in some passages from Charles Comte, which it may be well to reproduce here. "If nations can only exist by means of their property, it is impossible to admit that there is no natural property unless it be admitted that it is unnatural for men to live and to perpetuate themselves." "It is true that there is no image, no painting, no visible feature which can represent property in general; but it can not from this be concluded that property is not material, but

metaphysical, and that it belongs entirely to the conception of the mind. There is no visible feature by which a man in general can be represented, because in nature there exist only individuals, and what is true of men is true also of things." "Individuals, families and peoples subsist by means of their property; they could not live on metaphysical relations or conceptions of the mind. There is in property something more real, more substantial, than a basis of expectation. A false, or at least a very incomplete idea is given of it when it is defined as if it were a lottery ticket, which is also a basis of expectation." "According to Montesquieu and Bentham, it is civil laws which give rise to property, and it is clear that both mean by civil laws the decrees of public power which determine the possessions which each one may enjoy and dispose of. It would, perhaps, be more correct to say that it is property which gave birth to civil laws; for it is hard to see what need a tribe of savages, among whom no property of any kind existed, could have of laws or of a government. The guarantee of property is undoubtedly one of the most essential elements of which it is composed; it increases the value of property, and assures its duration. A great mistake would be made, however, were it supposed that this guarantee was all there is of property; the civil law furnishes the guarantee of property, but it is human industry which gives birth to property. Public authority is needed only to protect it and to assure to all the power of enjoying and disposing of it." "Were it true that property exists or is created by decrees and by the protection of public authority, it would follow that the men who in any country were invested with the power of legislation, would also be invested with the power of creating property by their decrees, and could, without committing injury to the right of property, despoil some of it to the advantages of others: they would have no other rules to follow than their own desires or caprices."

The Scotch school, from Locke to Reid and Dugald Stewart, was the first to give a nearly correct definition of the right of property; as the physiocratic school was the only one, previous to 1789, that understood its importance, and brought out into relief the beneficial influence it exercised on the economy of society. But at the time of the French revolution these teachings had not yet corrected the ideas of all; for Mirabeau said to the constituent assembly that "private property is goods acquired by virtue of the laws. *The law alone constitutes property*, because it is only the political

will which can effect the renunciation of all, and give a common title, a guarantee to the use of one alone." Tronchet, one of the jurists who contributed most to the drawing up of the civil code, shared at that time this opinion, and declared that "It is only the establishment of society and conventional laws which are the real source of the right of property."

There is not much difference between Mirabeau's statement and that of Robespierre, who wrote, in his declaration of rights, "Property is the right that each citizen has *to the enjoyment of that portion of goods guaranteed to him by the law.*" And Robespierre is not far removed from Babœuf, who desired that the land should be the common property of all, that is, that it should belong to nobody. Mirabeau, who pretends that the legislator confers property, admits, by so doing, that he can take it away; and Robespierre, who expressly reserves the state's right in property, and reduces the proprietor to the position of a mere usufructuary, by refusing him the power of selling or disposing of it by will or otherwise, is the direct and immediate forerunner of communism.

I know that the convention gave, in the declaration of rights which serves as a preamble to the constitution of 1793, a very reassuring and very sound definition of the right of property. Article sixteen reads: "The right of property is the right belonging to every citizen, of using and disposing as he likes, of his goods, his revenues, of the fruit of his labor and his industry." And article nineteen adds a guarantee, which all subsequent French constitutions reproduced: "No one shall be deprived of the least portion of his property without his consent, except when public necessity, legally proven, evidently demands it, and then only on condition of just compensation previously made."

But, doubtless, the convention reserved the application of those fine maxims, as it did the abolition of capital punishment, for times of peace. No government ever committed more flagrant outrages on the right of property. Confiscations and maximum laws, to say nothing of the inflation of assignats and bankruptcy, marked its savage sway, and if it made France victorious and terrible abroad, it ruined and impoverished her at home. The convention evidently thought, with Saint-Just, that "The man who has shown himself the enemy of his country, can not be a proprietor in it." It treated the nobles and priests as Louis XIV. had treated Protestant refugees after the revocation of the edict of Nantes. It adopted, in the

interests of the republican state, the theory of feudal origin, that the sovereign, the king, had direct and supreme dominion over the goods of his subjects.

M. Troplong called attention to the concordance of the demagogical doctrine of property with the maxims of despotism: "All that exists throughout the length and breadth of our states," said Louis XIV. in his instructions to the Dauphin, "whatever be its nature, belongs to us by the same title; you must be fully persuaded that kings are the absolute lords, and have naturally the full and free disposition of all the goods possessed both by church people and by laymen, that they may use it in everything; likewise husbandmen." Put this absolute sovereignty into the hands of a socialistic republic, and it will assuredly lead to the measures demanded in the following lines by Gracchus Babœuf: "The land of a state should assure a subsistence to all the members of that state. When, in a state, the minority of its people has succeeded in monopolizing its landed and industrial wealth, and by that means holds the majority under its sceptre, and uses the power it has, to cause that majority to languish in want, it should be known that such encroachment could only occur through the bad institutions of the government; therefore what former governments neglected to do, at the time, to prevent that abuse or to stifle it at the beginning, the actual administration should do to re-establish the equilibrium which should never have been lost, and the authority of the laws ought to operate a reform in the direction of the final maxim of the perfected government under the social contract: '*Let all have enough, and no one too much.*' "

At last the era of the civil code dawned on France and on Europe. Then for the first time the public power laid down and sanctioned the true principles respecting property. M. Portalis expressed himself before the legislative assembly in the following terms: "The principle of the right of property is in ourselves; it is in no way the result of human convention or of positive law. It lies in the very constitution of our being, and in our different relations to the objects which surround us. Some philosophers seem astonished that man should become the proprietor of a portion of the earth which is not his creation, which will outlast him, and which obeys only laws that are not of his making. But does not this astonishment cease when all the marvels of man's handiwork are considered, that is to say, all that human industry can add to the work of nature." Yes, legislators, it is by our industry that we

have conquered and reclaimed the land on which we live; by it we have made the earth more habitable, and better fitted to be our abode. Man's task, so to speak, was to complete the great work of creation. [...] Let us put no faith in systems which pretend to make the land the property of all, that men may have a pretext for respecting the rights of no one."

The civil code (articles 544, 545), collecting and condensing the principles laid down in previous constitutions, defined property as follows: "The right of using and disposing of things in the most absolute manner, provided that they are not used in a way prohibited by the laws or regulations." Charles Comte has rightly pointed out that this definition applies to the usufruct's right as well as to property. The definition of the civil code sins in another way: it does not limit the power which is given to legislators, or to the administration, of making rules regarding the use of property. On that account, property lacks all guarantees; it is not defended against arbitrary power. The law might forbid a landowner to sow seed, to plant vines or trees, to erect any building on his land, to sell, exchange or give his property away. In a word, the definition of the civil code admits of Egyptian monopoly as well as of French liberty. Fortunately, legislative custom and public morals correct the rashness of the legal text.

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The civil code declares property inviolable. Following the examples of the constitutions of 1791, 1793, and 1795, it declared that no one should be compelled to part with his property, unless for the public good, and in consideration of just compensation previously made. But is it absolutely the fact, as M. Troplong thinks it to be, that the state, by these

provisions, only reserved to itself the rights attached to political requisition? But did the state by those provisions shelter property from the public power as well as from the usurpation of private persons? This is the weak side of the civil code. Its authors laid down principles, all of whose consequences they had not drawn. While declaring property inviolable, they failed to shield it from sequestration by government, or from confiscation.

The emperor Napoleon said to the council of state, on Sept. 18, 1809: "Property is inviolable. Napoleon himself, with the numerous armies at his disposal, can not take away a single farm. For to violate the right of property in one man is to violate it in all men." Admirable words, to which his acts did not correspond.

III. ORIGIN, CHARACTER AND PROGRESS OF PROPERTY.

Why is it that the great majority of philosophers and juriconsults have succeeded so ill in defining property? How does it happen that the origin and nature of an institution which holds so high a place in social order, have been revealed to us with any degree of clearness, only since the end of the last century? How is it that the highest intellects, when brought to bear on this study, have too often evolved only such theories as the humblest of landowners could not reconcile with his every-day practice? It is because the phenomenon which they studied and described has more than once changed character. Property has shared in the general progress of civilization; it has, at the same time, followed a law of development of its own. It has advanced as liberty, as industry and as the arts have done, in the world; it has passed through different and successive stages, each corresponding to a different theory.

The distinction of mine and thine is as old as the human race. From the time that man became aware of his personality, he sought to extend it to things. He appropriated the land and what it produced, animals and their increase, the fruit of his energy and the works of his fellow-men. Property exists among pastoral peoples as well as among those nations which have reached the highest point of agricultural wealth and of industry; but it exists among them under different conditions. The occupation of land was annual before

it became lifelong, and it was lifelong, in the person of the tenant, before it became hereditary and in some sort perpetual. It belonged to the tribe before it belonged to the family, and it was the common domain of the family before it took an individual character. Poets, who were the first historians, attest this gradual transformation.

The marked distinction between the ancient and the modern world is, that formerly property was too often acquired by conquest, while now its essential basis is labor. Not only in antiquity and in the middle ages did individuals, as well as peoples, enrich themselves by usurpation, but free men disdained industry, and the earth was tilled by slaves. Armed force, which was the surest title to the possession of land, procured also the instruments of production. How was it possible to sound the nature or take in the full horizon of property at a time when the conqueror arrogated to himself the right, at one time of selling the conquered like beasts of burden, and at another of making serfs of them; when men were treated as though they were goods and chattels; when labor passed first through the ordeal of slavery, and then through that of serfdom, before it became the honor of free men and the wealth of nations?

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This is not all. Property, in undergoing a progressive development similar to that of liberty, has extended and increased, and has, so to speak, invaded space. When civilization begins, what man possesses is very trifling: a few herds, some rude implements, a spot of land which produces corn in the middle of a desert waste; as yet he has scarcely appropriated any natural agents. Agricultural peoples, which succeed the pastoral tribes, soon increase ten-fold and a hundred-fold the property which now, little by little, becomes connected with the surface of the earth. But it remains only for nations skilled in industry and commerce to bring property to its highest development. When the land becomes, in some sort, individualized, and each portion falls into the hands of an owner who makes it productive with his capital and by the sweat of his brow, those who find themselves left out in this partition of the land are not, on that account, excluded from property. Capital has its origin in accumulation. Personal property is grafted on landed property. Treasures accessible to all are formed, of which each can have a share, and which he can increase by his labor. A parcel of land which in Algeria is worth perhaps \$2, and in the western states of America about \$5, sells readily in western Europe for from \$100 to \$1,000. In spite of the high price which improved agriculture speedily gives to rural property, there is no exaggeration in saying that to-day the personal property of England and France far exceeds the value embodied in the land.

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It may be added, that, as civilization advances, each citizen witnesses the increase and extension of the common property which he enjoys equally with all other citizens of the state. Roads, canals, railways,

schools, and other public establishments are incomparably more numerous and better administered to-day than they were half a century ago. What would it be, if we were to compare the sum of enjoyments and capacities which society put at the disposal of its members in the republics of Greece and Rome and those enjoyed by them in our day? The humblest of our laborers would not like to find himself exposed to the misery or the humiliations which awaited the proletarian of ancient days in the agora or the forum. It is, then, rightly that M. Thiers, calling to mind that property is a universal fact, affirms, at the same time, that it is a *growing* fact.

Let us listen to Thiers,[2] portraying the origin and the growth of property in historic times: "Among all peoples, however rude they may be, we found property, at first as a fact, and afterward as an idea, an idea more or less clear according to the degree of civilization attained, but invariably settled. Thus the savage hunter has at least his bow, his arrows and the game which he has killed. The nomad, who is a shepherd, at least owns his tents and his flocks. He has not yet admitted property in land, because he has not yet thought of applying his labor to it. But the Arab who has raised numerous flocks, is satisfied that he is the proprietor of the land, and exchanges its products against the wheat which another Arab, settled on the land, has produced elsewhere. He measures exactly the value of the object which he gives, by that of the object which is given him; he knows that he is the proprietor of the one before the barter, and of the other after it. Immovable property does not yet exist for him. Sometimes only he is seen, during two or three months of the year, to establish himself on land which belongs to no one, to plow it, to sow it with seed, to reap the harvest, and then to wander off to other places. [...] The duration of his property is in proportion to his labor. Little by little, however, the nomad becomes settled and turns agriculturist, for it is an instinct in man to wish to have a place of his own, a home. [...] He ends by choosing a tract of land, by dividing it into patrimonies, on which each family establishes itself, and works and cultivates it for itself and its posterity. As man can not allow his heart to wander among all the members of the tribe, and as he longs for a wife of his own, children whom he may love, care for and protect, in whom his hopes, his fears, his very life, may be centred, so he has need of his own parcel of land, which he may cultivate, plant, beautify according to his

tastes, fence in, and which he hopes to transmit to his descendants, green with trees which have grown not for him, but for them. Then to the personal property of the nomad, succeeds the landed property of an agricultural people; this second property grows, and with it come laws, complicated, it is true, which time makes more just and more provident, but the principle of which it does not change. Property, at first the result of instinct, becomes a social agreement, for I protect your property that you may protect mine. As man advances, he becomes more attached to what he owns; in a word, more a proprietor. In a barbarous state he is scarcely proprietor at all; civilized, he is one intensely. It has been said that the idea of property was weakening in the world. That is an error of fact. Far from growing weaker, it is being regulated, defined and strengthened. It ceases, for instance, to be applied to what is not capable of being possessed, that is, to man, and from that time slavery is at an end. This is an advance in ideas of justice, but not a weakening of the idea of property. [...] Among the ancients the land was the property of the republic; in Asia it is that of a despot; in the middle ages it belonged to lords paramount. With the progress of the ideas of liberty, where man's freedom was accomplished, the liberty of his chattels and possessions was secured; he himself is declared to be the owner of his lands, independently of the republic, the despot, or the lord paramount. From that moment confiscation is abolished. The day the use of his faculties was restored to him, property became more individualized; it became more *proper* to the individual, more property than it was.

There is another observation to be made, and one more directly within the domain of political economy. It is, that the more property increases, is firmly established, respected, the more society prospers. "All travelers," says M. Thiers, "have been struck by the state of languor, of misery, and of rapacious usury, of countries in which property is not sufficiently well guaranteed. Go to the east, where despotism claims to be the only property owner, or, which is the same thing, return to the middle ages, and you will see everywhere the same thing: the land neglected, because it is the readiest prey to the avidity of tyranny, and left to the hands of slaves, who are not free to chose their own career; commerce preferred, because it could more readily escape exaction; in commerce, gold, silver and jewels in request, being the valuables most readily hidden; all capital seeking conversion into these values,

and when it actually seeks employment concentrating itself in the hands of a proscribed class, who, making a pretense of poverty, lived in houses wretched on the outside, gorgeous internally, opposing an invincible resistance to the barbarian master who would tear from them the secret of their treasures, and solacing themselves by making him pay more dearly for the money, thus, by usury, revenging themselves for his tyranny."

Such are the roots of property to be found in history. As far as the right of property is concerned, it may be said that the universality of the fact is sufficient to establish it. Were property something accidental in human society, were the institution established only among an insular people, and were it an exception to the general custom, it might be called upon to produce its title deeds; but it stands to reason that men must have the right to do as they have done at all times, and in every inhabited place. Universal consent is an infallible sign of the necessity for, and consequently of the legality of, an institution.

“At the commencement of social life, man appropriated the soil by occupation, before he made it his own by the work of his arms. Everywhere wresting the ground from man or from beast, the taking possession of it preceded its cultivation. The land belonged to a tribe collectively before it was distributed among its different members. This is what the school calls the right of the first occupant, a right which is explained by the very fact of possession being taken without hindrance, and by the power to defend, to protect, and consequently to appropriate, the land occupied.”

But the right can be proved independently of the historic reason. "Man," says M. Thiers, "has a first property in his person and his faculties; he has a second, less intimately connected with his being, but not less sacred, in the product of his faculties, which includes all that are called worldly possessions, and which society is in the highest degree interested in guaranteeing to him, for without this guarantee there would be no labor, without labor no civilization, not even necessaries, but, instead, destitution, brigandage and barbarism." This definition is neither sufficiently absolute nor complete. M. Thiers seems to place the foundation of property in labor alone. Undoubtedly it is its most legitimate source, but it is not the only one, nor, in point of date, is it the first. At the commencement of social life, man appropriated the soil by occupation, before he made it his own by the work of his arms. Everywhere wresting the ground from man or from beast, the taking possession of it preceded its cultivation. The land belonged to a tribe collectively before it was distributed among its different members. This is what the school calls the right of the first occupant, a right which is explained by the very fact of possession being taken without hindrance, and by the power to defend, to protect, and consequently to appropriate, the land occupied.

“Side by side with the men who acquired their possessions by occupancy or by labor, there are nations and individuals who usurped what they possess by violence and by fraud. Laws, and public forces at the service of the laws, justify that usurpation wherever their power extends, and commends both obedience and respect.”

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their power extends, and commends both obedience and respect. But it happens, and history furnishes many examples of it, that the property thus wrongfully acquired is peaceably handed down from generation to generation, gives rise to an infinite number of contracts, and becomes the basis of fortunes. After all these *faits accomplis*, ought the origin of landed estates to be sought for with a view to securing their condemnation? Or, rather, does not the interest of society demand that the subsequent transactions be legitimized, and their origin wiped out? This state of affairs has given rise to the system of prescription, which is the real safeguard of property. "No transaction would be possible," says M. Thiers, "no exchange could be made, if it were not settled that after a certain time the person who holds anything holds it lawfully, and may transfer it. Imagine what would be the condition of society, what acquisition would be certain, if it were allowed to go back to the twelfth or thirteenth century, and dispute possession with the holder of a piece of property, by proving that a feudal lord had taken it from his vassal and given it to a favorite, or to one of his men-at-arms, who sold it to a member of the guild of merchants, who, in turn, transmitted it, through many hands, to a long line of owners more or less respectable. It is very right that there should be a term fixed, after which what is, simply because it is, should be declared lawful and held as good. Were this not so, what a scene the world would present."

It must be said, however, that conquest and usurpation are not constant and exclusive facts, although it might be supposed they were, when we see Assyrians, Persians, Greeks, Romans, and, finally, the northern barbarians, each in turn dispossessing the other, and ruling the world by force of arms. Violence did not mark the beginning of all property. M. Thiers, after having stated, in contradiction to the well-understood and well-interpreted testimony of history, that "all society presented in the beginning this phenomenon of occupation more or less violent," admirably explains how it is that, the greater part of landed property had its origin in labor. (*De la Propriété*, by M. Thiers, vol. i., ch. 10.)

Property draws after it, as a consequence, inequality of conditions in the social order, and this inequality in condition is itself only the reflection of the differences which nature has established among men. All men have not the same muscular strength, nor the same degree of intelligence, nor an equal aptitude

for or application to work. By the very fact that there are some who are stronger, cleverer, and, it must be said, happier than others, there are some also who tread with a quicker and surer foot the way to wealth. Property does not aggravate these irregularities in nature, but it marks them in durable characters, and gives them a body. In the beginning the best farmer possesses most. What interest could society have in interfering with his better farming? The most skillful and robust cultivator of the soil, while enriching his family, adds to the general sum of products, and therefore enriches society also. Equality of condition, the equal partition of the land, and equality of wages, are three forms of the same idea, which amounts to saying that the stronger ought not to produce more than the weaker, and that the thought of the enlightened man ought to sink to the level of that of the ignorant man; this would be to limit production, to repress intelligence, and to stifle literature, science and art in their very germ.

“The right of possession includes, as a natural consequence, the right of disposing of the things possessed by you, of transmitting them to others, either for a consideration, or as a free gift; of exchanging, selling, or giving them away during life or by testamentary disposition, and of leaving them as an inheritance. Property implies the right of inheritance.”

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family; he would work much less for himself were he not, in working for himself, working for family. Property reduced to a usufructuary interest would be of but half its value to individuals, and of but half its value to society.

This thought is expressed in pages which I prefer to borrow rather than attempt to adapt: "A man, if he had but himself to think of, would stop short in his career. As soon as he had provided for his old age, would you, through fear of encouraging idleness in the son, force the father himself into idleness? But does it follow, that, by permitting the hereditary transmission of property, the son must necessarily be an idler, consuming in sloth and debauchery the fortune left him by his father? Firstly, we would ask, what does the property which is to support the idleness of the son represent, after all? It represents previous work done by the father; and by hindering the father from working in order to compel the son to work for himself, all that is gained is that the son must do what the father has not done. There will have been no increase in the amount of work done. In the system, on the contrary, in which the right of inheritance is recognized, to the unlimited labor of the father is added the unlimited labor of the son; for it is untrue that the son remains idle because the father has left him a more or less considerable amount of property. To begin with, it is rare for a father to leave his son the means of doing nothing. It is only in cases of great wealth that this happens. But usually, in most professions, the father, in leaving the son his inheritance, only procures for him a better start in his career. He has only pushed him a little further, a little higher: he has given him the chance of working to greater advantage; of being a farmer, when he himself was only a farm servant; of fitting out ten ships, when he could fit out but one; of being a banker on a large scale, when he was one only on a small one: or of changing his position in life; of rising from one to another; of becoming a lawyer, a doctor, or a barrister; of being a Cicero or a Pitt, when he himself was a simple gentleman, like Cicero's father, or a cornet of a regiment, like Pitt's."

Thus, the right of inheritance is necessary to property, as property is to social order; it is that right which, by permitting the accumulation of wealth, creates capital and makes labor productive. The laws of all free and industrious peoples sanction it; but it is so indispensable to the development of families and the progress of societies, that were it not the invincible

consequence of human nature and of the social state, that, in a word, if it did not exist, it would be necessary to invent it.

IV. OBJECTIONS WHICH HAVE BEEN RAISED AGAINST THE PRINCIPLE OF PROPERTY.

The objections which have been taken to the principle of property are taken sometimes to the right, sometimes to the fact itself. The great opponent of property, M. Proudhon, is forced to recognize, that, as the possession of property has become general among all classes, it has approached the ideal of justice. But this more general possession of property, inseparably connected with the advance of civilization, does not disarm M. Proudhon's hostility, he contests the principle of property itself. Property, according to him, does not exist as a natural right; it is founded neither on occupation nor on labor. "Since every man," says this author, "has the right to occupy from the simple fact that he exists, and that to continue in existence he can not dispense with a material of exploitation and of labor; and since, on the other hand, the number of occupants varies incessantly, owing to births and deaths, it follows that the quantity of matter which each worker may claim, is variable like the number of occupants; that occupation is always subordinate to population; and finally, that, possession never being able rightfully to remain constant, it is, as a fact, impossible that it should become the basis of property."

To dispose of this paradox, all that is needed is to refute the point from which it starts. The prerogatives of the individual and of the species do not embrace a natural right to occupation any more than they do a natural right to labor. Undoubtedly, in the midst of a vacant space, the man who first occupies a field or a meadow, incloses it in bounds, and appropriates it, becomes its lawful possessor; but it is not by virtue of a right of possession inherent in every man, but because the ground previously belonged to no one, and because, in leaving his impress on that ground, he is not interfering with any previous right.

"A man," says M. Proudhon, "who was forbidden to travel over the highways, to rest in the fields, to take shelter in caves, to light a fire, pick the wild berries, to gather herbs and boil them in a piece of baked earth—such a man could not live. Thus the earth, like water, air and light, is a first necessity which each ought to be

able to use freely, without injury to the enjoyment of them by another. Why, then, is the earth appropriated?" This thesis might have its good side in a condition of savagery. M. Proudhon's theory might succeed among a nation of hunters. But in an industrious and civilized community, it is but a late and faded echo of the declamations of J. J. Rousseau. Men nowadays do not live on wild berries or on herbs gathered in the fields; they are no longer reduced to live in caves, or to prepare coarse food in earthen vessels. Civilization has bestowed on them possessions which far more than compensate for any supposed natural rights to gather wild fruit, to hunt or to fish; and the humblest workingman of the nineteenth century is certainly better lodged, better clothed and better fed than the typical man of M. Proudhon could be, with all his right to common possession of the land.

After having asserted that occupancy could not serve as a basis for property, M. Proudhon equally denies the title of labor. Charles Comte had said: "A piece of ground of fixed dimensions is only able to produce sufficient food for the consumption of one man for one day: if the owner by his labor can make it produce enough for two days, he doubles its value. This new value is his work, his creation; it is not taken away from any one; it is his property." M. Proudhon answers: "I maintain that the possessor is paid for his trouble and his industry by the double return, but that he acquires no right in the soil. I admit that the laborer may make the product of his labor his own, but I do not understand how property in the product carries with it property in the soil, or in matter. Does the fisherman who can catch more fish, on the same coast, than his companions, become, because of his skill, proprietor of the waters in which he fishes? Was a hunter's skill ever looked upon as conferring on him a right of property in the game of a whole canton? The cases are precisely similar: the diligent husband-man finds in a harvest, abundant and of better quality, the recompense of his toil; if he has made improvements on the soil, he has the right to a preference as possessor of it; never, under any consideration, can he be allowed to allege his skill as a farmer as a title to property in the soil he tills. To transform possession into property, there is more needed than labor; otherwise man would cease to be a proprietor as soon as he ceased to be a laborer: now, what constitutes property, is, according to the law, immemorial and uncontested possession, that is,

prescription; labor is only the visible sign, the material act, by which occupation is manifested".

As sources of property, occupation and labor are the complements of each other. Possession would certainly be far from lasting, if cultivation did not follow to sanction it, by revealing and bringing into play the productive forces of the soil; and as for labor, it does not necessarily imply property, since a farmer who has spent a large amount of capital in the improvement of the land he leases, while he can demand compensation for that capital, does not therefore acquire a right of property in the domain. This much is true, and can be said without exaggeration. But to suppose that the possessor who has cultivated a piece of land, and who, by so doing, has improved the land and increased the capital which that land represents, to suppose that he has no rights beyond the fruit of the year, is a glaring error. To whom would this improved land belong? Would any one bestow capital on it, give it a new value, just that this value might become the prize of the first comer? If this were so, no one would work.

M. Proudhon admits that the husbandman who has improved land "has the right to a preference in possession." Here, then, is another case, and the case presents itself often, in which property, to use the language of Proudhon's book, ceases to be robbery. There is no doubt that the proprietor has no need to work to preserve his right: but work adds to the titles of property, and makes them still more honorable. Now, the possessor who cultivates, even if he does not add to the value of the land, would very soon grow tired of his passion for work, if he were only allowed to receive from it the produce of one harvest. Agriculture is the offspring of permanency in property, and without the guarantees which the law attaches to possession, agriculture would make no progress. M. Proudhon has only to look at what happens to the best of land when in the hands of nomadic tribes, among whom the land is only scratched to secure the meagre harvest of the year.

But, it will be said, the land thus conceded in perpetuity is, little by little, sequestered, invaded; and the last comers are likely to see both hemispheres entirely filled up by the heirs of the first who occupied the land, or of those who wrested it, by violence or by fraud, from its original owners. Even if all this were so, the misfortune does not seem to us a very great one. Land, thanks to the progress of industry, is not the only

source of wealth. The man who does not own a farm may buy a house, start a factory, or have an interest in some scheme for transportation. Property, supposing there were not enough for all in the form of land, would show itself abundant under new forms. Previous appropriation of the soil, instead of robbing future races, really tends to enrich them.

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Very high intellects refuse to admit this supposed confiscation of the soil to the detriment of the latest comers. M. Thiers gives us considerations on this point which are decisive. I shall try to epitomize them here. "Some engineers have thought that there was coal enough in the bowels of the earth to last indefinitely, while others have thought, that, at the rate at which industry was advancing, there was not enough for a hundred years. Should we, then, abstain from using it, lest there should be none for our posterity? [...]The society which should abolish property in land for fear of the earth's whole surface being invaded, would be every whit as absurd. Let us make our minds easy on that score. European nations have not yet cultivated, some the quarter, others the tenth part, of their territories; and of the entire globe not the thousandth part is occupied. Great nations have run their course hitherto, without having brought under cultivation more than a very small part of their dominions. Nations have passed through youth, maturity and old age; they have had time to lose their characteristics,

their genius, their institutions, all that they lived by, without having, we will not say, completed, but even much advanced, the cultivation of their territory. After all, space is nothing. Often, on the widest extent of land, men find it hard to live; and often, on the other hand, they live in plenty on the narrowest strip of ground. An acre of land in England or in Flanders supports a hundred times more inhabitants than an acre in the sands of Poland or of Russia. Man carries with him fertility; wherever he appears the grass grows and corn springs up. He brings with him his cattle, and wherever he settles he spreads around him a fertilizing soil. If, then, a day could be imagined when every corner of the globe should be inhabited, man would obtain from the same superficies ten times, a hundred times, nay a thousand times, more than he obtains to-day. What need be despaired of when the sands of Holland are transformed into fertile ground by man? Were he cramped for room, the sands of the Sahara, of the Arabian desert, of the desert of Cobi, would be covered by the fruitfulness which follows him; he would lay out in terraces the sides of the Atlas, of the Himalayas, of the Cordilleras, and cultivation would climb the steepest summits of the globe, and would only stop where, from the elevation, all vegetation ceases. This surface of the globe, invaded as is said, will not fail future generations, and, meanwhile, does not fail those of the present: for everywhere land is offered to men; it is offered them in Russia, on the banks of the Borysthenes, the Don and the Volga; in America, on the banks of the Mississippi, the Orinoco, and the Amazon; in France, on the coast of Africa, once the granary of the Roman empire. But emigrants do not always accept, and when they do, if nothing be added to the gift of the land, they go to their death on those distant shores. Why? Because it is not surface which is wanting, but surface covered with constructions, plantations, inclosures, the works of appropriation. Now, all these things exist only where former generations have been at the pains to put everything in such a position that the labor of the new comers may be immediately productive."

It is plain, then, that the earth, in spite of the extent of property, is not going to fail man. It is property well established, fenced around with guarantees, and become hereditary, which makes the land habitable and productive. Let us add, that under this régime the lot of the cultivator or tiller of the soil

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Notes

[1] Editor: Many of the authors of articles in the *Dictionnaire de l'économie politique* (1852-53) quoted from the work of Charles Comte (1782-1837) who was a lawyer and one of the leading liberal theorists before the 1848 Revolution. He wrote a two-part, multi-volume work on law and property, the *Traité de législation* (1826) and the *Traité de la propriété* (1834), which greatly influenced liberals and political economists like Faucher.

[2] Editor: Faucher also cites and quotes from Louis Adolphe Thiers, *De la propriété* (Paris: Paulin, Lheureux et Cie, 1848). Adolphe Thiers (1797–1877) was a French conservative politician and historian. He served as a prime minister in 1836, 1840 and 1848; and after a period in retirement while Louis Napoleon was in power, returned to power after 1870. He was instrumental in the bloody suppression of the activists behind the Paris Commune of 1871. From 1871 to 1873 he served as Head of State and then President of France. Apart from his multi-volume history of the French Revolution he also wrote an influential defence of property during the 1848 Revolution.

Further Information

SOURCE

The edition used for this extract: This article first appeared as "Propriété" in the *Dictionnaire de l'Économie Politique*, ed. Charles Coquelin and Charles Guillaumin (Paris: Guillaumin, 1852-53), 2 vols. Vol. 2, pp. 460-473. It was translated into English and included in *Lalor's Cyclopaedia of Political Science, Political Economy, and of the Political History of the United States by the best American and European Authors*, ed. John J. Lalor (Chicago: M.B. Carey, 1899) in 3 vols. Vol 3 Oath - Zollverein. Chapter: PROPERTY <<http://oll.libertyfund.org/title/971/63517>>. The translation follows the French quite closely except for some editing of the longer quotations from other authors and the omission of the final Section V. on communism and socialism (pp. 469-472).

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[Ludwig von Mises, “Liberty and Property” (1958)]



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