

*The Rights to Private Property and Religious Liberty: Mutually Reinforcing Bonds*¹

A Paper in Commemoration
of the 125th Anniversary of *Rerum novarum*

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I. An Overview of Private Property in the Western and Christian Traditions

A. Natural Law Philosophers

It is worth noting that the historical development of the notion of private property and its juridical protection largely arise out of challenges to it, attempts to confiscate, expropriate or control it by both common thieves and despots. In this way it may be argued that one's hold of one's property is something prior to law, something that law is formulated to protect and something that it is an instinctive notion of justice to protect when this innate sensibility is somehow challenged.

In this sense the development of a juridical and philosophical right to private property is not unlike the development of doctrine which, throughout history, progresses and becomes more delineated and defined when a point of dogma comes under attack, or new questions are raised concerning it, and the Church, acting as though from “within her DNA” reasserts and in the process clarifies or expands on that truth of the Faith. “The development of dogmatic theology” in the early Church, says Blessed John Henry Newman, was not “a silent and spontaneous process,” but “was wrought out and carried through the fiercest controversies.”² Even so, when the right to property has been challenged throughout history, its defenders have helped to elucidate its justifications, its character, and its limitations.

Scholars of the natural law—while not in agreement on every detail—have helpfully elucidated the right to private property. One approach is to argue that property ownership attain a sense of moral value to the extent that institutions of exclusive ownership have instrumental value—that is, they provide people the ability to employ their own practical reason to achieve their flourishing.³

Because human beings live by the use of their reason and are bound to the material world by their capacity to reason more than by their instincts, people make plans to satisfy their needs. Hence, one way in which people “constitute” themselves is through their use of their property. The authority of private ownership is thus derived not merely from positive law, but the demands of human flourishing.

Based on this mode of reasoning, a deeper understanding of a generally free use of private property can be seen in its social effect to the extent that such use increases the knowledge base of society through the institutions of exchange and prices and other ways which enable people to express their subjective preferences as well as deploy their own knowledge.

All of this is to say that embedded in the human self-presupposition is the concept of “mine and thine” and that such expressions exist in every known language. Ownership is thus tied to the sense of self. In this regard, the state's primary responsibility is to affirm, secure, and codify this. The sense of self, both as an individual and social being, is the true origin of private property in that it too fulfills a personal and social function. Property may be personal (as in the apple I eat which satiates my hunger), or it may be social (as in the factory I own that provides products desired by my customers).

¹ Delivered on April 20, 2016 at Acton Institute's conference on “Freedom with Justice: *Rerum novarum* and the New Things of Our Time” in Rome, Italy.

² John Henry NEWMAN, *An Essay on the Development of Christian Doctrine*, 12,4.

³ Adam J. MacLEOD, *Property and Practical Reason*, Cambridge University Press, Cambridge 2015, p. 1-11.

B. Scripture

It is widely recognized that religious and moral concerns have been central to the shaping of the concept and use of property in the Western world.⁴ The theological and legal precepts presented in Genesis, Exodus, and the Mosaic Law are foundational for the treatment of property in our philosophy and law.⁵ The recognition of property rights is perhaps most obvious in the Decalogue's strictures against theft and covetousness; Leviticus and Deuteronomy are also laden with rules that apply to the possession and use of property.

As in all else, Christianity's approach to property built upon the foundation of Judaism. The famous passages concerning communal ownership in the early chapters of the Acts of the Apostles are sometimes adduced as proof that primitive Christianity is in essence socialism. Serious exegesis of the text and context of the Acts reach a different conclusion. The language used in Acts 2:43–47 does not indicate "once-for-all" actions but instead "periodic acts of charity as needs arose." The narrative further indicates that such acts were voluntary and that there was no supposition, let alone mandate, that every early Christian would divest himself entirely of his possessions and contribute the proceeds to a communally owned account.⁶

The account in Acts does outline the principles of a Christian attitude toward property: stewardship, generosity, charity. But it does not undermine the underlying right to personal property that was deeply rooted in the Old Law and the Decalogue, the latter being particularly emphasized by the early Christians.

C. St. Thomas Aquinas

As he did in other areas, Thomas synthesizes both Judeo-Christian theology and the classical philosophical tradition in his articulation of private property. Thomas situates property in the context of man's unique role in the order of material creation by virtue of both his will and intellect. He insists that this existential reality implies that, from the beginning, man has legitimate use of natural resources to sustain life.

Private property, for Aquinas, tends to promote responsible and prudent use of material things through proper and efficient stewardship for the sustenance of human life.⁷ Aquinas also argues that the peaceable and right ordering of society can be better achieved under a regime of private property than under one in which communal ownership or insecure property rights are the norm.⁸

In Aquinas' view, private property makes possible a reciprocal communication of needs and tends toward the achievement of the universal destination of material things that have been provided by God to all mankind.⁹ This characterizes the entire Christian tradition and stands in contrast to the assertions of property's detractors: Secure ownership of property, by promoting economic initiative and enabling

⁴ See, for example, Andrew REEVE, *Property*, Humanities Press International, Atlantic Highlands (New Jersey) 1986, p. 51-57; e Francis FUKUYAMA, *The Origins of Political Order: From Prehuman Times to the French Revolution*, Farrar, Straus and Giroux, New York (N. Y.) 2011, cap. 17-19.

⁵ Wolfgang GRASSL, *Property*, Acton Institute, Grand Rapids (Michigan) 2012, cap. 1.

⁶ Art LINDSLEY, *Does Acts 2-5 Teach Socialism?*, Institute for Faith, Work, and Economics, 2012 (www.tifwe.org). Ho preso la citazione di Lindsley da Craig L. BLOMBERG, *Neither Poverty Nor Riches: A Biblical Theology of Possessions*, Intervarsity Press, Downers Grove (Illinois) 1999, p. 162-165.

⁷ Thomas Aquinas, "Every man is more careful to procure what is for himself alone than that which is common to many or to all: since each one will shirk the labor and leave to another that which concerns the community..." (*Summa*, II-II, Q. 66, ans. 2).

⁸ "Human affairs are conducted in a more orderly fashion if each man is charged with taking care of some particular thing himself, whereas there would be confusion if everyone had to look after any one thing indeterminately...a more peaceful state is insured to man if each one is contented with his own,...quarrels arise more frequently where there is not division of things possesses." (*Op. cit.*).

⁹ *Op. cit.*

economic exchange, makes possible the realization of the universal destination of goods. To be sure, greed, fraud, corruption, and injustice in the acquisition and use of property can frustrate this outcome, but the answer to these problems is not the annihilation of property; it is instead the promotion of virtue and, for the poor and vulnerable especially, a more vigorous defense of *their* property rights.

The *Catechism of the Catholic Church* summarizes succinctly this idea of stewardship, private property and promotion of the common good: “The appropriation of property is legitimate for guaranteeing the freedom and dignity of persons and for helping each of them to meet his basic needs and of those in his charge...” (no. 2402). Of course the Church has never said that property rights are absolute. But the presumption remains that, normally, private property is the means by which the universal destination of material goods is realized.

D. *Rerum novarum*

The lodestar of contemporary Church teaching on property is Leo XIII’s *Rerum novarum*. From the outset, Leo sees the ways in which business, economics, politics, the family, business and Catholic faith all cluster into a momentous set of questions that faced the Church in his day. It is remarkable how similar is the confluence of factors in our own time. Acknowledging the challenges that accompanied industrialization, including the exploitation of workers and the plight of the poor, Leo nonetheless warns against the sinister attempts of socialists to exploit the situation by weakening private property rights (cf., *Rerum novarum*, nos. 4–15).

The author of *Rerum novarum* was also the author of *Aeterni Patris*, so it is no surprise that Leo’s treatment of property follows much of that of Aquinas. Leo roots the right to private property in the natural law, noting its widespread acceptance: “the common opinion of mankind ... has found in the careful study of nature, and in the laws of nature, the foundations of the division of property, and the practice of all ages has consecrated the principle of private ownership, as being pre-eminently in conformity with human nature, and as conducing in the most unmistakable manner to the peace and tranquility of human existence.” (no. 11) He concludes that the principle of “private ownership must be held sacred and inviolable.” (no. 46)

Leo’s stalwart defense of property had nothing to do with admiration for totally unregulated markets or class loyalty to wealthy European landholders and businessmen. Instead he recognized that the possession of property—not only personal property but also property communally held by families, religious congregations, churches, and other groups—helps safeguard the freedom and integrity of both individual persons and corporate entities such as the Church.

In *Rerum novarum*, the pope expressed a concern that applies as much today as it did when he wrote a century and a quarter ago. Already in 1891, Leo saw the secular prejudice against the Church’s charitable institutions not for any evil they perpetuate but for the good they perform: “At the present day many there are who, like the heathen of old, seek to blame and condemn the Church for such eminent charity. They would substitute in its stead a system of relief organized by the State.” (no. 30) “In many places,” he continues, “the State authorities have laid violent hands on these communities, and committed manifold injustice against them; it has placed them under control of the civil law, taken away their rights as corporate bodies, and despoiled them of their property, in such property the Church had her rights.” (no. 53)

Leo is surely referring to efforts to shut down religious orders in various countries throughout Europe in the nineteenth century, including Italy. The liberal and monarchical regimes believed that the state could provide more “efficient” means of assisting the poor than could the antiquated methods of Catholic charity administered by religious orders. The move would also, not coincidentally, enhance the state’s power at the expense of sources of independent action and authority—in this case, the Church and her institutes of religious life.

This point is worth emphasizing, as its history extends beyond the nineteenth century and its lessons are perennial. When Henry VIII dissolved the monasteries of England, he also destroyed the system of charitable assistance that they furnished, which, during Elizabeth’s reign, the realm’s Poor Laws sought to

provide. Although the complex reasons for the welfare state's rise cannot be reduced to the dissolution of the English monasteries, it remains true that the turmoil associated with the Reformation "destroyed much of the institutional fabric which had provided charity to the poor in the past: monasteries, guilds, and fraternities."¹⁰ The Church's property and social mission were closely bound, and together they were a threat to unitary state power.

These relationships illustrate why the Church must resist the temptation to permit itself to be appropriated as an arm of the state in the provision of charity. The welfare of the poor and the Church's independence alike are undermined in the process.

II. Property and Religious Liberty

Religious liberty is often and correctly associated with rights to freedom to pursue the truth (cf., *Dignitatis humanae*). Less attention has been given to the linkage between religious liberty and private property. This is one practical dimension of property rights. The building and managing of institutions provides the faith with the means to influence society and shape culture.

Frequently, in discussions about the right to private property, one will be reminded that private property is not an "absolute right." While one can find numerous citations to "absolute rights" in academic sources,¹¹ for Catholics it may be understood as meaning that no-one may intentionally choose to violate what Saint John Paul II's *Veritatis splendor* calls "fundamental goods" (*Veritatis splendor*, nos. 48.50). The wording is important because we know that there are legitimate cases in which one may choose to act in a way that results in, for instance, another's death. A life may, for instance, be taken in self-defense if the only way that I can protect my life is to act in a way that results in the death of the person trying to take my life. The same logic of intentionality and an action's object and side-effects underlies the Church's longstanding teaching on capital punishment.

But aside from all this it is indeed difficult to find anyone who actually holds that the right to private property is absolute, if by that is meant without any moral or legal limits. As mentioned, the Catholic Church has always held that private property serves the universal destination of material goods. That said, I do think that behind many people's insistent reminder that the right to property is not absolute is the less-noble desire to expand the circumstances under which this right does not apply or may be waived, or to make a distinction between property rights and human rights – as though these were two radically distinct species of rights. While it is readily conceded that the human person as a spiritual being enjoys a primacy over the merely material dimension of creation, drawing this stark distinction in the case of property rights betrays a misunderstanding of the source and significance of such rights. As noted above, property rights are "sacred" (to use Leo's terminology) precisely because of the intimate relationship between property and the human person.

A. Property, Economic Liberty, and Religious Liberty

The linkage between property and religious freedom can be further elaborated by examining the importance of economic liberty to human flourishing. Economic liberty enables people to establish subjective goals that they deem worthy to pursue. It is thus dangerous to separate economic freedom from other dimensions of freedom, including religious freedom, because economic freedom, like other forms of liberty, permits individuals and religious institutions to pursue spiritual goods and engage the question of truth. After all, man's desire to know and live the truth is, as Vatican II clearly states, *the* foundation of religious freedom (*Dignitatis humanae*, nos. 2-3).

There are many possible illustrations of the ways in which disregard for the right to property can impinge on religious liberty. Two examples are:

¹⁰ Paul SLACK, *The English Poor Law, 1531-1782*, Macmillan, London 1990, p. 16.

¹¹ Cfr. Natasa MAVRONICOLA, *Human Rights*, in «Law Review», Oxford University Press, 30 november 2012, p. 723-758; cfr. anche l'articolo di Alan GEWIRTH, *Are There any Absolute Rights?*, in «Philosophical Quarterly», January, 1981, vol. 31, n. 122, p. 1-16.

1. Eminent domain laws, as they are called in the Anglo-American world. As Iyla Somin has pointed out, the abuse of eminent domain can diminish not only the freedom of churches to fulfill their mission; it can also affect the families served by religious institutions. This is due to the way in which special interests are incentivized when, in the name of economic development, taxpayers rather than the benefiting businesses are permitted to take ‘condemned’ property, or when such beneficiaries are not required to deliver on the economic benefits they promised for a community, and when the costs to a community of the condemnation of a property outweigh any economic benefit to that community.¹²

2. Occupational Licensure: In many occupations, licensing is necessary to conduct business legally. Thus the capacity of individuals to provide for themselves and their families is made dependent on the approval of the state. When the state—or the guild-like organizations that operate as an arm of the state for the purpose of licensing—control entry to trades and professions, there is a temptation to lose focus on the common good and instead to reap benefits for those who are already in secure positions. This situation has a disproportionate impact on the marginalized, for whom completing licensure requirements can be especially difficult. In a climate of hostility to the moral truths contained in Revelation and knowable through right reason, such licensing becomes a tool to force religious believers into line. This has become evident in the fields of law, pharmacy, medicine, teaching, and counseling. Consider how wide-ranging this could become and how extensive an intrusion into the lives of families, workers, and business owners, depending on who controls the political apparatus.¹³

B. Contemporary Threats to Religious Liberty

As the second example shows, economic liberty becomes more, not less important, as the climate for religion becomes less hospitable. Speaking primarily from the experience of the Church in America, the crucial link between property and religious liberty was taken for granted—and therefore largely ignored—for much of the twentieth century because a basically friendly culture and legal system did not frequently and blatantly expose the fragility of the Church’s independence and freedom of action. In the late twentieth century, that began to change for religious believers as a whole.

The increasingly hostile climate toward genuine and robust religious liberty has been manifested in many ways. Leading intellectual and political figures have stressed the “freedom of worship” rather than the fuller notion of “freedom of religion”—an implicit acceptance of the secularist notion that religion is a phenomenon to be closely restricted to the private sphere—to, for example, worship within the four walls of a church. One of our leading presidential candidates has said, in the context of discussion of eliminating beliefs such as man-woman marriage and the sinfulness of homosexual acts, that “...deep seated cultural codes, religious beliefs and structural biases have to be changed.” In the same spirit, the mayor of one major city initiated the process of legally requiring all pastors in the city to submit their sermons for review—in the cause of ensuring that nothing “discriminatory” or “hateful” toward protected groups would be said from the pulpit.

In the face of increasing legal and cultural uncertainty about religious freedom, the necessity of strong property rights for church institutions has become more evident. The following is but an abbreviated list of the ways in which the Church’s economic freedom—of which the right to dispose of property freely is one dimension—has been attacked and in the process her very mission and character have been threatened. In Arizona, a Protestant pastor was arrested for holding bible studies in his home, authorities alleging that he thereby violated zoning laws that prohibit regular assemblies in residences. In Pennsylvania, Washington, D.C., and many other places, Catholic dioceses with financial problems have been unable to manage their own properties responsibly due to opponents who use historic preservation codes to prevent the alteration, sale, or demolition of church structures. In Massachusetts, Illinois, and other jurisdictions, Catholic agencies have been forced to abandon their adoption services in the face of

¹² Iyla SOMIN, *The Grasping Hand: Kelo v. City of New London and the Limits of Eminent Domain*, University of Chicago Press, Chicago (Illinois) 2015, p. 74-84.

¹³ Cfr. Milton FRIEDMAN, *Capitalism and Freedom*, University of Chicago Press, Chicago (Illinois) 1962, p. 138.

mandates to place children with same-sex couples. These mandates have force because the state controls the licensure of adoption agencies. In a case that continues to be litigated, efforts are being made to force the Little Sisters of the Poor—a religious institute devoted to providing care to the elderly and dying—to participate in the provision of health insurance which involves coverage of acts which violate Catholic moral teaching. This so-called HHS mandate is a provision of the health reform act passed under President Obama, which has given rise to a series of religious freedom threats. Christian-owned businesses, religious colleges, and other institutions have all challenged the HHS mandate on these terms.

C. Private Property and the Family

Pope Leo stressed the close relationship between property and the family. It is a relationship well understood by enemies of the family.

The progenitors of economic and cultural Marxism recognized the ties between the traditional family and private property. In Friedrich Engels' account of history, the nuclear family emerges at the last stage of capitalism and as a result of the development of a class system built upon monogamy and private property. For Engels, this must be destroyed in order for a full egalitarian society to emerge. What is key to Engels' mind is that economic relations have polluted the previously pristine state of human sexuality by the emergence of a private property regime designed to protect the patriarchy and middle-class family life. Engels thus entertained a thoroughly cynical view of "bourgeois marriage." Likening husbands to the bourgeoisie and wives to the proletariat, he argued that it was necessary, for the sake of sexual equality, to liberate woman from the home. "This in turn demands that the characteristic of the monogamous family as the economic unit of society be abolished."¹⁴ In a concise expression of the linkages that I have sought to emphasize, Engels refers to the utopian socialist Robert Owen's list of the three main obstacles to his vision of social reform: "private property, religion and this present form of marriage."¹⁵

In one sense Engels sees what many in the contemporary debate fail to: that private property is the institution that can and does reinforce the family and vice-versa. The alternative, free love under a socialist regime, will create chaos to the extent that it lacks the ability to assign responsibilities naturally provided in families and under private property. The Austrian economist Ludwig von Mises underscored this absurdity when he wrote "it is certain that even if a socialist community may bring 'free love,' it can in no way bring free birth."¹⁶

The contrast between the visions of society offered by Engels and St. Thomas/Pope Leo could not be starker. The latter view property as a safeguard of freedom, prudence, economy and family well-being. In the Catholic tradition, property, correctly understood and properly regulated, is a preserver of peace, a method for harmonious human activity, and a means toward human flourishing. It is also a guarantor of religious freedom, a role that becomes ever clearer as respect for Christianity erodes in Europe and the Americas. The links between property rights, economic liberty, and religious liberty are clear in the social teaching and they are clear in history. We neglect them at our peril.

¹⁴ Friedrich ENGELS, *The Origin of the Family, Private Property and the State*, International, New York (N. Y.) 1972, p. 138.

¹⁵ See Friedrich ENGELS, *Socialism: Utopian and Scientific*, trans. Edward Aveling, Charles H. Kerr & Company, Chicago (Illinois) 1918, p. 72.

¹⁶ Ludwig von MISES, *Socialism*, trad. J. Kahane, Yale University Press, New Haven (Connecticut) 1950, p. 198.