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# Notes on Liberty and Property

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A LITERARY man is likely to think that property is quite simple: it is something you *own*. A second glance dispels the illusion. For property rights even in the simplest society are not absolute, but relative. And only by thinking of them as relative — subject to obligation, limitation, and even confiscation — is it possible to understand any kind of property, particularly the modern corporate variety. The simplicity of mere ownership does not bear analysis, even by a literary man.

If property is a relative term, so is liberty, and in exactly the same way. For to the extent to which a man controls the property by which his welfare is insured, is the man possessed of liberty. It is impossible to think of liberty apart from property, property apart from liberty.

But liberty since the time of Marx has ceased to mean merely individual liberty. Here, then, the crucial issue between property and collectivism is whether any meaning that the word liberty has can be attributed to a group or is strictly the attribute of an individual who enjoys a certain control of the means of production. Can a group own property? If it can, may it be said that a group as large as a whole state can own it? This question, to be answered in any way that makes sense, must be looked at practically. For legal ownership does not always mean effective ownership. There is a point at which effective ownership ceases,

although the legal fictions sustaining "property" may hold that beyond that point ownership endures. Effective ownership ceases at the point where a certain kind of effective control ceases. So a defender of the institution of private property will question not only the collectivist state but also large corporate property.

When the means of production are "owned" by the people, the control passes to the state. When a large part of the means of production, say one of the heavy industries, is owned by thirty thousand stockholders, the control of their ownership passes to a small group of men. In each case, collectivist ownership or corporate ownership, the property rights are legal. A large group then may legally own property. But is its ownership in any sense *effective*? A man owns a hundred thousand dollars' worth of stock in the United States Steel Corporation. His property rights in that corporation entitle him, apart from the largely fictitious "privileges" of such ownership, to a certain cash dividend. He may also sell his stock. The dividend and the privilege of selling the stock are his sole property rights. He cannot effectively question the amount of the dividend, nor can he dictate the policy of the corporation. He has no control over the portion of the means of production that he owns: he has no effective ownership.

In a collectivist state, in which private accumulations of capital are severely limited or forbidden, a man would not have a hundred thousand dollars to "invest". He would not be permitted to "save" the surplus income of his labor so that he could apply it to further production — he could not "let his money work for him". The collectivist state itself would ac-

cumulate the capital for future production: the individual would "own" that capital only in the sense that it would be there for him to apply his labor to. And if the units of production are properly balanced — corn with wheat, wheat with steel, steel with cosmetics, all with one another — he may expect a certain security. But he is not free. For it cannot be said that he in any sense controls the means of production. Control, the power to direct production and to command markets, is freedom under finance-capitalism.

## II

The history of property in the United States is a struggle, from 1787 on, of one kind of property against another. Small ownership, typified by agriculture, has been worsted by big, dispersed ownership — the corporation. This must be kept steadily in mind. Without this fact it is easy to fall into the trap of the Big Business interests today, who are trying to convince the people that there is *one* kind of property — just *property*, whether it be a thirty-acre farm in Kentucky or a stock certificate in the United States Steel Corporation. For if there is a contest merely between property and non-property — between real private property, as the average American understands it, and collectivism — the small owner will come to the support of the big corporation. And this is what the big corporation is using every means to make the small owner do.

The owner of the small farm, of the small factory, of the village store, owns a distinct kind of property. It is the familiar, historical kind. The reason why the "little man" confidently identifies his interests with

the big interests is that he cannot imagine another kind of property than his own. He thinks that there is just "property", and that he has been less successful in accumulating it than Mr. Mellon. Of course the corporations know better. And they take advantage of the innocent rectitude of the owner of genuine property. There could not be a more grotesque proof of this intention of Big Business than the Liberty League, which uses liberty and property as slogans in a campaign to deprive the American people of what little liberty, what little property, they still have.

A movement to restore property to the citizens of this country must be based upon a broad distinction. The people must be shown the fundamental difference between private property, which means effective control by the owner, and corporate property, which usually means control by a clique of the many owners. The people must learn that corporate property is no less hostile to their interests than state, or collectivist, ownership — that the corporation is socially less responsible and perhaps eventually less efficient than collectivism.

The joint-stock corporation is the enemy of private property in the same sense as communism is. The collectivist state is the logical development of corporate ownership and, if it comes, it will signalize the final triumph of Big Business. "All the arts," said Walter Pater, "strive toward the condition of music." Corporate structure strives toward the condition of Moscow.

It will have reached that condition when the integration of the big monopolies requires still further concentration of control, in the hands of the state,

and when ownership is so dispersed that it will be co-extensive with society as a whole.

### III

What is effective ownership? It is not a metaphysical essence. Unlike liberty it is not a thing of the spirit. Common sense can recognize it. The effective ownership of property entails personal responsibility for the action of a given portion of the means of production. A true property system will be composed of a large proportion of owners whose property is not to be expressed solely in terms of exchange-value, but retains, for the owner, the possibility of use-value. Liberty is the power of the owner to choose between selling and using; not absolute power of choice, but choice relative to "conditions". As the freedom to "use" disappears, liberty begins to disappear. There has never been a society in which use-value has been the exclusive kind of value; no such society is being recommended now. But it must remain the basis of liberty.

A farmer owns a hog. It has two values — use-value and exchange- or market-value. The farmer's ownership is effective because he has the relatively free choice between killing the hog for his smoke-house and selling it on the market.

No such choice is open to the stockholder in the giant corporation. He holds a certificate of rights and expectations. In order to make good the rights and to fulfill the expectations of the "owners" the corporation has got to sell its commodity. Its concern is wholly with exchange-value. The "liberty" available to the corporation consists in the degree of *power* it

has from time to time over the market. If it lacks this power it has no liberty whatever. The farmer, if he is protected by system of prices and distribution favorable to agriculture, enjoys a kind of liberty, the real kind, that can function apart from power over others. Now suppose a corporation makes tires. The market for tires in a given year is bad. It cannot eat the tires, nor can it operate enough cars of its own to consume them. Neither can the stockholder consume tires to the amount of "expectations" (dividends) due him. He may look at the pretty pictures on his stock certificate, and starve — or he may sell the stock at a price that he cannot influence in his favor.

It is not suggested that everybody make his own tires in a system that requires by law universal production for use. It is rather that finance-capitalism has become so top-heavy with a crazy jig-saw network of exchange-value that the individual citizen is wholly at the mercy of the shifting pieces of the puzzle at remote points where he cannot possibly assert his own needs and rights. This was not originally the American system. We began with the belief that society should be supported by agriculture, the most stable basis of society because it is relatively less dependent upon the market than any other kind of production.

Now this is elementary, and that is why Big Business does not include it in its propaganda today. Nor is Big Business interested in the responsibility of property, an attribute of ownership no less important than legal title itself. Responsibility is a function of control, and is necessary to effective ownership. A stock certificate is a symbol of a certain amount of capital working somewhere to produce a certain amount of

exchange-value from which the "owner" hopes to derive a certain amount of profit. But dispersed ownership guided by concentrated control deprives the stockholder of the onerous privileges of responsibility. For control alone makes responsibility possible. It doesn't make it inevitable. The history of the big corporation shows that the men in control, having a remote, symbolic, paper connection with the owners, violate their responsibility in two ways — by milking the stockholders and by stealing from new capital issues.

And the social aspect of responsibility does not exist. The corporation must produce for the market; labor is necessarily an inhuman item of costs. If the stockholder has no chance to be responsible, neither has the chairman of the board. Both are involved in a system of property rights in which responsibility to labor is on principle irrelevant. The corporation has only the freedom of power, not responsible freedom of choice. It must be un-responsible in the sense that a man may supposedly be un-moral. The corporation may choose to give its labor numerous "social services" in sheer humanitarian ebullience. Labor gets as philanthropy what is due to the free citizen as right.

Changes in the character of property since the rise of the big corporation are ably summarized by Berle and Means\* under seven heads:

1. Ownership under real private property was active. It is now passive, under the corporation.
2. Ownership formerly meant an extension of the owner's personality — a connection between personal and

\* *The Modern Corporation and Private Property* by Adolf A. Berle, Jr. and Gardiner C. Means.

physical property that gave to property a moral significance that it now lacks. "With the corporate revolution, this quality has been lost to the property-owner much as it has been lost to the worker through the industrial revolution."

3. The individual's wealth is no longer an expression of his own efforts. The moral significance of this is obvious. Wealth is now conditioned by (a) those in actual control of a business and (b) the general confidence of society in its future prosperity — usually herd-feeling.

4. Individual wealth has become extremely liquid; it is quickly convertible from one form to another. The facility of the "market" is a factor to be considered in the decline of the responsibility of ownership, which has become fluid and anonymous.

5. A man's wealth is capital — ownership of a portion of the means of production. It fluctuates under constant appraisal; that is, its exchange-value is subject to constant revision.

6. Wealth exists decreasingly in a form which can be employed directly by the owner. When wealth was in the form of land, it could be used by the owner even if its market value was negligible. "The physical quality of such wealth makes possible a subjective value to the owner quite apart from any market value it may have. The newer form of wealth is quite incapable of this direct use. Only through sale in the market can the owner obtain its direct use. He is thus tied to the market as never before." (A man can love the land, and I suppose men loved the small, vine-clad factories of early New England. The man who loves the United States Steel Corporation could make a good living in the side-show.)

7. "Finally, in the corporate system, the 'owner' of industrial wealth is left with a mere symbol of ownership while the power, responsibility, and the substance of ownership which have been an integral part of owner-

ship in the past are being transferred to a separate group in whose hands lies control."

To summarize, historically, this summary: since about 1760 in Great Britain and since the Civil War in America, *one attribute of property as it existed for five hundred years has been steadily lost*. That attribute is the responsibility of personal control. The other attribute remains: legal ownership. But without control its future security must necessarily be tenuous. If the legal remnant of ownership should disappear, as it must if finance-capitalism cannot get on its feet again, the last vestige of the institution of private property will be gone. It will be replaced by collectivist ownership. Possibly the change will be ushered in by another depression, followed by great industrial liquidations. The big productive plants will remain, with ownership even more dispersed than before: through society as a whole; and with control even more concentrated under a fiction called the State.

#### IV

Figures obligingly prove anything. But there are no figures to prove that the concentrated control of property is not enormous.

Of the total business wealth of the country seventy-eight per cent is corporate. There are over five hundred corporations each with assets of over \$100,000,000. The two hundred largest control forty-nine per cent of *all* corporate wealth, which includes the thousands of small corporations. Nearly forty per cent, then, of all business wealth, both corporate and private, is controlled by the two hundred corporations.

In 1929 the national wealth was about \$367,000,000,000. The total assets of the two hundred big corporations was about \$81,000,000,000, or twenty-two per cent of the national wealth. (These corporations are non-banking.) The figures are taken from Berle and Means, who comment:

[The big corporation's] political influence may be tremendous. Therefore, if roughly half of corporate wealth is controlled by two hundred big corporations and half by smaller companies, it is fair to assume that very much more than half of industry is dominated by these units. This concentration is made even more significant when it is remembered that as a result of it, approximately two thousand individuals out of a population of one hundred and twenty-five million are in a position to control and direct half of industry.

These two thousand men control the wealth of nearly six million investors — a ratio of one to three thousand.

In 1819 Chief Justice Marshall, in the famous Dartmouth College Case, described the corporation as an artificial being, invisible, intangible, and existing only in contemplation of law. Being the mere creature of law, it possesses only those properties which the charter of its creation confers upon it, either expressly, or as incidental to its very existence. Among the most important are immortality, and, if the expression may be allowed, individuality; properties by which a perpetual succession of many persons are considered as the same, and may act as a single individual.

If the concentrated control of wealth is to be immortal, its next avatar is not likely to be a bigger and better capitalist corporation. The Marxists believe in

the big corporation for two, to them, excellent reasons: (1) they like centralization as a good thing in itself; and (2) they like it as a means. Not only is the big mass-production unit easier to "take over" than distributed units; the two thousand men in control of the two hundred big corporations would be easier to eliminate than six million scattered owners who also control what they own. So the Marxists praise the big corporation as the result of "economic determinism" (divine order) because they know that it has already accomplished the first stage of the journey toward the collectivist state: the impotence of dispersed ownership under increasingly concentrated control. They are pleased because one of the two chief attributes of historic property is virtually destroyed.

For the Marxists know that legal ownership alone is nothing, that the secret of power is control. Let us imagine a country doctor in Alabama or Nebraska. He would not only be willing to fight for his farm or for his partnership in the local button factory; he would also be *able* to fight for it — though at present it might be a difficult war — because he would be able to see it, recognize it, understand its relation to the town as a whole — because he would be able to put himself in front of it and shoot. But he would not know whom to shoot at if (a) the rubber corporation in Ohio, in which he owned stock, had to liquidate, or if (b) the assets of the corporation were seized by Mr. Norman Thomas for the State. He might decide to shoot the mail-carrier who had repeatedly failed to deliver his dividend check. That would be a kind of political action, action on the whole about as effective as he finds possible at present in a society paralyzed by

the destruction of effective ownership, by the divorce of ownership from control.

Now this state of affairs existing between the immortal corporation and the mortal owner — to say nothing of the present non-owner who is as good as dead — has been brought about by "economic determinism". Nature decided in favor of Big Business from the beginning. Nature did nothing of the sort, and there is no determinism about it. There is only the determination of those in power to perpetuate and to continue to control the corporate system. What exists in contemplation of law can cease to exist in contemplation of law. Corporate property has reached gigantic dimensions under protection of certain legal fictions: when the law made the abstract corporation a person, gifted with the privileges of real persons but few of the responsibilities, it established a fiction that has gradually undermined the traditional safeguards, the truly functional property rights, embodied in the older common law.

Shall we make a law to undo bad laws and to set up a better older law? It is comfortingly too simple. Yet the property state may in the long run be the only escape from violence. Or it may not be. If the people were convinced that the collectivists wished to eliminate the two thousand men only to dispossess them more thoroughly, they might decide to eliminate the two thousand themselves — to get control of their property again.

## V

The struggle is not new. It is the meaning of American history. Hamilton and Jefferson are the symbols

of the struggle. Its story is too well known to need retelling. The next phase of the contest is doubtless near, but how the lines will be drawn it is impossible to predict. There are two general possibilities. We shall drift with the corporate structure of emasculated ownership until all trace of widespread control vanishes: that would be the tyrant state where corporations would be bigger than now and the two thousand men reduced, say, to twenty. Or we shall return to real politics, resume our political character, and reassert the rights of effective ownership.

I am not suggesting that the American Telephone and Telegraph Company break up into jealous units, one for each county. But I do suggest, if the institution of property, corporate or private, is to survive at all, that we keep only enough centralization — of production as well as control — to prevent gross economic losses and the sudden demoralization of large classes of workers. Our objective has been the big corporation. We must change it. Our objective should be the private business. Corporations are not yet big enough to satisfy the corporations. Nor doubtless will property ever be widely enough distributed to please the absolute distributist. Distributed property should nevertheless be the aim.

Or put it this way: we have been mere economists, and now we have got to be political economists as well. Economics is the study of wealth, and it points ways to greater production of wealth. But political economy is the study of human welfare.

We have tried to produce as much wealth as possible. It cannot be denied that technology and corporate ownership have combined to increase staggeringly the

aggregate wealth of modern states. But it is an equivocal wealth. The aggregate wealth of a nation may be stupendous, and the people remain impoverished. Let us assume what need not be true, that the total wealth of the property state would not be so great as the total wealth of the tyrant state. Yet the well-being of the people would be greater all round. So, if we are to achieve so desirable an end, we have got to add politics to economics in order to get a sum that we may, perhaps, call free citizens. For politics is — or should be — concerned with the welfare of persons, which is not always the same as their capacity to produce the maximum of goods.

## VI

The sceptics about the property state, and even some of its friends who misunderstand it, assume that we are advocating something like this: Every man must live on a farm, hew his own logs for his cabin, make his own clothing — after tending the sheep and growing the cotton — raise all his food, and refuse to have electric lights. I should like to use this derisive idyll as a boomerang. Even though production for use throughout society is now neither possible nor desirable, it should not be forgotten that the nearer a society is to production for use, the freer it is. We are not, therefore, crying for absolute liberty; we do want a little of it — as much as can be got when the majority of men own small units of production, whether factories or farms.

We do not ask everybody to live on a farm, nor — since we are allowing ourselves a little exchange-value in the property state — do we ask everybody to rush

out as soon as he has read this essay and buy a small store, a small factory, a small automobile, or a small football team.

At present the buyer of a farm would probably, in a year, be glad to run from his debts, and give it to the insurance company; or should he not be glad to run, he had better try to be. A farm now is not necessarily property. We want to make it property again. A small grocery store may represent certain paper property rights, but in view of the six chain stores surrounding it, it does not represent the same property rights as it did a hundred years ago. We want the store to be property again. Altogether it does seem to be a modest wish. For it is not only necessary to buy the farm or the factory, it is necessary to keep it. It can be kept if we can restore property rights that unite again ownership and control.

Ownership *and* control are property. Ownership without control is slavery because control without ownership is tyranny. Under finance-capitalism liberty has been defined\*:

Liberty itself is empty and meaningless. Its meaning is in its content. Its content is freedom to choose. . . . The economic equivalent of liberty, therefore, is freedom to choose between two degrees of power over other persons.

This Hobson's choice, in a system in which the owner-without-control has not even the freedom of power, becomes a real choice in a system of real property. And the real choice is a moral choice; it gives the human being the opportunity to survive economically without exercising power over others. Pure exchange-

\* *The Legal Foundations of Capitalism* by John R. Commons.

value represents the power of its owner over other persons or his lack of that power. Pure use-value represents the owner's liberty not to exercise power over other persons, and his independence of their power over him. The property state stands for a reasonable adjustment of these extremes.

The liberty of power is the only kind possible in the corporate system. But liberty in the true sense is grossly caricatured when it is replaced by the mere possibility of power over our fellow men. Even that kind of liberty is denied to the great masses who have no power at all.