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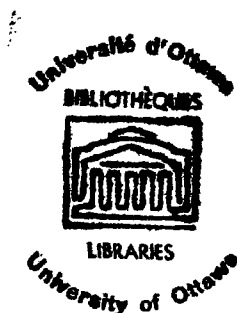
THE PROBLEM OF OWNERSHIP
IN THE THEOLOGY OF ST. THOMAS AQUINAS

A dissertation
presented to the Faculty of Theology of the
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the requirements for the degree of Doctor of
Sacred Theology

by

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INTRODUCTION.

"In the opinion of some, the regulation of PROPERTY is the chief point of all, that being the question upon which all revolutions turn." Aristotle.

The twenty years which have passed since the end of the Great War have witnessed political and economic changes in the Western world the rapidity and magnitude of which are unrivalled by any similar period in history. The remaking of the map of Europe, consequent on the signing of the peace treaties of Versailles, St. Germain and the Trianon, was preceded by the fall of four historic empires; and has been followed by the establishment of totalitarian regimes in three great European states.⁽¹⁾ The open flaunting by these latter nations of the cherished ideals of pre-war Europe, and their successful defiance of the system of collective security established by the victorious powers in 1919, has not failed to give rise to storms of violent protest on the part of those who consider themselves in the vanguard of human progress; nor have the governments of the non-totalitarian nations allowed the dictatorships to rise to power without challenging them with diplomatic and economic opposition.

(1) F. BENNS, Europe Since 1914, New York, 1936, p. 181 sqq.

(2)

What they have failed to do, however, is to put an effective check to their development. Instead we are faced by the spectacle of numerous smaller European states imitating to a greater or less degree the totalitarian policies of their more powerful neighbours; while the three great democratic powers are showing an increasing reluctance to imperil their own safety by defending outside their own frontiers the abstract principles upon which their regimes purport to be based. In the face of widespread social unrest they find it sufficiently difficult to defend these principles at home.

To what cause is this critical condition of the Western world to be attributed? Superficially it may seem to be due to spiritual and economic exhaustion consequent on the Great War and to the harsh international injustices perpetrated by the victors in the name of peace. But whatever the explanation given by the journalists and political commentators, to many philosophers of our day the cause must be sought at the very roots of modern Western civilization. Thus to Spengler, Western culture has passed its greatness and is already beginning its decline,⁽¹⁾ Peter Wust sees fulfilled in our day the great historical process begun in the Renaissance, the humanizing of

(1) Decline in the West.

medieval man which has finally given us the complete individual, a "tragic spectacle, indeed, this humanity outside the Church, this man of the twentieth century who has been completely uprooted".⁽¹⁾ Berdyaev tells us, "It is our lot to live historically in a period of transition. The old world, if I may call it so, or "modern times" have come to an end and are in decomposition. A new and unknown world is coming to birth ... our epoch is the end of modern times and the beginning of a new middle age."⁽²⁾ Similarly, Belloc, in a masterly review of the development of Christian Europe, declares that the Western world is faced by a crisis, "the greatest of all historically known to us," one in which "that by which the leaders of mankind had lived, that by which the white civilization had been what it was, that from which what had for so long most properly been called Christendom, had drawn its personality, its will, its honor, its very self, was and is melting away."⁽³⁾

If the Catholic philosopher is surprised at the chaos in the world today, it is not that chaos has come but that it has not come sooner. To the Catholic, trained in the school of

(1) Crisis in the West, London 1931, p. 46

(2) The End of Our Time, London 1935, p. 69

(3) The Crisis of Civilization, New York 1937, pp. 8,9.

St. Augustine, the basic cause for every major transformation in history is primarily a spiritual one. Today we are but reaping the whirlwind sown by the zealots of the last five centuries who, in the name of Liberty - whether artistic, religious, intellectual or political - have smashed one by one the ties which bound men together in a social organism in which the interest of the individual was ever kept subordinate to the common good. Liberalism, religious, political and economic, has run its course. However useful it may have been to establish the free market and liberate an expanding capitalist economy from irksome legal and moral restraints, today it is powerless to distribute the fruits of modern industrial development. Already its cause has been deserted by the zealots of the present century, who, while they may retain the name Liberal out of affection for an old cause, have abandoned completely the doctrine of the sacredness of the individual. At its best it is a luxury to be retained with growing scepticism, and increasing armaments, by the wealthiest nations. What signor Mussolini has pithily described as the "proletarian nations" have already learned to look elsewhere for a philosophy.

The Catholic, however, is not alone in considering the present world crisis a period of cultural transition due to the operation of century-old historical causes. The Marxist Socialists are no less convinced that the world is undergoing a major transformation, one which their prophet had the intelligence to predict as inevitable nearly a hundred years ago. It was Marx's genius to give to the Utopian Socialism of the nineteenth century a philosophy of history which at once transformed the socialist movement into a realistic campaign for action and gave it the assurance of a goal which must inevitably be attained.⁽¹⁾ Marx, like Hegel, his master, is an evolutionist. But his evolutionism is not idealistic but materialistic: "The mode of production of the material means of existence conditions the whole process of social, intellectual and political life... At a certain stage of their development the material productive forces of society come into contradiction with the existing productive relationships... Then an epoch of social revolution opens... Bourgeois productive relationships are the last antagonistic form of the social process of production...

(1) H. LASKI, Communism, London 1927, p. 55 sqq.

With this social system, therefore, the pre-history of human society comes to a close..."⁽¹⁾ Thus armed with a philosophy of history, Marx passed judgment on the nineteenth century Liberal society in words which were to resound throughout the labor halls and chanceries of Europe: "The development of modern industry cuts from under its feet the very foundation on which the bourgeoisie produces and appropriates products. What the bourgeoisie therefore produces, above all, are its own grave-diggers. Its fall and the final victory of the proletariat are inevitable."⁽²⁾ If Marx's predictions were premature, the opening line of the Communist Manifesto, "A spectre is haunting Europe - the spectre of Communism," is no less dreadful today when its author has been in his grave for half a century. And if recent developments in Europe seem to indicate that national rather than international socialism will be adopted by the non-Russian West, Marx deserves no less credit for having sounded the doom of European Liberalism.

- (1) A Contribution to the Critique of Political Economy, preface, English translation, in Handbook of Marxism, NY 1935, p.371-2.
- (2) Communist Manifesto, Eng. Trans., Handbook of Marxism, p. 36.

The Marxist explanation of the present world crisis must seem at first glance the very antithesis of the Catholic viewpoint ; for Materialistic Communism is but the unwanted offspring of Economic Liberalism. But antithetical as Catholicism and Communism may be as systems of society, as philosophies of history they have far less in common with Liberalism than with each other. Both Communism and Catholicism reject the Liberal division of life into airtight compartments, religious, political and economic, and insist upon the close affinity between religion and property. The Communist cannot be indifferent to religion but is an atheist by necessity.⁽¹⁾ The Catholic similarly cannot be indifferent to economic practices but must make economic morality a condition for entrance into the Kingdom of Heaven. Moreover, although the Catholic interprets history in terms of things of the spirit while the Marxist interpretation is materialistic, this antithesis is restricted to the question of which is the primary cause. The Marxist would be the last to deny the power of ideas as an instrument of social change, as his organization of the Communist International and its

(1) GURIAN, Bolshevism, Theory and Practice, p. 255

immense propaganda machine bears witness. On the other hand the Catholic historian cannot deny that economic conditions exert a serious influence on the religious thought of the individual, whether he be a land-hungry Catholic wool-merchant in sixteenth century England with his eye on Church domains⁽¹⁾ or a bread-hungry Catholic proletarian in twentieth century Spain with an eye on the high profits extorted by his Catholic employer. The conversion of the mercantile class to Protestantism in Calvin's day,⁽²⁾ and the drift to materialism by a large part of the working-class in our own, cannot be considered a mere coincidence. Both bear witness to the fact that man lives neither by faith nor bread alone and ^{that} the religion, or the philosophy of life, which will dominate the "new middle age" must be one which presents a satisfactory theory of property.⁽³⁾

It is not surprising, therefore, that the ideological struggle of our day should largely center about this problem of ownership. While philosophers are few, the chief business of the majority of men must be that of earning a living for

(1) BELLOC, op. cit., p. 123

(2) TAWNEY, Religion and the Rise of Capitalism, London 1938, p. 105

(3) J. STRACHEY, The Coming Struggle for Power, NY 1933, p 341.

themselves and their dependents. Access to property in some form is necessary for the continuance of life. Ownership of the means of production means freedom. Ownership of the means by which others must live means power. Whether or not we agree with Marx that the historical mission of Protestantism, or religious Liberalism, was to make possible a capitalist society,⁽¹⁾ we are faced with the fact that the inheritors of religious, philosophical and political idealism of the past five centuries are the Economic Liberals or Capitalists who have rightly given their name to the age in which we live. Once freed by the idealists from the religious and political restraints of medieval Christendom, the realists, always more numerous, lost no time in devoting their new freedom to the pursuit of wealth. But as one man's property increases only as the other man's diminishes, today we are confronted by the anomaly of a dehumanized economic order defending its concentrated wealth in the name of the very Liberalism which set out with the brave hope of restoring man to the fullness of his dignity.⁽²⁾

(1) Communist Manifesto, in Handbook of Marxism, p. 25

(2) C. DAWSON, Religion and the Modern State, NY 1936, p. 38

Defense of private property has thus become synonymous in the minds of many with the defense of the Liberal era which the prophets of our day, both Catholic and non-Catholic, insist is drawing to a close. That this defense is not of the right to property, in the medieval sense of the term, but of the rights of property, in a purely individualistic sense, is appreciated by few. Logically, therefore, the Marxist, in his passionate hatred of individualism and his equally passionate determination to set up a purely communist society, centers his attack upon the institution of property. "In this sense," says Marx, "the theory of Communism may be summed up in a single sentence: Abolition of private property."⁽¹⁾ Moreover, by insisting that only two systems of industrial property are possible, Capitalist and Communist, and by pointing out the obvious failures of the former to provide a decent life for the proletariat, the Marxist has succeeded in winning to his cause numerous Liberal intellectuals who have come to identify the abolition of private property with the cause of progress and to look upon those who speak of the right to property as hopeless reactionaries.⁽²⁾

(1) Communist Manifesto } . cit., p. 38

(2) BELLOC, op. cit. p. 192

In this often violent conflict between the supporters of these two opposed theories of property, the Catholic finds cause for real alarm. In the first place because of the Church's insistence upon the right of private ownership, he finds the Church claimed as an ally by men of wealth who look upon the Catholic doctrine as a "bulwark against Communism" in the sense of a defense for Capitalism. To this cause must be attributed the alienation from the Church of large numbers of working-men both in Europe and the New World. On the other hand, he sees the increasing danger of the abuses of the Capitalist system driving men to the acceptance of a Marxist society which is not only the avowed enemy of the Christian religion but which also can but complete the work of the dehumanizing of man which was begun in the fifteenth century. If the New Middle Ages predicted by Berdyaev are to be based on Marxist Materialism despair can well fill the human soul.

To a world thus torn between the desire to preserve the tremendous industrial achievements made during a period of economic liberalism, and at the same time tempted to seek the security which liberalism has been unable to give, in the attractive promises of a utopian communism, the Church presents the clear light of the Christian doctrine of property. This doctrine, enunciated by Leo XIII in his masterful encyclical Rerum Novarum⁽¹⁾ has been restated at greater length and with more completeness in our own day by Pope Pius XI in the encyclical Quadragesimo Anno.⁽²⁾ Combatting the Socialist, or Communist, attack upon the institution of private property, the Holy Father defines man's natural right to own material goods. At the same time, however, he insists upon the twofold character of ownership, individual and social, the latter decreeing that property must always serve the common good. He condemns thus not only the Socialism which would deprive man of a natural right to own the goods of creation, but also the Individualism which denies in practice, if not in theory, that these goods have been created by God for the use of all men.⁽³⁾

(1) May 15, 1891, On the Condition of Labor.

(2) May 15, 1931, On Reconstructing the Social Order.

(3) "Primo igitur pro comperto ex explorato habentur neque Leonem neque eos qui, Ecclesie duce at magistra, docuere theologos, negasse unquam vel in dubium vocasse duplicem dominii rationem, quam individuales vocant et sociales, prout singulos respicit vel ad bonum spectat commune; sed semper uno ore affirmasse a natura seu a Creatore ipso jus dominii privati hominis esse tributum, cum ut sibi familieque singuli, providere possint, tum ut; hujus instituti ope, bona, quae Creator universae hominum familiae destinavit, huic fini vere inserviant.

The teaching of Leo and even that of Pius, while failing to satisfy the extreme demands of the utopian idealists, has been judged as dangerously radical by many conservatives both within the Church and without. (1) "Some minds were not a little disturbed, with the result that the noble and exalted teaching of Leo XIII, quite novel to worldly ears, was ^{looked} upon with suspicion by some, even among Catholics, and gave offense to others. For it boldly attacked and overthrew the idols of Liberalism, swept aside inveterate prejudices, and was so far and so unexpectedly in advance of its time that the

(1) "In tanto animorum concentu non defuerunt tamen qui non-nihil commoverentur; quo factum est, ut tam nobilis et alta Leonis XII doctrina mundanis auribus prorsus nova, a quibusdam vel inter catholicos in suspicionem vocaretur, quosdam etiam vero offenderet. Per eam enim liberalismi idola audacter impetita evertabantur, inveterata praejudicia nihili fiebant, tempora praeter spem praevertabantur, ita ut et tardi corde novam hanc philosophiam socialem ediscere aspernarentur, et animo pavidi fastigium illud ascendere pertimescerent. Fuerunt etiam qui hanc lucem quidem admirarentur, sed fictam quandam perfectionis speciem optandam magis quam expectandam reputarent." Quadragesimo Anno, I, cit., p. 180, 181.

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quae omnia obtineri nullo modo possunt nisi certo et determinato ordine servato."

"Itaque duplex in quem impingi potest scopulus naviter cavendus est. Nam, sicut ex negata vel extenuata juris proprietatis indole sociali et publica, in 'individualismum' quem dicunt ruitur aut ad eum acceditur; ita privata ac individuali ejusdem juris indole repulsa vel attentuata, in 'collectivismum' properetur vel saltem ejusdem placita attingatur necesse est." PIUS XI, Quadragesimo Anno, official text published in Acta Apostolicae Sedis, June 1931, p. 191, 192.

slow of heart ridiculed the study of the new social philosophy, and the timid feared to scale its lofty heights. Nor were there wanting those who, while professing their admiration for this message of light, regarded it as a utopian ideal, desirable rather than attainable in practice."

Yet the doctrine of the Popes is essentially the same as that developed in the Middle Ages by the schoolmen who added the light of metaphysical speculation to the data of Divine revelation and ^{the} numerous commentaries of the Fathers of the Church. That the schoolmen should concern themselves with the question of property was but natural. Not only was it integral to their study of Creation and the natural virtues, but obliged as they were to deal with numerous property relationships arising out of cases of conscience and the usual disputes in civil and ecclesiastical courts they formulated a complete theory of property upon which the casuistry and legal decisions of their time were based. The fullest development of this doctrine from the point of view of its practical application is found in the Summa Moralis of St. Antonino (1389-1459), archbishop of Florence. But for the clearest exposition of the theological and philosophical basis of the doctrine, we must turn to the works of St. Thomas Aquinas. Succeeding writers have added little to the teaching of the Angelic Doctor; while

his contemporaries who invoke the authority of Aristotle more often are employing the arguments of the Angelic Doctor.⁽¹⁾

St. Thomas treats of the subject of property in its social or political aspect in his commentary on the Politics of Aristotle.⁽²⁾ The Politics gave the Schoolmen their first speculative treatise on the question of property and to Aristotle they will constantly refer in their philosophical exposition of the traditional Christian viewpoint. Although Aristotle writes to reject the communism proposed by Plato in the Republic, it must not be imagined that Aristotle is an individualist. He is as much a socialist as Plato, in the sense that his sole concern is the common good.⁽³⁾ If he opposes community of property, ~~as he also opposes community of property,~~ as he also opposes community of wives and children, it is because he believes that harmony will be best

(1) B. JARRETT, Medieval Socialism, London, 1935, p.51.

(2) Pol., II. 4.

(3) "But if all communities aim at some good, the state or political community, which is the highest of all, and which embraces all the rest, aims, and in a greater degree than any other, at the highest good." Politics, I, 1., English translation by Benjamin Jowett, American Edition, New York 1900, p.1.

preserved when each citizen has the responsibility of his own sustenance.⁽¹⁾ To insist on communism, whether it be of ownership or of partition, is only to invite constant strife among the members of the community and thus defeat one's primary end.⁽²⁾ A realistic view of human nature, therefore, insists that private property is necessary for the common good; but the same common good likewise demands its common use.⁽³⁾ The latter will be effected by law, but particularly by friendship;⁽⁴⁾ wherefore "it is the special business of the legislator to create in men this beneficial disposition."⁽⁵⁾

(1) "That all persons may call the same thing mine in the sense in which each does so may be a fine thing, but it is impracticable; or if the words are taken in another sense (i.e. the sense which distinguishes "all" from "each"), such unity in no way conduces to harmony. And there is another objection to the proposal. For that which is common to the greatest number has the least care bestowed upon it. Everyone thinks chiefly of his own, hardly at all of the common interest; and only when he is himself concerned as an individual." *ibid.*, II, I, I, cit. p. 24

(2) "Indeed we see that there is much more quarrelling among those who have all things in common, though there are not many of them when compared with the vast numbers who have private property." *ibid.*, p. 29.

(3) "It is clearly better that property should be private but the use of it common." *ibid.*, p. 28.

(4) "And yet among the good, and in respect of use, 'Friends' as the proverb says, 'will have all things in common'." *ibid.*

(5) *ibid.*

In his theological treatise on property in the Secunda Secundae of the Summa Theologica (q.66, a.1-2), St. Thomas will make this same psychological fact, interpreted in the light of the fallen state of human nature, the basis of his own justification of private ownership. He will likewise insist upon the common use of possessions. But to Aristotle's argument from political expediency he will add the metaphysical basis for the common use, namely the order of divine providence which has destined exterior things for the use of all men, and the freedom of man's will which demands that he have all that he requires freely to reach his last end. Thus to St. Thomas the common use is primarily a matter of justice. For its execution, however, he depends as does Aristotle, upon friendship; only to St. Thomas instead of the natural friendship of the pagan it is the supernatural virtue of charity, which unites all members of the Mystical Body of Christ, which will dispose the possessors of property to effect that perfect community of use which the natural law demands. At the same time, however, St. Thomas, in accepting the Aristotelean principle of private ownership as best suited to the realities of life, does not reject the Platonic community of ownership as an ideal. It would have been the natural way of living in the state of original justice. To St. Thomas, as to the Fathers of the Church, private property is but a concession to original sin.

In thus bringing the question of property into the realm of theology, St. Thomas has again effected a synthesis between classical Greek philosophy and the moral teaching of the Church. In this instance the synthesis is of peculiar importance because of the insistence by writers of the Marxist school that the Catholic doctrine of property, far from being based on immutable principles, or even on the Gospels themselves, is but the reflection of the property relationships natural to a feudal society. ⁽¹⁾ Through Aristotle, St. Thomas was brought in contact not only with the communism of Plato but also with the individualism of the Sophists who violently opposed the statism both of Plato and of Aristotle. ⁽²⁾ Furthermore he was bound to have been familiar through his classical studies and his knowledge of the Fathers with the moral problems presented by the advanced mercantilism of both the Greek and Roman empires, conditions which a mind such as that of St. Thomas could not be conceived to have considered would never arise again. In fact, even in his own day, St. Thomas was not living in a simple feudal economy - if indeed such a thing ever existed throughout Europe at any one time - but must have been only too familiar with the rising mercantilism of the great commercial and financial centers of Venice and Florence. It was indeed the horde of problems raised by these new commercial relations which was responsible for the volume of writing by the schoolmen on ethico-economic questions and for the

(1) STRACHEY, op. cit., p. 13

(2) R. GONNARD, *Histoire des Doctrines Economiques*, Paris, 1928, p. 2

solution of which they almost invariably turned to the principles laid down by their greatest master, St. Thomas Aquinas.⁽¹⁾

At the same time, however, it would be foolish to deny that were St. Thomas suddenly to return to life in our day he would find much at which to wonder. The most striking change would be in the concept of ownership of land. Under the feudal system absolute ownership in the modern sense of the word was unknown. Villein, lesser lord and greater lord each held his land on certain definite conditions imposing upon him the obligation of supporting his inferiors and serving his superiors. The king himself, from whom the greater lords received their large grants of land, exercised his dominion as representative of the nation. At his coronation he swore to observe the customary conditions, and his failure to keep his oath released his subjects from their duty of allegiance.⁽²⁾ Under this system it was simple to reconcile the scholastic principle of private ownership with its essential corollary of common use. The landholder who failed to allow his inferiors the necessary use of his land, or who was wanting in the traditional duties of almsgiving and hospitality, might soon find himself dispossessed by his superior lord. Likewise, the fury with which usury is attacked in the Middle Ages is largely aimed at the money-lender who by exploiting the necessity of the peasant or landlord, comes into possession of their land without accepting their traditional responsibilities for it and its use.⁽³⁾

(1) JARRETT, op. cit., p. 1549.

(2) JARRETT, op. cit., p. 15.

(3) R. TAWNEY, op. cit., p. 57

To Marx this concept of conditional ownership, together with the other restraints of feudal relationships, was an insufferable obstacle to the development of modern industrialism. In tearing it down, "the bourgeoisie historically has played a most revolutionary part...It has pitilessly torn asunder the motley feudal ties that bound man to his 'natural superiors', and has left no other nexus between man and man than naked self-interest, than callous 'cash-payment'. It has drowned the most heavenly ecstasies of religious fervour, of chivalrous enthusiasm, of philistine sentimentalism in the icy water of egotistical calculation. It has resolved personal worth into exchange value, and in place of the numberless indefeasible chartered freedoms, has set up that single, unconscionable freedom - Free Trade."⁽¹⁾ Marx justifies the physical and moral horrors of industrialism in the light of its tremendous achievements which he considers as necessary preparation for a communist society to which the restrictions of the feudal system are sheer Liberalism by comparison.⁽²⁾ His error lies in the supposition that only a ruthless individualism could have built the great industries and mighty economic empires which characterized the nineteenth century. Had he lived half a century later, however, he would have seen the great wealth of the Liberal states seriously rivalled by the nations which they out-distanced in the land grabbing of the past two

(1) Communist Manifesto, p.25.
JARRETT op. cit., p.p. 16.

centuries and which now, having abandoned the trappings of economic and political Liberalism, are finding in the corporate tradition of the Middle Ages the secret of national greatness.⁽¹⁾

Not a few Catholics, and writers of Catholic sympathies, in their abomination of Marx have accepted Marx's identification of Catholic social teaching with the medieval social system. We sometimes find them therefore preaching the abandonment of all that modern industrial development has brought us and insisting that modern man can find his soul only in a return to an agrarian-craftsman society.⁽²⁾ When they do so, however, they may speak as philosophers, artists or poets, but not as Catholics. No one would rejoice more than the Angelic Doctor in the achievements of modern science or in the marvels of the machine which has enabled man to multiply so cheaply the necessities and comforts of life which God in His Providence surely intended for all men. But what would puzzle the Angel of the Schools would be the complete secularization of modern life, the loss by the majority of men of wealth of any sense of social responsibility, the grinding poverty which exists in the midst of potential plenty, the substitution of riches for eternal beatitude as the end of human activity, and above all the naive belief that avarice could be creative of a healthy social life.

(1) G. DE MICHELIS, La Corporation Dans Le Monde, French edition, Paris, 1935, p. 307

(2) cf. PENTY, Post-Industrialism, New York, 1922.

The teaching of St. Thomas on ownership cannot therefore be said to have been intended only for the Middle Ages. It is not a reflection of the feudal system. It is a reflection only of the unchanging truths of revelation which acquaint us with the end of created goods and the end of man, which establish for us the hierarchy of values which must dominate human activity, which show us the weakness of man as a result of original sin and the strength he has received through the Incarnation, which warn man ever to beware of greed, avarice, and attachment to material things. To these revealed truths, St. Thomas has added the wisdom of the ancients and the Fathers and his observations on his own time. But he has not given us an economic system, any more than he has given us a political system, which is essentially Catholic. What he has done is to tell us the purpose of created goods, to point out certain systems under which these goods must invariably fail to achieve their purpose, to give us directives as to how that purpose may best be achieved under the peculiar circumstances of time and place.⁽¹⁾ He writes not as an economist but as a theologian whose sole concern is that man may use the gifts of God to return to God, his last end.⁽²⁾

It is as theologians, therefore, that we approach this

(1) JARRETT, *Social Theories of the Middle Ages*, London 1926, p.123

(2) John of ST. THOMAS, Introduction a La Theologie de St. Thomas, French Translation, Paris 1926, p. 101.

study of the teaching of St. Thomas on the problem of ownership. We shall not be content with a study of those articles in which he treats formally of the problem but shall endeavour to integrate his formal teaching on property with his teaching on man and society to form an integral whole. To others we leave the problem of the practical application of these principles to the contingencies of any modern state. At the same time in our discussion we shall bear in mind the changed conditions of economic life which the past seven centuries have brought and the theories which have been elaborated to meet the peculiar needs of the day.

As becomes a Thomistic study we shall lay special stress upon the metaphysical aspects of the problem of ownership. To those who consider the present world crisis a purely economic question such a study may seem folly. To those even who, impatient for action, believe that the excellent, though necessarily limited directives of the encyclicals, are sufficient to meet all a Catholic's doctrinal needs in the great task of social reconstruction, a work of this nature may seem a questionable use of time. But a proper understanding either of the great issue of the day or of the doctrine of the papal documents themselves can only be attained by a patient search for the ultima ratio of both the ownership of property and its use.

In this effort we can have no better guide than the Angelic Doctor whose teachings are as "modern" today as they were seven centuries ago. In the words of one of his best known modern disciples: "The very crises of the economic order urge us most strongly to study metaphysics. Competent writers tell us that the most terrible economic crises of modern times with their absurd consequences spring from the rationalization on scientific lines of the technical processes of production, or more generally of the material of economic life, without any corresponding rationalization of production itself or of the human elements in the economic order. But it is no more possible to rationalize the human elements without knowing what man is, than to rationalize the production of a factory without knowing what a factory is. We must know then what man is; which is the office of metaphysics and even of theology. Ethics, which we may consider as the rationalization of the use of Freedom, presupposes metaphysics as its necessary prerequisite. A system of ethics cannot be constituted unless its author is first able to answer the questions: What is man? Why is he made? What is the end of human life?" (1)

(1) MARITAIN, Le Regime Temporel et La Liberte, English translation, Freedom in the Modern World, New York, 1936, p.14.

Chapter I

DIVINE OWNERSHIP

"The earth is the Lord's and the fullness thereof." Ps. 23. 1

In beginning his discussion of the problem of ownership, St. Thomas takes nothing for granted. He first asks the question "Whether it is natural for man to possess external things?"⁽¹⁾ And he immediately answers, "It would seem that it is not natural for man to possess external things. For no man should ascribe to himself that which is God's. Now the dominion over all external creatures is proper to God, according to Ps. xxiii. 1, The earth is the Lord's etc."⁽²⁾

That in a treatise on what is commonly considered one of the primary rights of man, St. Thomas's first thought should be of God is characteristic both of the man himself and of his system of theology. God is the subject of theology, he tells us in the first question of the Summa.⁽³⁾

(1) "Utrum naturalis sit homini possessio exteriorum rerum"
II II, 66, 1.

(2) "Videtur quod non sit naturalis homini possessio exteriorum rerum. Nullus enim debet sibi attribuire quod Dei est. Sed dominium omnium creaturarum est proprium Dei, secundum illud Psal. xxiii, 1: 'Domini est terra, etc.' Ergo non est naturalis homini possessio exteriorum rerum." *ibid.*, obj. 1.

(3) "Deus est subjectum hujus scientiae." I, 1, 7.

"All things are treated of in theology sub ratione Dei; either because they are God himself; or because they have a relation to God as to their beginning and end."⁽¹⁾ Thus theology, although it treats of both God and creatures, is but one science; for it does not treat of them equally, but primarily of God and secondarily of creatures, in so far as they are referred to God.⁽²⁾ Furthermore, in the discussion of human acts, theology considers them as means by which man is ordered to the perfect knowledge of God in which his eternal happiness consists.⁽³⁾

St. Thomas takes up the question of ownership as incidental to the discussion of those human actions which are regulated by the virtue of justice. In discussing the acts opposed to this virtue, he first treated of the acts opposed to distributive justice (q. 63), and to commutative justice by injuring another's person (q. 64, q. 65). He then proceeds, "We must now consider the sins opposed to justice whereby a man injures his neighbour in his belongings (in rebus); namely theft and robbery."⁽⁴⁾ This

(1) "Omnia autem pertractantur in sacra doctrina sub ratione Dei; vel quia sunt ipse Deus; vel quia habent ordinem ad Deum, ut ad principium et finem." *ibid.*

(2) "Principaliter agit de rebus divinis quam de actibus humanis; de quibus agit secundum quod Deus ordinatur ad perfectam Dei cognitionem, in qua aeterna beatitudo consistit." I, 1, 4.

(3) "Sacra doctrina non determinat de Deo et de creaturis ex aequo; sed de Deo principaliter; et de creaturis secundum quod referuntur ad Deum, ut ad principium vel finem. Unde unitas scientiae non impeditur." I, 1, 3, ad 1.

(4) "Deinde considerandum est de peccatis iustitiae oppositis, per

will form the subject of Question LXVI, the first two articles of which determine the existence and nature of the right which theft and robbery violate. But here again, unlike the jurist, he is less concerned that the right of the individual be respected, than that by giving to others that which is their due, man may preserve the proper order instituted by God and thus attain his last end.⁽¹⁾ He is determined therefore that in the name of justice no one may be asked to render to another that which rightly belongs to God. Hence the first right of ownership to be defined is that of God himself.

Bearing in mind that St. Thomas writes as a theologian and not as a canonist, we must accept the definitions which he gives us and beware of interpreting his terms in their familiar juridic sense. Furthermore, we must not be surprised if the Angelic Doctor, in speaking of ownership, uses various terms interchangeably when the context cannot fail to make his meaning clear. We must, however, distinguish carefully his use of dominium, possessio and proprietas.

Quoting St. Ambrose (De Trinitate, lib.I), St. Thomas tells

(1) "Aetus justitiae per comparisonem ad propriam materiam et obiectum tangitur cum dicitur: Jus suum unicuique tribuens; quia, ut Isidorus, dicit, 'justus dicitur quia jus custodit'." II II, 58, 1.

(4) concluded from page (26)

"quae infertur nocumentum proximo in rebus, scilicet de furto et rapina." II II, 66, 1, prel.

us "Dominion denotes power."⁽¹⁾ Dominium, therefore, the specific quality or faculty of the dominus, signifies simply the power of one ^{natural creature} being over another, ^{being} whether the latter be a person or a thing. In this broad sense, St. Thomas uses dominium to signify man's power over his own acts,⁽²⁾ over his life and members,⁽³⁾ over his reputation and honor,⁽⁴⁾ over other men,⁽⁵⁾ and finally over irrational creatures. If the term is used generally to signify several species of domination it is because all have a common foundation in the intelligence and free will of man,⁽⁶⁾ as we shall see later when we discuss the reasons why man may possess external things. Regarding man's dominion over his fellow-man, St. Thomas makes a necessary distinction between the dominion of the ruler directing his subject for the latter's welfare or for the common good, and the dominion of the master directing his slave, ad propriam utilitatem sui, that is, for the master's utility.⁽⁷⁾

(1) "Praeterea, sicut Ambrosius dicit, 'dominus est nomen potestatis.'" *ibid.*, 66, 1, obj. 3.

(2) "Ex hoc contingit quod homo est dominus sui actus, quod habet deliberationem de suis actibus." I II, 6, 2, ad 2.

(3) "Corporis membra in nullo resistere possunt imperio animae." I, 81, 3, ad 2.

(4) "De opere virtuoso aliquis apud alios et reverentiam mereretur et famam, et apud seipsum bonae conscientiae gloriam." II II, 75, 1, ad 2.

(5) "Servus in quantum servus est aliquid domini." *ibid.*, 57, 4 ad 2.

(6) "Homo est dominus sui actus quia habet deliberationem de suis actibus." I II, 6, 2, ad 2.

(7) "Tunc vero dominabitur aliquis alteri ut libero, quando

Fr. Spieq., O.P.,⁽¹⁾ refers to this as a distinction between dominium jurisdictionis and dominium proprietatis, the latter term being applied to dominion over anything which is for the master's own use, whether the object be animate or inanimate. Although the term dominium proprietatis is not used by the Angelic Doctor, the concept of dominion ad propriam utilitatem sui, as distinguished from dominion of jurisdiction or authority, is the one which St. Thomas makes the basis of his treatise on ownership. In its broadest connotation it is a mere potestas utendi,⁽²⁾ although he will at times use it in a more restricted sense. In every case, however, it is used in the subjective sense of a faculty and never to indicate the thing possessed.

In 9. 66, 1, ad 1, St. Thomas uses dominium synonymously with possessio: "the dominion over all creatures is proper to God.. Therefore the possession of external things is not natural to man."⁽³⁾ Possessio, however, differs from dominium in that it

(1) Dominium et Droit de Propriete, in the Revue des Sciences Philosophiques et Theologiques, 1931, p.62.

(2) "Homo habet naturale rerum dominium, quantum ad potestatem utendi ipsis." II II, 66, 1 ad 1.

(3) "Dominium omnium creaturarum est proprium Dei...Ergo non est naturalis homini possessio rerum exteriorum."

concluded from page (27)

(7) "dirigit ipsum ad proprium bonum ejus qui dirigitur, vel ad bonum commune..aliquis dominatur alicui ut servo, quando eum cui dominatur, ad propriam utilitatem sui, scilicet dominantis, refert." I, 96, 4.

signifies not only the faculty of possession, as in the above passage, but also the article possessed. Thus in article 2 of the same question, St. Thomas says: "the division of possessions is not according to the natural law."⁽¹⁾ Here the objective use is evident. Possessio, moreover, does not extend to the dominium jurisdictionis but is restricted to the dominium proprietatis mentioned above. The common juridic notion of possession as the detention of an object without dominion is foreign to the mind of St. Thomas. To express such a concept he uses rather occupatio, detentio or auctio.

We shall have occasion to investigate the notion of proprietas at length when we come to the discussion of private ownership.⁽²⁾ Here it will suffice to state its relation to dominium and possessio. Father Spicq, O.P., in his excellent article on this subject describes the use of proprietas in St. Thomas as the "mise en acte du droit abstrait du possession."⁽³⁾ St. Thomas does not use the term at all in treating of the natural right of ownership in article 1. It is in article 2 that he speaks

(1) "Secundum jus naturale non est distinctio possessionum." *ibid.* ad. 1

(2) Page 129

(3) Dominium, Possessio, Proprietas, chez S. Thomas et les Juristes Romains, in the Rev. des Sc. Phil. et Théol., 1929, p.269 sq.

of the "proprietas possessionum" or the right of man to "possess any thing as his own."⁽¹⁾ Here it is not a question of the "suam" which was defended in the preceding article ⁽²⁾ but of the "rem propriam", from which other men are to be in some way excluded.⁽³⁾ Both as regards the faculty and the thing possessed its use is more restricted than that of either dominium or possessio.

In this treatise we shall use the English term, "ownership", in the subjective sense of dominium proprietatis, and the term, "Property", in the objective sense of the thing owned or possessed. Where greater precision is necessary we shall speak also of dominion and possession or make use of the Latin terminology.

Bearing in mind the above distinctions, we are better able to appreciate the profundity of St. Thomas's first objection to man's exercise of the prerogative of ownership; "No man should ascribe to himself that which is God's. Now the dominion over

(1) "Videtur quod non liceat alicui rem aliquam quasi propriam possidere. Omne enim quod est contra jus naturale est illicitum. Sed secundum jus naturale omnia sunt communia; cui quidem communitati contrariatur proprietas possessionum." art. 2, 1.

(2) "Putabat exteriora bona esse principaliter sua." art. 1, ad 2.

(3) "pessat autem si alios ab usu illius rei indiscrete prohibet." art. 2, ad 2.

all external creatures is proper to God." (1) Although St. Thomas himself will answer the objection, as we shall see in Chapter II, we must have a proper understanding of divine ownership, or better of divine dominion, if human ownership is to be intelligible.

The ancient Hebrews, in common with other Semitic people, had a common name for "god", Elohim, which they applied not only to the true God but also to the false gods of their neighbours. (2) His proper name, however, Yahweh, "He Who Is" (3) they considered too sacred for common use; where the sacred text indicated Yahweh, they read instead Adonai. (4) The latter, the plural of magnitude of adon, "master", is rendered in the Greek version as Kurios and in the Vulgate as Dominus. "The Lord", therefore, is the "Master of Masters".

The Psalmist pays tribute to this magisterial power of God when he exclaims, "The Lord ruleth me: and I shall want nothing," and again, "The earth is the Lord's and the fullness thereof: the world and all they that dwell therein." (5) St. Thomas explains the appropriateness of this name. If God is most properly

(1) *iam cit.*, p. 22

(2) cf. PRAT, Jehovah, in Dictionnaire de la Bible, Paris 1912, vol. III, part 2, col. 1220.

(3) Exod. 3. 14

(4) Exodus, 6.3.

(5) Psalms, 22.1, 23.1

called Yahweh because He is subsisting being,⁽¹⁾ He is also properly called Adonai, or Lord;⁽²⁾ although the name Lord signifies the divine substance only indirectly.⁽³⁾

But what is the precise basis for this divine dominion over all creatures? "It is manifest that dominion belongs to God for a proper and single reason, namely because He Himself made all things and maintains over all supreme sovereignty."⁽⁴⁾ Dominion signifies the power which one being has over another; but God's dominion over creatures is dominion over their very essence which He Himself has produced.⁽⁵⁾ As a result of this the creature stands in relation to the Creator as to the

(1) "Hoc nomen, qui est, triplici ratione est maxime proprium nomen Dei. Primum quidem propter suam significationem. Non enim significat formam aliquam sed ipsum esse." I, 13, 11.

(2) "Sequitur quod Deus non secundum rationem tantum sed realiter sit Dominus." I, 13, 7, ad 5.

(3) "Huiusmodi non significant substantiam divinam directe, sed indirecte; inquantum praesupponunt ipsam; sicut dominium praesupponit potestatem, quae est divina substantia." I, 13, 7.

(4) "Manifestum est quod dominium convenit Deo secundum propriam et singularem quandam rationem, quia scilicet ipse omnia fecit et quia summum in omnibus obtinet principatum." III Sent. 11, 1, 3.
"In Deo fundatur ratio domini in ratione creatoris..et ratio est clara, quia cum habet dominium a se, et non ab alio communicatum, habet dominium et principatum super creaturas secundum quod naturaliter ipsi subjectae sunt, et hoc est quod ab illo habuerunt esse." John of St. Thomas, De Religione, Disp XIX, art. 3.

(5) "Creatio est productio alicujus rei secundum totam substantiam, nullo praesupposito quod sit vel increatum vel ab alio creatum."
I, 65, 3, c.

principle of his being,⁽¹⁾ in other words, completely subject to His sovereignty. God "owns" His creatures in the fullest sense of the word, for creation can be the work of God alone. ⁽²⁾ This dominion, moreover, which God has over His creatures by virtue of the act of creation, must be incommunicable. For it consists in a relationship between the creature and the unique principle of being.

Created things, however, are subject to God in another way than by virtue of creation. They are subject also to the Divine Government or Providence. ⁽³⁾ "By Thy Providence, Father, Thou governest all things." ⁽⁴⁾ Being is not the only good that God has given created things. He has also given them the added good of ordering them to their proper ends and particularly to their final end, which is the divine goodness. ⁽⁵⁾ This ordering of

(1) "Creatio in creatura non sit nisi relatio quaedam ad creatorem sicut ad principium sui esse." I, 45, 3

(2) "Producere autem esse absolute pertinet ad rationem creationis. Unde manifestum est quod creatio est propria actio ipsius Dei." I, 45, 5.

(3) "Necesse est omnia quae habent quocumque modo esse, ordinata esse a Deo in finem." I, 22, 2

(4) "Tu autem, Pater, gubernas omnia providentia." This is St. Thomas's rendition of the Vulgate: Tuae autem providentiae gubernat. (Wis. 14.3) I, 22, 1, sed contra.

(5) "In rebus autem creatis invenitur bonum non solum quantum ad substantiam rei sed autem quantum ad ordinem earum in finem; et praecipue in finem ultimum^m; qui est bonitas divina." I, 22, 1.

created things to their proper end pertains to the divine intellect: "The plan of ordering things to their end pre-exists in the divine intellect."⁽¹⁾ It is therefore properly called Providence, as the principle part of the virtue of prudence, which has as its object to order things to their ends, is known by that name.⁽²⁾ Providence, however, pertains not to the divine intellect alone, but also to the divine will. "Providence is in the intellect, but it presupposes the willing of the end. For no one orders things to be done for an end unless he wills the end."⁽³⁾ Two things, moreover, pertain to the divine providence: the ratio ordinis, which is providence, simpliciter; and the executio ordinis, which is called the divine government. The former is eternal, the latter as a transient act of God having its effect in time, is temporal.⁽⁴⁾

God, therefore, exerts a twofold dominion over creatures: one, by the communication of being, which pertains to the

(1) Ibid.

(2) "Providentia est principaliter inter omnes partes prudentia quia omnia alia quae requiruntur ad prudentiam ad hoc necessaria sunt ut aliquid recte ordinetur in finem." IIa, 49, 6 ad 1.

(3) "Providentia est in intellectu, sed praesupponit voluntatem finis. Nullus enim praecipit de agendis propter finem, nisi velit finem." I, 22, 1, ad 3.

(4) "Ad providentiae curam duo pertinent: scilicet ratio ordinis, quae dicitur providentia et dispositio; et executio ordinis, quae dicitur gubernatio. Quorum primum est aeternum; secundum temporale." Ibid., ad. 2.

the divine essence; the other by virtue of the divine providence which directs creatures to their proper ends, which pertains to the divine intellect and will. Both, however, pertain to the divine goodness, which by creation has communicated to creatures goodness, quoad substantiam, and by divine providence brings them to the perfection of being. (1)

(1) "Cum enim sit optimi optima producere, non convenit summae bonitate Dei quod res productas ad perfectum non perducat. Ultima autem perfectio est in consecutione finis. Unde ad divinam bonitatem pertinet ut sicut produxit res in esse, ita etiam eas ad finem perducat; quod est gubernare."
I. 103, 1.

What is the end or purpose of this dominion of providence? From the part of the creature it is, as we have seen, the creature's perfection. In this respect it may be called a ⁽¹⁾ dominium auctoritatis. But from the part of God it can be but one thing, namely God himself. "Wherefore, since God does not wish things other than himself except for an end, which is his goodness, it cannot be said that anything other than his goodness moves his will. And so, just as he knows things other than himself by the knowledge of his own essence, so he wills ⁽²⁾ things other than himself by willing his own goodness." God, therefore, makes use of creatures to further his own ends. He rules them by his providence, so to speak, "ad propriam utilitatem sui." In other words, he exercises over them a dominium proprietatis, or ownership, apart from that which he enjoys by right of creation.

How is this divine dominion or ownership of creatures exercised? By law. "Law," says St. Thomas, "is nothing other than

(1) p.25

(2) "Unde quia Deus alia a se non velit nisi propter finem, qui est sua bonitas, non sequitur quod aliquid aliud moveat voluntatem ejus nisi bonitas sua. Et sic, sicut alia a se intelligit intelligendo essentiam suam, ita alia a se vult volendo bonitatem suam." I, 19, 2, ad 2.

the dictate of practical reason in a ruler who governs some perfect community. But it is evident that, supposing the world is ruled by divine providence, the entire community of the universe is governed by the divine reason. And so that ratio of the government of creatures existing in God as ruler of the universe, has the nature of law."⁽¹⁾ Insofar as this law exists in God, it is called eternal.⁽²⁾ But "as all creatures which are subject to divine providence are ruled and measured by the eternal law, it is evident that all participate to some degree in the eternal law insofar as from its impression they are inclined to their proper acts and ends."⁽³⁾ Rational creatures, however, participate in the eternal law in a more excellent manner because by the light of natural reason they are able to discern what is good and what is evil; which participation is known as the natural law.⁽⁴⁾

(1) "Nihil est aliud lex quam dictamen practicae rationis in principe, qui gubernat aliquam communitatem perfectam. Manifestum est autem, supposito quod mundus divina providentia regatur, quod tota communitas universi gubernatur ratione divina. Et ideo ipsa ratio gubernationis rerum in Deo sicut in principe universitatis existens legis habet rationem." I II, 91, 1.

(2) "Et quia divina ratio nihil concipit ex tempore, sed habet aeternum conceptum, ut dicitur Prov. VIII, inde est quod huiusmodi legem oportet dicere aeternam." *ibid.*

(3) "Unde cum omnia quae divinae providentiae subduntur, a lege aeternam reguntur et mensurentur, manifestum est quod omnia participant aliquo modo legem aeternam, inquantum scilicet ex impressione ejus habent inclinationes in proprios actus et fines." *ibid.* 2.

(4) "Lex naturalis nihil aliud est quam participatio legis aeternae in rationali creatura." *ibid.*

Irrational creatures also participate in the eternal law according to their nature. "But whereas a rational creature participates in it intellectually and rationally, and so the participation in the eternal law on the part of a rational creature is properly called law - for law is something pertaining to reason, in an irrational creature the participation is not rational and therefore cannot be called law except by similitude."⁽¹⁾ Motivated by instinct and not by reason, irrational creatures are more accurately described as governed by the laws of nature.

Now just as God leads rational and irrational creatures to their proper ends by different means, so are those ends different in themselves. For although the ultimate end of all creatures is the same,⁽²⁾ their proper ends, by which they attain their ultimate end, are different. Thus the proper end of man is eternal beatitude⁽³⁾ which consists in the contemplation of the

(1) "Sed quia rationalis creatura participat eam rationaliter et rationabiliter, ideo participatio legis aeternae in creatura rationali proprie lex vocatur; nam lex est aliquid rationis; in creatura autem irrationali non participatur rationaliter; unde non potest dici lex nisi per similitudinem." *ibid.*, ad 3.

(2) "Si ergo loquamur de ultimo fine hominis quantum ad ipsam rem quae est finis, sic in ultimo fine hominis omnia alia conveniunt; quia Deus est ultimus finis hominis et omnium aliarum rerum." *ibid.*, 1, 8.

(3) "Ultimus autem finis vocatur beatitudo." *ibid.*, 3, 1.

divine essence.⁽¹⁾ This beatitude, however, is not the divine essence itself but an act of the human intellect.⁽²⁾ Thus the divine essence is said to be the ultimate end of man, materialiter, while beatitude is his ultimate end, formaliter. Irrational creatures, however, although sharing with man the same ultimate end materialiter, have not the necessary faculties for the attainment of man's proper end. They have however their own proper act from which they receive their perfection.⁽³⁾ "The less noble creatures exist for the more noble creatures; as those creatures which are beneath man are for man."⁽⁴⁾ In man's service therefore, irrational creatures attain their proper end, and through man their final end. For, "the proximate end does not exclude the final end. Wherefore the fact that corporal creatures were made for spiritual creatures does not exclude their having been made for

(1) "Ultima et perfecta beatitudo non potest esse nisi in visione divinae essentiae." *ibid.*, 8.

(2) "Secundum quod beatitudo hominis est aliquid creatum in ipso existens, necesse est dicere quod beatitudo hominis sit operatio." *ibid.*, 2.

(3) "Sic igitur et in partibus universi unaquaeque creatura est propter suum proprium actum et perfectionem." I, 65, 2.

(4) "Creaturae ignobiliores sunt propter nobiliores; sicut creaturae quae sunt infra hominem sunt propter hominem." *ibid.*

the divine goodness."⁽¹⁾

St. Thomas thus presents to us a vision of the universe in which every creature, inanimate and animate, vegetative, sensitive and rational, has its proper function to perform and its proper perfection to seek. Every creature in the universe owes its being to the Creator. Every creature is also subject in all things to the divine Providence which directs each to its proper end by the dictates of the eternal law, step by step through an ascending hierarchy until the entire universe returns to the divine goodness whence it came. Thus does he vindicate the words of the Psalmist which he quoted at the beginning of his treatise, "The earth is the Lord's and the fullness thereof: the world and all that dwell therein." He has established the fact of God's absolute ownership of the universe, and that by two titles: 1) creation, by which he has dominion over all being; 2) providence, by which he orders all creatures ad propriam utilitatem sui. We cannot question therefore his assertion in the first objection of article one: The dominion over all external creatures is proper to God. "Tu solus Dominus!" But must we by the same token conclude that ownership of any kind is impossible for man? Is the prerogative of ownership

(1) "Finis proximus non excludit finem ultimum. Unde per hoc quod creatura corporalis facta est quodammodo propter spirituales, non removetur quin sit facta propter Dei bonitatem." *ibid.*, ad 2.

incommunicable? Here we are not concerned with what titles man may possess to ownership but whether or not the name "owner", or dominus, may be predicated of him.

In his commentary on the *Metaphysics* of Aristotle, St. Thomas tells us, "One thing may be predicated of different objects in several ways: 1) according to a reason that is altogether the same, and then it is said to be predicated of them univocally, as 'animal' is predicated of a horse and an ox; 2) according to reasons altogether different, and then it is said to be predicated of them equivocally, as 'dog' is predicated of a star and an animal; 3) according to reasons partly different and partly not different: different, in that they imply different habitudes; one, in that those different habitudes refer to one and the same thing; and that is said to be predicated analogically, that is, proportionately, as each refers to the one thing according to its habitude."⁽¹⁾ In reply, then, to the question whether those things which are said both of God and creatures

(1) "Aliquid praedicatur de diversis multipliciter: quandoque quidem secundum rationem omnino eadem, et tunc dicitur de eis univoce praedicari, sicut animal de equo et bove. Quandoque vero secundum rationes omnino diversas; et tunc dicitur de eis aequivoce praedicari, sicut canis de sidere et animali. Quandoque vero secundum rationes quae partim sunt diversae et partim non diversae: diversae quidem secundum quod diversas habitudines important, unae autem secundum quod ad unum aliquid et idem istae diversae habitudines referuntur; et illud dicitur 'analogice praedicari', idest proportionaliter, prout unumquodque secundum suam habitudinem ad illud unum refertur." *Meta. IV, 1, (535)*.

are said univocally, he states, "It is impossible for anything to be predicated of God and creatures univocally...If anything is said of God and of creatures, it is said in accordance with some order of the creature to God, as to its principle and cause in which preexist all the perfections of created things. And this mode of communication is the mean between pure equivocation and simple univocation. For in these things which are said analogically, neither is the ratio one, as in univocation, nor totally diverse, as in equivocation; but the name which is thus used multiply signifies different proportions to the same thing."⁽¹⁾

Applying this principle to the first title to divine dominion, creation, it is evident that in this sense no man can be said to have dominion over creatures. "External things can be considered in two ways. First as regards their nature, and this is not subject to the power of man, but only to the power of God whose mere will all things obey."⁽²⁾ God's second title to

(1) "Impossibile est aliquid praedicari de Deo et creaturis univoce. Quia omnis effectus non adaequans virtutem causae agentis, recipit similitudinem agentis non secundum eadem rationem sed deficienter...Et sic quidquid dicitur de Deo et creaturis dicitur secundum quod est aliquis ordo creaturae ad Deum, ut ad principium et causam, in qua praesistent excellenter omnes rerum perfectiones. Et iste modus communicationis medium est inter puram aequivocationem et simplicem univocationem. Neque enim in his quae analogice dicuntur est una ratio, sicut in univocis, nec totaliter diversa, sicut in aequivocis; sed nomen quod sic multipliciter dicitur, significat diversas proportionales ad aliquid unum." I, 13, 5.

(2) "Res exterior potest dupliciter considerari: uno modo

creation, however, is the divine providence by which the divine intellect and will make use of created things. And here St. Thomas finds a basis for ownership of created things by man: "Secondly, as regards their use, and in this way man has a natural dominion over external things, because by his reason and will he is able to use them for his own profit."⁽¹⁾ Man, therefore, is an owner, or dominus, in the strict sense of the word. But the term is applied to him not univocally, as his power over creatures is dependent on the divine providence,⁽²⁾ nor yet equivocally, because he is able by his intelligence and will actually to make use of created things, but analogously, analogia proportionalitatis propriae.⁽³⁾

Here it is not our purpose to establish man's de facto

(1) "Alio modo quantum ad usum ipsius rei; et sic habet homo naturale dominium exteriorum rerum, quia per rationem et voluntatem potest uti rebus exterioribus ad suam utilitatem quasi propter se factis." *ibid.*

(2) "Sunt aliqua media divinae providentiae; quia inferiora gubernat per superiora, non propter defectum suae virtutis, sed propter abundantiam suae bonitatis; ut dignitatem causalitatis etiam creaturis communicet." I, 22, 3.

(3) "Terminus analogus est analogus secundum analogiam interisecam, si ratio significata est una secundum quid instrinsecus. Terminus analogus secundum analogiam intrinsecam dicitur analogus analogia proportionalitatis propriae." GREDT, Elementa Philosophiae, I, p. 135.

ownership or dominion over created things. That will be the task of the succeeding chapter. In the present chapter we have merely endeavoured to show that while God's dominion over the nature of external things, by virtue of creation (potest facere) is incommunicable, there is no intrinsic repugnance that his dominion over the use of external things (potest uti) should be communicated analogically and in a secondary sense to man. (1)

(1) "Dives ille reprehenditur ex hoc quod putabat exteriora bona esse principaliter sua, quasi non accepisset ea ab alio, scilicet a Deo." II II, 66, 1 ad 2.

Chapter II

HUMAN OWNERSHIP

"Let us make man to our image and
likeness and let him have dominion
over the whole earth."
Gen.1.26.

As was suggested at the end of the preceding chapter, man's ownership of external things, in an analogous and secondary sense, implies two things: first, man's subjective capacity to exercise ownership; and second, the entrusting of external things to man by God, the supreme owner of all creation. The elaboration of these two points is the purpose of the present chapter, together with a discussion of their corollary: man's right to ownership.

St. Thomas approaches the question of human ownership in the usual manner of the Summa by giving first the data of divine revelation. In the argument sed contra⁽¹⁾ he quotes Psalm 8: "(Thou hast made him a little less than the angels, thou hast crowned him with glory and honor: and hast set him over the works of thy hands.) Thou hast subjected all things under his feet."⁽²⁾ Again, in the body

(1) IIa, 66, 1, c.

(2) vv. 6-8. St. Thomas quotes only v.8.

of the article, he quotes Genesis 1.26: "Let us make man to our image and likeness: and let him have dominion over the fishes of the sea, (and the fowls of the air, and the beasts, and the whole earth, and every creeping creature that moveth upon the earth.)" To this latter text we might well add that of its execution: "And God created man to his own image: to the image of God he created him: male and female he created them. And God blessed them, saying: Increase and multiply, and fill the earth, and subdue it, and rule over the fishes of the sea, and the fowls of the air, and all living creatures that move upon the earth. And God said: behold I have given you every herb bearing seed upon the earth, and all the trees that have in themselves seed of their own kind, to be your meat."⁽¹⁾

In the three passages quoted above a parallelism can be noted. In each case there is first the insistence on man's creation in a state superior to that of other earthly creatures: "a little less than the angels" (Ps.8.6), "to our image and likeness" (Gen.1.26) and "to his own image" (Gen.1.27). Consequent upon that is the statement of his dominion over them: "thou hast subjected all things under his feet" (Ps.8.8), "let him have dominion over .. the whole earth" (Gen.1.26), and "fill the earth, and subdue

(1) Gen.1.27-29.

it, and rule over...all living creatures" (Gen.1.28). All three are a clear indication of man's superior nature and of the close connection between this fact and the explicit grant of dominion over all external creatures. "Man, the image of God, is thus endowed with a sovereignty analogous to that of God over the entire universe."⁽¹⁾

But according to the Angelic Doctor, not only has man explicitly been given dominion over all creatures, but "man has a natural dominion over external things," and again, "the possession of external things is natural to man."⁽²⁾ We must look therefore for indications of an implicit grant to man of dominion over inferior creatures of which the explicit grant in Gen. 1.28 is but the confirmation.

"An object," says St. Thomas, "is called an image in that it is an imitation of another. In a perfect image nothing is lacking to the image that is present in that of

(1) "L'homme, image de Dieu, est donc pourvu d'une souverainete analogue a celle de Dieu sur l'univers entier." SPICQ, O.P., La Justice-II, Paris 1934, append. 2, La Theologie du Droit de Possession, p. 281.

(2) "Et sic habet homo naturale dominium exteriorum rerum."
"Possessio rerum exteriorum est homini naturalis." II II, 66. 1.

which the image is the expression. It is evident that there is found in man some similitude which is deduced from God as from an exemplar; yet there is not a similitude according to equality because the exemplar infinitely exceeds exemplification. And so the image of God is said to be present in man not perfectly but imperfectly."⁽¹⁾ The Son is "the perfect image of God, perfectly representing that whose image he is. And so he is called imago, and never ad imaginem. But man, because of his similitude is called imago, and because of the imperfection of the image is called ad imaginem."⁽²⁾ Man, moreover, "according to this is most to the image of God, that his intellectual nature is most capable of imitating God. But an intellectual nature imitates God most closely in that God knows and loves himself."⁽³⁾ Irrational creatures,

(1) "Imago dicitur ex eo quod agitur ad imitationem alterius.. In perfecta imagine non deest aliquid imagine quod inest illi de quo expressa est. Manifestum est autem quod in homine invenitur aliqua Dei similitudo quae deducitur a Deo sicut ab exemplari; tamen est similitudo secundum aequalitatem, quia in infinitum excedat exemplar hoc tale exemplatum." I, 93, 1.

(2) "Primogenitus omnis creaturae est imago Dei perfecta, perfecte implens illud cuius imago est. Et ideo dicitur imago et numquam ad imaginem. Homo vero et propter similitudinem dicitur imago, et propter imperfectionem similitudinis dicitur ad imaginem." ibid., ad 2.

(3) "Cum homo secundum intellectualem naturam ad imaginem Dei esse dicatur, secundum hoc est maxime ad imaginem Dei secundum quod intellectualis natura Deum maxime imitare potest. Imitatur autem intellectualis natura maxime Deum quantum ad hoc quod Deus seipsum intelligit et amat." ibid., 4.

however, not being possessed of intelligence and will, are not made ad imaginem Dei; for although they are in some way similitudes expressed by the exemplar, in that they have being - life, their similitude is according to genus only or secundum accidens commune. Man, however, having a similitude to God secundum accidens proprium speciei - both being intellectual substances - is truly made ad imaginem Dei.⁽¹⁾

Man, therefore, by his very nature as an intellectual substance made to the image of God, possesses, though imperfectly and analogously, that same relation toward irrational nature as God himself - with the necessary exclusion of that unique divine prerogative of creation and preservation in being. But this, as we have seen,⁽²⁾ is the relation of sovereignty and of ownership, by virtue of the divine providence. Man, therefore, may truly be given the title of dominus; as regards irrational creation he is a "petit seigneur".

Man has, moreover, the power to make this sovereignty effective. "When one is constituted in any dignity he has not only the excellence of status but also the power of

(1) "Non quaelibet similitudo, etiamsi sit expressa ex altero, sufficit ad rationem imaginis. Si enim similitudo sit secundum genus tantum, vel secundum aliquod accidens commune, non propter hoc dicetur aliquid esse ad imaginem alterius. Requiritur autem ad rationem imaginis quod sit similitudo secundum speciem, vel ad minus secundum accidens proprium speciei... Sic ergo patet quod solae intellectuales creaturae, proprie loquendo, sunt ad imaginem Dei." I, 103, 2.

governing those who are subject to him."⁽¹⁾ An intellectual being, he is endowed with the intellectual faculties of intellect and will.⁽²⁾ By virtue of the former man is able to comprehend the nature and purpose of things;⁽³⁾ by virtue of the latter he desires and wills those things presented to him by his intellect as good.⁽⁴⁾ Being thus endowed with faculties analogous to the divine intellect and will,⁽⁵⁾ by which the divine providence operates, man also is able to direct things to their proper ends and his own utility, thus exercising a providence or dominion over them. "A rational creature is so subject to the divine providence that he is not only governed by it but also can comprehend the order of

(1) "Aliquis ex hoc quod est in aliqua dignitate constitutus, non solum quamdam status excellentiam habet, sed etiam quamdam potestatem gubernandi subditos." II II, 102, 1, ad 2.

(2) "In solo Deo intellectus est ejus essentia. In omnibus aliis creaturis intellectualibus intellectus est quaedam potentia intelligentis." I, 89, 1.

(3) Objectum intellectus est quod quid sit." I, 57, 1, ad 2.

(4) "Quaedam vero inclinantur ad bonum cum cognitione qua cognoscunt ipsam boni rationem, quod est proprium intellectus; et haec inclinatio dicitur voluntas." I, 59, 1.

(5) Analogous both because of their limitations and because they are faculties.

providence and therefore is able to provide for and rule over others."⁽¹⁾

"And thus man has a natural dominion over external things because through his reason and will he can make use of them for his own utility."⁽²⁾ God, however, has not given man the dignity of dominus and the faculties of intellect and will in vain. He has also committed to him active dominion over created things: "Semper enim imperfectiora sunt propter perfectiora. And by this argument the Philosopher proves that the possession of external things is natural to man."⁽³⁾

Man has been entrusted with this dominion as the agent and instrument of divine providence. "Two things pertain to providence: the order of disposing things to their end and the execution of this order.. As to the second, there are certain agents of divine providence; for God governs inferior beings through superior ones, not because his own power is deficient, but because of the abundance of his goodness that he may

(1) "Creatura rationalis sic divinae providentiae subiacet quod non solum ab ea gubernatur, sed etiam rationem providentiae utrumque cognoscere potest; unde sibi competit etiam aliis providentiam et gubernationem exhibere." III C.G., 113.

(2) "Et sic habet homo naturale dominium exteriorum rerum, quia per rationem et voluntatem potest uti rebus exterioribus ad suam utilitatem quasi propter se factis." II II, 66, 1.

(3) "Semper enim imperfectiora sunt propter perfectiora.. Et ex hac ratione Philosophus probat quod possessio exteriorum rerum est homini naturalis." *ibid.*

communicate to creatures the dignity of causality."⁽¹⁾ Man exercises this dominion first over his own actions. "Beings endowed with reason move themselves toward their end because they have dominion over their actions through free will which is the faculty of the will and of reason."⁽²⁾ It is in this freedom, moreover, of which he is the unique earthly possessor, that his exercise of dominion over inferior nature is founded.⁽³⁾ For he has need of them as instruments by which he is freely to attain his last end; while they in turn have need of him as the free medium through whom their last end is attained.

The divine providence has ordained that man should attain his last end freely. "It would be repugnant to the divine providence if that were taken from any being by which it is made like to God. But a voluntary agent is like to God in that he acts freely; for it has been shown that free will exists in God. Liberty therefore is not taken away by

(1) "Ad providentiam duo pertinent; scilicet ratio ordinis rerum provisarum in finem et executio hujus ordinis, quae gubernatio dicitur.. Quantum ad secundum, sunt aliqua media divinae providentiae; quia inferiora gubernat per superiora, non propter defectum suae virtutis, sed propter abundantiam suae bonitatis, ut dignitatem causalitatis creaturis etiam communicet." I, 82, 5.

(2) "Illa ergo qui rationem habent, seipsa movent ad finem, quia habent dominium suorum actuum per liberum arbitrium quod est facultas voluntatis et rationis." I II, 1, 2.

(3) "Dominium quod maxime pertinet ad potestatem liberam, formaliter invenitur in voluntate eo quod de illo dicemur habere dominium quo utimur cum volumus." JOHN OF ST. THOMAS, Cursus Philosophicus, III, 12, 2.

providence."⁽¹⁾ But when is a man really free? "Liber est qui sui causa est."⁽²⁾ He is free only when he can exert a providence over himself, making free use for his own ends of all those things which are necessary to him; when he is not dependent upon another for those things which are essential to the preservation of that liberty but possesses them as his own. But of what has he need? Of all that he must use for the perfection of his nature. "An intellectual substance uses all other things for himself: either to the perfection of his intellect as he explores the truth in them; or for the practice of virtue and the explanation of knowledge, as the artist makes known his concept of his art in corporal matter; or even for the sustenance of the body which is united to the intellectual soul, as is evident in man. It is manifest, therefore, that God has provided all things for the use of intellectual substances."⁽³⁾

(1) "Esset igitur divinae providentiae repugnans si alicui rei subtraheretur illud per quod assequitur divinam similitudinem. Agens autem voluntariam assequitur divinam similitudinem in hoc quod libere agit; ostensum est enim liberum arbitrium in Deo esse. Non igitur per providentiam subtrahitur voluntatis libertas." III C.G., 73.

(2) "Liber enim est qui sui causa est." *ibid.*, 112.

(3) "Intellectualis substantia omnibus aliis utitur propter se: vel ad intellectus perfectionem, quia in eis veritatem speculatur; vel ad suae virtutis executionem et scientiae explanationem, ad modum quo artifex explicat artis suae conceptionem in materia corporali; vel etiam ad corporis sustentationem quod est unitum animae intellectuali, sicut in hominibus patet. Manifestum est igitur quod propter substantias intellectuales omnia divinitus providentur." *ibid.*

Noteworthy in this passage is the insistence that God has provided material things for all man's needs. Not only those of his body which requires adequate food, clothing and shelter for its individual preservation - and a more generous allowance for the reproduction and preservation of the species; but also those of the spirit which makes use of material things in the realm of the scibile, or science, for the perfection of the intellect, in the realm of the agibile, or moral virtues, for the perfection of the will, and finally in the realm of the factibile, or art and work, by which man puts on matter the mark of rational being. God has destined material things for the perfection of the whole man.

It is, moreover, of the nature of irrational creatures that they should serve rational creatures, "That being which has dominion over its own acts is free in acting. But that which by some necessity is moved to action by another is subject to servitude. Every other creature, therefore, is naturally subject to servitude while only an intellectual nature is free. But in any regime the free are provided for because of themselves, the slaves because they are useful to the free. So therefore by divine providence intellectual creatures are provided for because of themselves, and the other creatures for the former."⁽¹⁾

(1) "Quod dominium sui actus habet liberum est in agendo.. Quod

This service of inferior creatures to man, however, by which he makes use of them to attain his last end, is but part of the greater scheme of divine providence by which all things are returned to the divine goodness from which they came. "One observes in nature an order of species by grades. Mixed creatures are more perfect than the elements, plants than minerals, animals than plants, and man than other animals."⁽¹⁾ Of all God's creatures, however, only rational creatures can attain the final end of the universe by their own actions.⁽²⁾ But, says St. Thomas, "When certain beings are ordered to a certain end and are unable to attain that end through themselves, they should be ordered to those beings which do attain that end as ordered to it because of themselves."⁽³⁾ But man is a μικρὸς κόσμος. In him are found, in a sense, all

(1) "In rebus naturalibus gradatim species ordinatae esse videntur; sicut mixta sunt perfectiora elementis; et plantae corporibus mineralibus; et animalia plantis; et homines aliis animalibus." I, 47, 2.

(2) "Sola creatura intellectualis ad ipsum ultimum finem universi sua operatione pertinet, scilicet cognoscendo et amando Deum." III C.G., 111.

(3) "Quandocumque sunt alia ordinata ad finem aliquem, si qua inter illa ad finem pertingere non possunt per seipsa, oportet ordinari ad illa quae finem consequuntur, quae propter se ordinantur in finem." III C.G., 112.

Concluded from page (55)

(1) autem quadam necessitate ab alio agitur ad operandum, servituti subjectum est. Omnis igitur alia creatura naturaliter servituti subjecta est, sola vero natura intellectualis libera est." *ibid.*

(57)

things. And just as in this fact is found a basis for his domination of material nature,⁽¹⁾ so too in this way is material nature elevated to its last end. By his use of material things he makes them, as it were, a part of himself and thus brings them into contact with the divine goodness which he alone, as a free and rational being, is able to attain. Man thus becomes the medium between the material and the divine, the active instrument of divine providence in ordering material nature to the end of the universe.

Thus does St. Thomas by a threefold argument show that "the possession of external things is natural to man." It is natural because it pertains to man's nature, made as he is to the image and likeness of God, a free agent, endowed with the faculties of intellect and will. It is natural also from the nature of external things, which, being irrational creatures and therefore incapable of attaining God by their own acts, have been created for man. It is natural too in the wider sense of the order of nature, from the operation of which St. Thomas deduces that God has provided irrational creatures for the use of man.

(1) "Et ideo secundum modum quo dominatur his quae in seipso sunt, secundum hunc modum competit ei dominari aliis."
I, 96, 2.

But the notion of dominion is not completed by the establishment of man's capacity for ownership and the actual entrusting of external things to him. A third element must be considered which is properly a corollary of the other two, namely, man's right of ownership. However evident the inference might have been to the scholastic mind, today, when in non-scholastic circles the discussion of ownership is almost entirely in terms of rights, a further clarification of this aspect is necessary.

What is the meaning of the term "right" in its modern philosophical usage? Cathrein defines it for us as "potestas moralis in rem suam".⁽¹⁾ We must look in vain in St. Thomas, however, for such a usage. In the first of his four articles on the subject "De Jure", he states that jus has a fourfold signification: the objective sense of ipsa res justa; the derived meaning of the ratio iuris, or law; and finally the more remote connotations of court and the decision of a judge.⁽²⁾

(1) "Jus sensu stricto acceptum recte definitur 'potestas moralis in rem suam'." CATHREIN, Philosophia Moralis, n.284.

(2) "Ita etiam hoc nomen jus primo impositum est ad significandum ipsam rem justam; postmodum autem est derivatum ad artem qua cognoscitur quid sit justum; et ulterius ad significandum locum in quo jus redditur, sicut dicitur aliquis comparare in jure; et ulterius dicitur etiam quod jus redditur ab eo cujus officium pertinet justitiam facere, licet etiam id quod decernit, sit iniquum." IIa IIae, 57, 1, ad 1.

(57)

In its primary, or objective, meaning it is the object of the virtue of justice⁽¹⁾ and its consideration in this sense is fundamental to the understanding of any principle of justice enunciated by St. Thomas.

The notion, however, of "potestas moralis", or moral faculty, is not alien to the mind of St. Thomas. It is conveyed frequently enough by the use of such terms as "licitum", "potest" and "potestas". Thus in discussing what we would call the "right of private property", St. Thomas asks "Utrum liceat alicui rem aliquam quasi propriam possidere."⁽²⁾ The use of "licitum", in its several forms, is particularly appropriate to convey the notion of a moral faculty. For a right is a faculty not in the physical sense of the intellectual potencies by which man is able to use external things, but rather in the moral sense of a relation because of which it is lawful for man to make external things his own. "Right", therefore, in the sense of moral faculty, is practically synonymous with licity. It is a faculty or potency only insofar as it signifies the power to perform a certain action morally. It has as its object not the substance but the quality of the

(1) "Justitiae prae aliis virtutibus determinatur secundum .
se objectum, quod vocatur justum; et hoc quidem est jus. Unde
manifestum est quod jus est objectum justitiae." *ibid.*, c.

(2) II II, 66, 2.

action.

But the moral faculty cannot be divorced from the physical. There is a causal relation between the two. The physical faculty is evidence of a finality, which is the basis of any notion of jus. "Quod autem aliquid debeat fieri, hoc provenit ex necessitate alienius finis."⁽¹⁾ From the finality implied in the physical faculty we proceed by induction to the notion of a ratio ordinis, or law, which orders to the subject of the faculty whatever is required for the fulfillment of its end. And it is in this law, ordering to the subject his jus, or that which is due him, which makes lawful the exercise of the physical potency. Man's right of ownership, or jus ad rem, is therefore the term of a relationship of the jus, in the objective sense, to its subject.

(1) I II, 99, 1.

In this relationship must be placed the ratio formalis of human ownership. In God, might and right are synonymous. But in man, where the two are so often in conflict, the notion of physical potency cannot be taken as synonymous with moral potency. Between the two must come the law, ordering the exercise of the physical faculty to its proper end and to the common good.⁽¹⁾

If "the possession of external things is natural to man", we may therefore say that man has a natural right of ownership or that his right of ownership is of the natural law. For the natural law is nothing more than a participation on the part of rational creatures in the lex aeterna, or ratio ordinis of providence, by which God rules the universe.⁽²⁾ But as all human law must be derived from the natural law,⁽³⁾ it is important that before we attempt to discuss property rights conferred by the civil law, we should understand thoroughly the nature and scope of man's natural right to

(1) "Lex quaedam regula est et mensura actuum, secundum quam inducitur aliquis ad agendum, vel ab agendo retrahitur." I II, 90, 1.

(2) "In ipsa (rationali creatura) participatur ratio aeterna per quam habet naturalem inclinationem ad debitum actum et finem; et talis participatio legis aeternae in rationali creatura lex naturalis dicitur." I II, 91 2.

(3) "Omnis lex humanitus posita intantum habet de ratione legis inquantum a lege naturae derivatur." I II, 95, 2.

(2)

ownership. We must therefore consider the subject of this right of ownership, its object, and the title by which this right is exercised.

It should first be noted that only a person can be the subject of a right. A right, as we have seen, is a potestas moralis. It pertains not to the physical order of instinct but to the moral order of law. It is a faculty given by law to one who is bound by law to attain a certain end. Now this presumes not only that the subject of the right be capable of comprehending his end⁽¹⁾ but also that he be endowed with free will by which, unlike the brute, he moves himself toward his end.⁽²⁾ It implies not only the independence which comes from individuality of substance but also that which comes from rationality and liberty. But according

(1) "Participatio legis aeternae in creatura rationali proprie lex vocatur; nam lex est aliquid rationis; in creatura autem irrationali non participatur rationaliter; unde non potest dici lex nisi per similitudinem."
I II, 91, 2, ad 3.

(2) "Quae vero havent notitiam finis, dicuntur seipsa movere, quia in eis est principium non solum ut agunt, sed etiam ut agunt propter finem." *ibid.*, 6, 1.

to St. Thomas, it is precisely this independence which constitutes what we call a "person."⁽¹⁾

Brute animals have not the right of ownership because they are not persons. They are moved by forces which they do not will toward an end which they do not comprehend. They are incapable not only of ownership but also of use, in the strict sense of the term. Although the various grades of irrational creatures depend for their existence upon inferior grades - the animal upon the plant or other animal, the plant upon inorganic matter - they cannot be said to use, or still less to own them. "To use is to apply a principle of action to the action. But to apply anything to something else pertains only to one who has it subject to his will; but this can only be done by one who has the knowledge to refer something to another, which pertains to reason. Only a rational animal therefore consents and uses."⁽²⁾

(1) "Persona igitur in quacunque natura significat id quod est distinctum in natura illa." I, 29 4.

"Sed adhuc quodam specialiori et perfectiori modo invenitur particulare et individuum in substantiis rationalibus, quae habent dominium sui actus; et non solum aguntur sicut alia sed per se agunt ... Et ideo quoddam speciale nomen habent singularia rationalis naturae; et hoc nomen est persona." ib., 1.

(2) "Uti est applicare aliquod principium actionis ad actionem, sicut consentire est applicare motum appetitivum ad aliquid appetendum, ut dictum est (quaest. praec., art. 1, 2 et 3). Applicare autem aliquid ad alterum non est nisi ejus quod habet super illud arbitrium; quod non est nisi ejus qui scit referre aliquid in alterum; quod ad rationem pertinet. Et ideo solum animal rationale consentit et utitur." I II, 16, 2.

The proper subject of the right of ownership therefore is man. He alone among animal creation is a person. But when we say that man has a natural right of ownership, what do we mean by man? Do we mean one particular man, or mankind taken as a whole, or every man? We mean that the right of ownership over all irrational creation is enjoyed by the human race as a whole, while every individual man, taken as a member of the collectivity, has a right to such property as is necessary for him to attain his end.

The donation of inferior creature to Adam, described in Genesis 1. 28, was not made to Adam as an individual but in his capacity as head and representative of the entire human race. God had created Adam as "the principle of the entire human species" just as God is the principle of the entire universe."⁽¹⁾ Our first parents, moreover, - and it was to them, not to Adam alone that dominion was given⁽²⁾ - were made by God "not only as singular persons but also as principles of the entire human nature which was to be handed on by them to posterity."⁽³⁾ The foundation, moreover, for this gift was

(1) "Ipse principium totius speciei, sicut Deus principium totius universi." I, 92, 2.

(2) "And God blessed them, saying: Increase and multiply and fill the earth, and subdue it, and rule over etc." Gen./I.28.

(3) "Primi parentes fuerunt a Deo instituti non solum sicut quaedam personae singulares sed sicut quaedam principia totius humanae naturae ab eis ad posteros derivandae." II II, 94, I, 3.

their human nature, made to the image and likeness of God. But this image is not peculiar to their individual nature; it is common to the species.⁽¹⁾ Dominion over external things, therefore, is the common property of the human race. And the race itself may be spoken of as endowed with the right of ownership because in its collectivity it constitutes a moral person.

But "rational creatures are directed by God to their acts not only according to the species but also according to the individual."⁽²⁾ God exercises his providence over man not only for the preservation of the human race but also for the preservation of the individual human soul.⁽³⁾ It is not only all men who He has decreed shall freely attain their last end but every man. And to every man is due those things which are necessary for him to attain his proper end. The right of ownership is the natural right of every member of the species as all, without exception, are made to the image and likeness of God.

(1) "Intellectus et ratio est potissime hominis natura; quia secundum eam in specie constituitur." I II, 31, 7

(2) "Creatura rationalis dirigitur a Deo ad suum actus, non solum secundum speciem, sed etiam secundum individuum." III C.G. 113.

(3) "Anima rationalis non solum secundum speciem est perpetuitatis capax, sicut aliæ creaturæ, sed etiam secundum individuum." ibid.

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But are not these two concepts of individual and collective right irreconcilable? Not if we have a proper understanding of the relation of the individual to the collectivity. There exists in every human person a twofold polarity by which he is drawn not only toward his own particular good but toward that of the community. His final end is beatitude, an individual good. Yet he can attain this end only as part of collectivity. He is one with his fellow man because he shares a common nature, because he has incurred a common guilt through his first parent, Adam, because he enjoys a common redemption through the second Adam, Christ. His final destiny is to be a member of a celestial society, the Kingdom of Heaven. On earth he lives as a member of civil society, the state, and is sanctified by membership in a supernatural society, the Church which is the Mystical Body of Christ. Although governed by God, because of himself, he is destined to attain his last end, or his particular good, only through the community. "A particular good is ordered to the common good as to an end; for the being of the part is because of the being of the whole; and therefore the good of a people is higher than the good of one man. But the highest good, which is God, is the common good since upon him depends

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the good of all creatures."⁽¹⁾

The right of the individual to possess external things, therefore, has its foundation in the right of the community of which he is a member, and with which he shares a common nature and destiny. As such it is and must be a limited right; limited by his own needs, by those of his neighbour, by the common good. It is in the last, moreover, that the synthesis of man's twofold polarity is realized. "He who seeks the good of the multitude, consequently seeks his own good, and for two reasons: first, because his particular good cannot be realized without the good of the family, or of the city, or of the kingdom. Wherefore Valerius Maximus said of the ancient Romans that 'they preferred that there should be poor people in a wealthy state than that there should be wealthy people in a poor state.' Secondly because since a man is a part of a home or a state, it is necessary that he consider what is good for him insofar as it leads to the good of the multitude. For the disposition of parts is good according to its relation to the whole."⁽²⁾

(1) "Bonum particulare ordinatur in bonum commune sicut in finem; esse enim partis est propter esse totius; unde et bonum gentis est divinius quam bonum unius hominis. Bonum autem summum, quod est Deus, est bonum commune, quum ex eo universorum bonum dependeat." III D.G. 17.

(2) "Ille qui quaerit bonum commune multitudinis, ex consequenti etiam quaerit bonum suum, propter duo: primo

The subject, then, of the right of ownership is man, considered both as an individual and collectively. In considering the object of the right of ownership we must observe two things: the material object, or those things which are subject to man's right of ownership; and the formal object, or the precise aspect under which the possession of external things may be said to be natural to man.

As to the former, it is evident from what we have seen above concerning the subjection of irrational creatures to man that his right of ownership extends to the entire material universe, although the extent to which they are subject to his physical power must vary. St. Thomas, however, observes that the latter has decreased because of original sin, before which all animals obeyed him in the way that domestic animals do today.⁽¹⁾ But all material creatures are

(1) "Inobedientia ad hominem eorum quae ei debent esse subjecta, subsecuta est in poenam ejus, eo quod ipse fuit inobediens Deo." I, 96, 1.

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"quidem quia bonum proprium non potest esse sine bono communi vel familiae, vel civitatis, aut regni. Unde et Valerius Maximus dicit de antiquis Romanis quod 'malebant esse pauperes in divite imperio quam divites in paupere imperio.' Secundo, quia cum homo sit pars domus vel civitatis, oportet quod homo consideret quid sit sibi bonum ex hoc quod est prudens circa bonum multitudinis. Bona enim dispositio partium accipitur secundum habitudinem ad totum." II II, 47, 10 ad2.

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in some way of service to man, either administering to his bodily needs or serving in the elaboration of his scientific knowledge.⁽¹⁾ If since the fall man can be subjected to his will only at the price of severe labor, it is not that man lacks the moral power over them but that he must win them by toil as the price of original sin. "Cursed is the earth in thy work. With labor and toil shalt thou eat thereof all the days of thy life."⁽²⁾

The right of the individual to the common heritage of the race extends to all that is required for the attainment of his end. To keep his body alive he must assimilate to himself the chemical elements of the inorganic world through the medium of either plant or animal life.⁽³⁾ By so doing he makes them a part of himself, his "own" in the most intimate sense of the term. But his right to ownership extends to more than what is necessary to supply the immediate needs of hunger. God does not provide for man in the same immediate way that he provides for the birds of the air and the beasts of the field. Man had been destined by God to

(1) "Indigebat tamen eis ad experimentalem cognitionem summendam de naturis eorum," *ibid.*, ad 2.

(2) Gen. 3.17.

(3) "Maxime necessarius videtur ut animalia plantis utantur in cibum, et homines animalibus, quod sine mortificatione eorum fieri non potest." II II, 64, 1.

provide for himself and for his dependents.⁽¹⁾ He must wrest from nature a sufficient store of the necessities of life to tide him through the winter, to secure his existence in time of flood or drought, to make provision for his care in sickness or old age. Furthermore, he must be possessed of goods in sufficient quantity to allow him to live with ^{the} dignity which becomes one made to God's image and to enjoy the leisure necessary for the development of his intellect and the worship of God. All these pertain to his perfection as a rational creature. He must, moreover, often provide not only for himself but for others; for in the normal exercise of his right to parenthood he will be charged with the care and education of his children, for whose continued sustenance in the event of his death provision must be made.

This obligation of man to provide for himself and others in the numerous contingencies that human needs give rise to, demands more than access to the fruits of nature. It is not by the chase, fishing, and gathering of wild foods that man can support himself and his dependents decently in any but tropical climates. If he is to "increase, multiply and fill the earth",⁽²⁾ he must have access to the means of production. He must have the right to till the soil, to tools, and even to machines, which in this day of concentrated population are indispensable means of subsistence. Only when he thus has

(1) Rationalis creatura excellentiori quodam modo divinae providentiae subiacet, in quantum et ipsa fit in providentiae particeps, sibi ipsi et aliis providens." I II, 91, 2.

(2) G. n. 1.28.

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access to the material things upon which his existence and that of his family depend, can he be said to freely provide for himself and others, freely to attain his end.

Man's right to ownership, therefore, extends to all that is necessary to the conservation of his life, in the widest sense of the term.⁽¹⁾ "Those riches are natural to man," St. Thomas tells us, "by which he is aided in filling his natural needs, such as food, clothing, vehicles and housing".⁽²⁾ But he also has a right to such "true riches as take away need and bring sufficiency to their possessor, so that a man may be sufficient unto himself for well living."⁽³⁾

But what shall we say is the formal object of the right of ownership? In what distinctive way does man exercise his natural dominion over external things? "An external thing can be considered in two ways: first, according to its nature, which is not subject to human power, but only to the divine power which

(1) "Secundum hanc inclinationem pertinent ad legem naturalem ea per quae vita hominis conservatur." I II, 94, 2.

(2) "Naturales quidem divitiae sunt quibus homini subvenitur ad defectus naturales tollendos, sicut cibus et potus, vestimenta, vehicula, et habitacula etc." I II, 2, 1.

(3) "Verae divitiae sunt ex huiusmodi rebus quibus subvenitur necessitate naturae ... quia possunt tollere indigentiam et facere sufficientiam habenti eas, ut scilicet homo sit sibi sufficiens ad bene vivendum." Pol. I, 7.

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all thing obey; secondly according to the use of the thing, and in this respect man has a natural dominion over external things because by his reason and will he can use them for his own utility as though they were made for him."⁽¹⁾ This principal of usage as synonymous with natural ownership is given a further clarification in the reply to the first objection of the same article (66,1): "God has ordered certain things for the corporal sustenance of man, and because of this man has a natural dominion over things as to the power of using them."⁽²⁾ St. Thomas thus rules out any claim to ownership pertaining to the order of creation and restricts man's right to the order of providence. But here he does not go so far as to discuss the specification of this right, which will be the subject of the following article. He defines man's natural right of ownership as a potestas utendi, by which man directs to his own ends the irrational creatures committed to him by providence. Use, therefore, is the formal object of the natural right of ownership. Every man is endowed with the natural right to use such material things as he needs in the attainment of his end.

(1) "Res exterior potest duplici considerari: uno modo quantum ad ejus naturam, quae non subiacet humanae potestati, sed solum divinae, cui omnia ad nutum obediunt; alio modo quantum ad usum ipsius rei; et sic habet homo naturale dominium exteriorum rerum quia per rationem et voluntatem potest uti rebus exterioribus ad suam utilitatem, quasi propter se factis." II II, 66, 1.

(2) "Deus habet principale dominium omnium rerum; et ipse secundum

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But by what title? What is man's claim to the use of material things? It cannot be work; because although work is a condition of use, it presupposes a primary right to make use of a thing by work. Man's title to ownership is founded in human nature itself, by which man is a diminutive "dominus", made to the image and likeness of God, yet needing irrational creatures to attain his end; and in the order of divine providence which has not only ordered inferior nature to man's needs but which has also made man the instrument of providence and the intermediary between irrational creation and God. It is therefore a connatural right, inalienable, independent of merit or demerit. It is not man's actions which are the basis of this right but his needs. "It is the due of any created thing that it have that which is ordered to it, as that a man should have hands and that other animals should serve him."⁽¹⁾

So strict is man's title to external things that it is even the object of the divine justice. St. Thomas defines justice

(1) "Debitum est alicui rei creatae, quod habeat id quod ad ipsam ordinatur; sicut homini quod habeat manus, et quod ei alia animalia serviant." I, 21, 1, ad 3.

(Concluded from page (72)).

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suam providentiam ordinavit quasdam res ad corporalem hominis sustentationem: et propter hoc homo habet naturale rerum dominium, quantum ad utendi ipsis." II II, 66, 1, ad 1.

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as "the constant and perpetual will of giving to each his due."⁽¹⁾ He distinguishes between commutative justice, which obtains between equals,⁽²⁾ and distributive justice, "according to which a ruler or dispenser gives to each one according to his dignity."⁽³⁾ It is this latter justice which obtains between God and man; but then only analogously, for "although in this way God gives one his due, God still is not a debtor; because he himself is not ordered to others but others to him."⁽⁴⁾ Man's right of ownership, by virtue of which he exacts material things from God, is therefore not absolute but relative; as it is dependent upon the divine wisdom which has ordered these things to him. It is, however, a true right, and the object of the divine justice, "God practices justice when he gives to each one what is due him according to his nature and condition."⁽⁵⁾

(1) "Convenientur definitur justitia quod est constans et perpetua voluntas ius suum unicuique tribuendi." II II, 57, 1.

(2) "Hunc ordinemdirigit commutativa justitia, quae consistit in his quae mutuo fiunt inter duas personas ad invicem." II II, 61, 1.

(3) "Alia quae consistit in distribuendo; et dicitur justitia distributiva, secundum quam aliquis gubernator vel dispensator dat unicuique secundum suam dignitatem." I, 21, 1.

(4) "Licet Deus hoc modo debitum alicui det, non tamen ipse est debitor; quia ipse ad alia non ordinatur, sed potius alia in ipsum." *ibid*, ad 3.

(5) "Deus operatur justitiam quando dat unicuique quod ei debetur secundum rationem suae naturae et conditionis." *ibid*.

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If the right of ownership gives man, independently of any extrinsic title, a claim upon the divine justice for whatever is necessary for his well being, it is evident that this right must take precedence over any claim of human justice. It must be respected not only by those, who, being given the care of the community, have the duty of dispensing material things to its members, but also by each individual member himself. Whatever title to ownership the civil courts may recognize can but be a specification of man's primary title given him by the divine justice under the natural law. Any disposition of property by positive law which violates this primary human right in any individual is manifestly unjust. For justice, whether human or divine, has a single object; that which is just.⁽¹⁾

In this chapter we have endeavoured to show how the Angelic Doctor establishes man's natural dominion over external things. Although this dominion is analogous, it is a true dominion or ownership. It is based upon the natural order, and it is a right which everyone who possesses human nature enjoys. It consists in the right to use external things for one's needs, whether they be needs of body or of soul. Founded in man's very nature, it is inviolable by any human authority. Because it pertains to man by virtue of his humanity, this natural dominion

(1) "Specialiter justitiae prae aliis virtutibus determinatur secundum se objectum, quod vocatur justum." II II, 57, 1.

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has been called by recent authors ⁽¹⁾ "human property", both to distinguish it from the divine property and from the several forms of property recognized by the civil law which are based upon an extrinsic title. Following our intention expressed earlier in this work, ⁽²⁾ we have used the term "ownership" to signify dominion in its subjective sense, restricting the term "property" to the thing owned or possessed. We have therefore headed this chapter "Human Ownership", and shall, as occasion arises, henceforth refer to man's natural dominion by that name.

Having thus discussed the legitimacy of human ownership, it remains to us to consider by what means this may be actualized. In the first article of Question 66, St. Thomas has treated only of ownership in general. In the following article he treats of the specific ways in which man realizes his dominion over external things. This will be the topic of discussion of the succeeding chapters.

(1) cf. PERES GARCIA, O.P., De Principiis Functionis Socialis Proprietatis Privatae Apud Div. Thomam Aquinatem, Fribourg, 1924; G. RENARD, Propriete Privée et Propriete Humaine, Paris 1926; E. MOUNIER, De La Propriete Capitaliste a La Propriete Humaine, Paris 1936.

(2) page 31.

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Chapter III

PRIVATE OWNERSHIP

"Let no man call his own that
which is common." St. Ambrose.⁽¹⁾

Having disposed of the first part of his treatise on ownership, in Question LXVI, article 1, "Whether the possession of external things is natural to man", St. Thomas now proceeds to complete his treatise, in article 2 of the same Question, "Whether it is lawful for a man to possess anything as his own."⁽²⁾ The legitimacy of human ownership, or possession, has been determined. He now considers the lawfulness of private ownership, or property.

We use the term "ownership" for both possession and property for both possessor and proprietor "own" things, though in different ways. The possessor owns a thing because he is a man, and by virtue of his human nature can call external things his own. St Thomas has shown in the preceding article that man's exercise of ownership over irrational

(1) Sermon LXIV, De Temp; also found in Decretals, Dist 47.

(2) "Utrum liceat alicui rem aliquam quasi propriam possidere.
11 11, 66, 2.

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creatures neither does violence to the rights of God, because it is a secondary and analogous ownership in accord with the divine will;⁽¹⁾ nor to any "rights" of the irrational creatures themselves, because they have been made for man. The proprietor, however, claims ownership by an extrinsic title and calls his property his own, not in reference to God or to irrational nature, but in reference to his fellow man. The thing owned is not merely his (sua), in the sense of being subject to him, but is his alone (propria), in the sense that the ownership pertains to him individually, to the exclusion of all other persons. Whereas St. Thomas, in speaking of human ownership, in article 1, avoids entirely the use of the second of these two possessive pronouns; in article 2, where he discusses private ownership, he uses propria, in various forms, no less than eleven times. Thus things privately owned are "res proprias"; private ownership is "proprietas possessionum", or "proprietas"; the act of owning is "appropriare", or "rem quasi propriam possidere".

Property, then, is distinguished from possession. It is not, however, its opposite but one of its species; the specific difference being individuality, expressed by

(1) "Dives reprehenditur ex hoc quod putabat exteriora bona esse principaliter sua, quasi non accepisset ab alio, scilicet a Deo." II 11, 66, 1, ad 2.

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St. Thomas in the phrase "quasi propriam". Property, or "proprietas possessionum", is opposed to communism, or "communitas possessionum", under which things are owned not individually but in common. To be consistent in our use of the term ownership, we shall refer to the former as "private ownership" and to the latter as "common ownership". Common ownership, however, admits of two meanings. If community is taken in the absolute sense of the human race, then common ownership means the right of the race as such and is opposed^{to} private ownership either by an individual or a collectivity, even though that collectivity be a sovereign state.⁽¹⁾ If community be taken, however, in the political sense of civitas, or the state, then common ownership means social ownership and is opposed to private ownership either by an individual member of the community or by an aggregate who do not represent the community. In this treatise, unless it be necessary to distinguish between common ownership in the absolute and in the relative sense, we shall use the term generically.

This distinction between private and common ownership is according to the subject, or ratione subjecti. St. Thomas also

(1) " Enfin, au regard de la communauté internationale, la propriété de l'Etat lui-même (ce mot pris au sens le plus large) n'est, au-delà de la 'suffisance' des besoins de la nation, qu'un pouvoir de procuration et de dispensation, une simple 'propriété privée'; et il y a lieu de lui appliquer, toutes proportions gardées, les mêmes charges qu'à la prop-

gives us another distinction, ratione actus. "Two things are competent to man in respect to exterior things. One is the power to procure and dispense them. The second thing that is competent to man regarding external things is their use."⁽¹⁾ We have already seen that the right of ownership consists essentially in the power of using: potest uti. But use, which in its generic sense is "the application of a thing to some operation",⁽²⁾ admits of two interpretations. It can be taken in the sense of administration, or productive use, or in the sense of fruition, or consumptive use. It is in the latter sense that St. Thomas speaks of use in the present article.

(1) "Circa rem exteriorem duo competunt homini: quorum unum est potestas procurandi et dispensandi...Aliud vero quod competit homini circa res exteriores est usus ipsarum." 11 11, 66, 2.

(2) "Usus rei alicujus importat applicationem rei illius ad aliquam operationem." 1 11, 16, 1.

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riété individuelle ou a toute autre propriété institutionnelle, dans l'intérêt du Bien commun." RENARD, La Théorie de L'Institution, Paris 1930, P.535.

It is use in the ultimate sense of human ownership, the application of external things to human needs. But such use of external things is normally possible only after external things have been made usable by human labour.

Wealth, to be enjoyed, must first be procured. That it is productive use which St. Thomas has in mind, when he speaks of the power of procuring, is evident from the contrast he makes between the solicitude of the private owner "ad procurandum aliquid" and the indifference of the communist,
⁽¹⁾
"laborem fugiens"; or again when he compares "procurare" to "adhibere studium".⁽²⁾ But with this power of procuring is

(1) "Magis sollicitus est unusquisque ad procurandum aliquid quod sibi competit, quam quod est commune omnium vel multorum, quia unusquisque laborem fugiens, relinquit alteri id quod pertinet ad commune." ll ll, 66, 1.

(2) "Ad perfectionem episcopalis status pertinet adhibere studium ad proximorum salutem. Sed si salutem aliorum procurare non possit, converiens est ut suae salutis intendit." ll ll, 185, 4.

reasonably adjoined the power of dispensing or distributing the wealth which is acquired, of administering its consumption "To dispense properly implies the distribution to individuals of a thing which is common to them."⁽¹⁾ It is in this act of administration, or of procuring and dispensing, that man appears as the agent or instrument of divine providence, rather than in consumption in which he is more its object. Ownership, therefore, whether common or private, is conveniently divided into administration and use.

In this distinction, however, it should be borne in mind that St. Thomas is speaking of property in its subjective sense. He speaks, indirectly, of production and consumption; but he does not, as do the socialists, make any fast distinction between productive and consumptive goods. Furthermore, as we shall see, although he seeks the common good as earnestly as any socialist reformer, he proposes to achieve it by inverting their traditional formula of "common ownership and private use", to read "private ownership and common use."

The discussion of this subject of appropriation follows naturally upon the establishment of man's right of possession. It answers the question of how this right is to be exercised.

(1) "Dispensatio proprie importat commensurationem alicujus communis ad singula." 1 11, 97, 4.

The problem had been stated for St. Thomas by Aristotle who, in the second book of his Politics, observed, "Three alternatives are conceivable: The members of a State must either have 1) all things or 2) nothing in common, or 3) some things in common and some not. That they should have nothing in common is clearly impossible, for the State is a community, and must at any rate have a common place. But should a well ordered State have all things, as far as may be, in common, or some only and not others? For the citizens might conceivably have wives and children and property in common, as Socrates proposes in the 'Republic' of Plato. Which is better, our present condition, or the proposed new order of society?"⁽¹⁾

St. Thomas, like Aristotle, was confronted by the fact that men actually do possess private property. Opposed to this fact he had not only the arguments of Plato and the communists, but also, apparently, his own teaching on human ownership which he had elaborated in the preceding article. And in addition, the patristic tradition, as manifested in the writings of many of the Fathers of the Church seemed to oppose private ownership and favor community of goods. It was

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his task, therefore, to determine whether private ownership was in keeping with the natural law, from the viewpoint both of human rights and of the common good; and whether it could be reconciled with the teaching of the Fathers of the Church.

St. Thomas deals with the first problem in his answer to the first objection proposed in article 2: "according to the natural law all things are in common; but private ownership is opposed to this community of goods."⁽¹⁾ "Community of goods," he tells us, "is attributed to the natural law not because the natural law states that all things must be possessed in common and nothing privately owned; but because the division of possessions is not according to natural law but rather according to human agreement, which pertains to positive law, as was said above (q. 57, a. 2, 3). Therefore private ownership is not contrary to the natural law but is added to it by the device of human reason."⁽²⁾

St. Thomas had already suggested the basis for this solution when discussing the condition of man in the state of original

(1) "Secundum jus naturale omnia sunt communia; cui quidam communitati contrariatur proprietates possessionum." II II, 66, 2, obj. 1.

(2) "Communitas rerum attribuitur juri naturali non quia jus naturale dicitur omnia esse possidenda communiter, sed quia secundum jus naturale non est distinctio possessionum, sed magis secundum humanum conditum, quod pertinet ad jus positivum ut supra dictum est (q. 57, a. 2, 3). Unde proprietates possessionum non est contra jus naturale sed juri naturali superadditur per adinventionem rationis humanae." ibid., ad 1.

justice. "In the state of innocence the wills of men would have been so ordinate that they would have made common use according to their needs of things subject to their dominion, without any danger of discord."⁽¹⁾ In other words, their natural inclination would have been such that division of property would not have been necessary, and the end of property, the common utility, would have been achieved under common ownership. Original sin, however, has made a change in human relations. It has not essentially affected either human nature itself or the faculties of the soul; but it has diminished the inclination of human nature to virtue.⁽²⁾ This vulnus naturae, or disinclination to virtue is found in all four faculties of the soul. Thus in the intellect, in place of prudence we find ignorance; in the will, instead of justice we find malice; in the irascible appetite, infirmity displaces fortitude; in the concupiscible appetite, temperance, or the moderation commanded by reason,

(1) "In statu innocentiae fuissent voluntates hominum sic ordinatae, quod absque omni periculo discordiae communiter usi fuissent, secundum quod unicuique eorum competeret, rebus quae eorum dominio subdebantur." I, 98, 1, ad 3. It is evident that usi here signifies both use and administration, as St. Thomas is contrasting community of possessions under original justice with their division under original sin.

(2) "Primum bonum naturae (ipsa principia naturae, ex quibus ipsa natura constituitur, et proprietates ex his causatae, sicut potentiae animae et alia huiusmodi) nec tollitur nec diminuitur per peccatum. Sed medium bonum naturae, scilicet ipsa naturalis inclinatio ad virtutem diminuitur per peccatum." I II, 85, 1.

gives way to concupiscence.⁽¹⁾ True, original sin has brought not the destruction but merely the diminution of virtue; and many men, notably the religious communities, are sufficiently virtuous to practise community of goods.⁽²⁾ But common ownership demands that the majority of men be sufficiently endowed with the four cardinal virtues that material wealth will be wisely administered and justly distributed, that each will do his share of the work and none will seek what is not his due. The damage done by original sin, however, is too widespread for such an ideal economy; and therefore, observes St. Thomas, "in this state (of fallen nature) it is necessary that with the multiplication of owners a division of possessions be made, because, as the Philosopher says, 'community of possessions is the occasion of strife'."⁽³⁾

(1) "Sunt autem quatuor potentiae animae quae possunt esse subjecta virtutum, scilicet ratio, in qua est prudentia; voluntas in qua est iustitia; irascibilis in qua est fortitudo; concupiscibilis in qua est temperantia. In quantum ergo ratio destituitur suo ordine ad verum, est vulnus ignorantiae; in quantum vero voluntas destituitur ordine ad bonum est vulnus malitiae; in quantum vero irascibilis destituitur suo ordine ad arduum, est vulnus infirmitatis; in quantum vero concupiscentia destituitur ordine ad delectabile moderatum ratione, est vulnus concupiscentiae." I II, 85, 3.

(2) "Hoc (communitas possessionum) etiam modo apud multos bonos viros observetur." I, 98, 1, ad 3.

(3) "In statu isto, multiplicatis dominis, necesse est fieri divisionem possessionum; quia 'communitas possessionum est occasio discordiae', ut Philosophus dicit." ibid.

Private property, then, is to St. Thomas, not one of the prerogatives of human nature in which man should glory, but a condescension to the weaknesses of human nature caused by original sin. The Platonic ideal of community of goods (though not of wives and children) is still held up to man as an object of counsel for those capable of following a more perfect way of life. But the state of fallen nature makes common ownership impracticable as a norm for society in general.

We have reviewed this teaching of St. Thomas on property under original justice, because it facilitates a proper understanding of the relation of private property to the natural law. According to the Angelic Doctor, natural law is "that participation of the eternal law in a rational creature, by which he has a natural inclination to a due act and end." (1) The object of the natural law, as of any law, is the jus, or right, which is a "thing equated to another person according to some kind of equality". (2) But this equation of one thing to another is possible in two ways: from the nature of the thing

(1) "In ipsa (rationali creature) participatur ratio aeterna per quam habet naturalem inclinationem ad debitum actum et finem; et talis participatio legis aeternae in rationali creatura lex naturalis dicitur." I II, 91, 2.

(2) "Jus, sive justum, est aliquod opus adaequatum alteri secundum aliquem aequalitatis modum." II II, 57, 2.

itself; or from human consent, either privately or publicly, as when a whole people agree to the proposition, or when it is so ordered by the public authority. The former is the object of the natural law. The ratio ordinis of the latter, when expressive of the common will, is known as positive law.⁽¹⁾

Positive law, in turn, is either divine or human, according as it is determined by a divine or a human legislator. The authority of the former is evident. But what is the authority of human law? "The human will can, by common consent, make a thing just, provided that it be not of itself contrary to natural justice; and it is in such matters that positive law has its place."⁽²⁾ Its function, moreover, is twofold. First, to deduce from the self-evident general principles of natural law those conclusions which are not intuitive but can be

(1) "Duplicitur potest alicui homini esse aliquid adaequatum; una quidem modo ex ipsa natura rei, puta cum aliquis tantum dat ut tantundem recipiat, et hoc vocatur jus naturale. Alio modo est aliquid adaequatum vel commensuratum alteri ex cunctis, sive ex communi placito; quando scilicet aliquis reputat se contentum si tantum accipiat. Quod quidem potest fieri dupliciter; uno modo per aliquod privatum cunctum, sicut quod firmatur aliquo pacto inter privatas personas; alio modo ex cunctis publicis, puta cum totus populus consentit quod aliquid habeatur quasi adaequatum et commensuratum alteri; vel cum hoc ordinet princeps, qui curam populi habet, et ejus personam gerit; et hoc dicitur jus positivum." II II, 57, 2.

(2) "Voluntas humana ex communi cunctis potest aliquid facere justum in his quae secundum se non habent aliquam repugnantiam ad naturalem justitiam; et in his habet locum jus positivum." *ibid.*, ad 2.

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arrived at only by a process of ratiocination.⁽¹⁾ And secondly, to order to the common good certain things conducive to it which are of themselves indifferent.⁽²⁾ There are therefore in human law, as in divine law, "certain things which are commanded because they are good and forbidden because they are evil; and certain things which are good because they are commanded and evil because they are forbidden."⁽³⁾ Human law, therefore, although a division of positive law, because it has its ratio formalis in the will of the lawgiver, extends also to certain derived principles of the natural law which have their force ex necessitate rei, although the necessity itself be not immediately evident.

But a thing may be commanded by the natural law in one of three ways. It may be commanded by a self-evident principle,

(1) "Sicut in ratione speculativa ex principiis indemonstrabilibus naturaliter cogitis producuntur conclusiones diversarum scientiarum, quarum cognitio non est nobis naturaliter indita sed per industriam rationis inventa; ita etiam ex praeceptis legis naturalis necesse est quod ratio humana procedit ad aliqua magis particulariter disponenda." I II, 91, 3.

(2) "Unde Philosophus dicit, quod 'legale justum est quod ex principio nihil differt, sic vel aliter; quando autem ponitur, differt.'" II II, 57, 2 ad 2.

(3) "Unde enim jus divinum per haec duo distingui potest, sicut et jus humanum. Sunt enim in lege divina quaedam praecepta quia bona et prohibita quia mala; quaedam vero bona quia praecepta, et mala quia prohibita." *ibid.*, ad 3

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as, for example: Thou shalt not kill the innocent. It may be commanded by a necessarily derived principle, v.g.,: Thou shalt not commit adultery. In either case the thing commanded, or forbidden, has of itself an absolute relation to nature. Or a thing may be commanded not ratione sui but in ordine ad aliud. "The natural right, or just, is that which is by its very nature adjusted to or commensurate with another person. Now this may happen in two ways; first, as it is considered absolutely...secondly, not according as it is considered absolutely, but according to something resultant from it."⁽¹⁾

Now it is evident that if the resultant good is in the order of an absolutely necessary consequence, we are still in the domain of natural law; for natural law is the order of necessity, independent of any human will. Thus fornication is opposed to the natural law because it is necessarily opposed to the proper education of the offspring.⁽²⁾ But the resultant

(1) "Jus sive justum naturale est quod ex sui natura est adaequatum vel commensuratum alteri. Hoc autem potest contingere dupliciter: uno modo secundum absolutam sui considerationem; alio modo... non secundum absolutam sui rationem sed secundum aliquid quod ex ipso sequitur." II II, 57, 3.

(2) "Fornicatio autem simplex importat inordinationem quae vergit in nocuumtum vitae ejus qui ex tali concubitu nasciturus." II II, 154, 2.

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good may, on the other hand, be in the order not of absolute but of moral necessity. It may require an act only out of expedience and congruence; in which event it cannot be said to effect, of itself, an obligation on the human conscience.

How then does such an act come under the domain of law?

When its congruence, or its moral necessity, is so universally recognized by human reason that it is made a rule of conduct among all peoples. In other words, when it becomes a part of the jus gentium.

The Jus Gentium, or Law of Nations, takes its name from the collection of laws common to non-Roman peoples which was used by the Praeter Peregrinus in settling disputes among foreigners in Rome. "It was not to be considered as a primitive law which lay embedded like first principles in human nature; ..it was what the nations had derived from primitive principles, not by any force of logic but by the simple evolution of life. The human race had found by experience that the observance of the natural law entailed the establishment of certain institutions. The authority, therefore, which these could boast was due to nothing more than the simple struggle for existence."⁽¹⁾ It is understandable, however, how the jurists, less concerned with philosophical principles than the theologians, came in time to include under the jus gentium not only those institutions favorable to the natural law but even the principles of the natural law itself; although distinguishing jus gentium from jus naturale, which latter term they applied, improperly, to the operation of irrational nature. "By the jus gentium they generally mean all things which the nations universally observe, whether they proceed from the natural law or from another source. They therefore ascribe to the jus gentium those things which are really of

(1) JARRETT, Medieval Socialism, London 1935, p.12.

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natural law, as when they exemplify the jus gentium in these words: "Veluti erga Deum religio: ut parentibus et patriae parcamus: ut vim atque injuriam propulsemus." For it is certainly of natural law to worship God, obey one's parents and to be able to repel force by force...Moreover, they so widely interpret the jus gentium that they sometimes call it the jus naturale.⁽¹⁾"

It is in the latter sense that St. Thomas seems to speak of the jus gentium when he discusses the question, "Whether the jus gentium is the same as the jus naturale."⁽²⁾ Contrasting the jus ex natura sua adaequatum with that equated secundum aliquid quod ex ipso sequitur, he remarks "Therefore that law which is called natural, according to the first mode, is common both to us and to other animals. But the jus gentium is distinguished from the natural law, so

(1) "Per jus gentium vero generaliter intelligunt omne illud quod gentes universae observant, sive a natura proficiatur sive aliunde. Unde juri gentium ascribunt ea quae vere sunt juris naturalis, quando ibidem illud jus gentium exemplificant his verbis: "Veluti erga Deum religio: ut parentibus et patriae parcamus: ut vim atque injuriam propulsemus." Certum enim est juris naturalis esse, Deum colere, parentibus obedire, vim vi posse repellere.....Praeterea, cum tam late usurpent jus gentium, ipsum aliquando appellant jus naturale."
F. SYLVIUS, Commentarium in IIam IIae S. Thomas Aquinatis, 57,3.

(2) "Utrum jus gentium sit idem cum jure naturali." II II. 57,3.

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understood, as the Jurist says, because "the former is common to all animals while the latter is common only to men among themselves.' But to consider anything by comparing it to what follows from it is proper to reason: wherefore this same is natural to man in respect to right reason which dictates it. Hence the jurist Gaius says: 'whatever natural reason decrees among all men, is observed equally by all, and is called the right of nations.'⁽¹⁾"

A more precise use of the jus gentium, however, is found in St. Thomas's explanation of St. Isidore's division of human law into jus gentium and jus civile. Human law, says

(1) "Et ideo jus quod dicitur naturale, secundum primum modum, commune est nobis et aliis animalibus. A jure autem naturale sic dicto recedit jus gentium, ut Jurisconsultus dicit, quia 'illud omnibus animalibus, hoc solum hominibus inter se commune est.' Considerare autem aliquid comparando ad id quod ex ipso sequitur est proprium rationis; et ideo hoc idem est naturale homini secundum rationem naturalem, quae hoc dictat. Et ideo dicit Cajus jurisconsultus, 'Quod naturalis ratio inter omnes homines constituit, id apud omnes peraeque custoditur, vocaturque jus gentium.'" ibid.

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St. Thomas, being based on the natural law,⁽¹⁾ is divided into civil law and the law of nations, according to the two ways in which it is derived from the law of nature. "To the jus gentium pertain those things which are derived from the law of nature as if conclusions from principles...But those things which are derived from the law of nature by way of particular determination pertain to the civil law, according to which a state determines what is convenient to it."⁽²⁾ Here the jus gentium is distinguished from the jus naturale in its proper sense of participatio legis aeternae in rationali creatura. But is it distinguished from the jus naturale in its strict sense of ex sui natura adaequatum? Our answer must be in the affirmative. For St. Thomas states that to the law of nations pertain those things derived from

(1) "In rebus autem humanis dicitur esse aliquid justum ex eo quod est rectum secundum regulam rationis. Rationis autem prima regula est lex naturae. Unde omnis lex humanitas posita in tantum habet de ratione legis in quantum a lege naturae derivatur." I II, 95, 2.

(2) "Ad jus gentium pertinent ea quae derivantur ex lege naturae, sicut conclusiones ex principiis...Quae vero derivantur a lege naturae per modum particularis determinationis, pertinent ad jus civile, secundum quod quaelibet civitas aliquid sibi accomode determinat." *ibid.*, art. 4.

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the law of nations pertain those things derived from the law of nature not tanquam conclusiones, but sicut conclusiones. In other words, the jus gentium does not pertain to the order of strict necessity which is the order of the natural law. (1)

Commenting upon this particular passage of the Summa, Franciscus Sylvius makes the following observation:

That is properly and strictly called the jus gentium which was introduced not from nature but from the common agreement of all men: and so the precepts of the decalogue do not pertain to the jus gentium. Nor does it matter that they are elicited as conclusions (tanquam conclusiones) from the principles of the natural law; for they are elicited as conclusions which are necessary simpliciter and they follow from them altogether independently of human use or acceptance. But here Bl. Thomas says those things pertain to the jus gentium which are derived from the natural law as if conclusions (sicut conclusiones) which are not altogether necessary but very probable, and which depend upon human use or acceptance to be strengthened by the force of obligation; since they do not otherwise involve matter (2) necessary to man simpliciter in order to his end."

(1) "Communiter doctores dicunt quod idem est jus naturale sicut jus necessarium, id est jus naturale est illud quod est necessarium, puta quod non dependet ex voluntate aliqua." N. de VICTORIA, Commentarios a la segunda secundae de Santo Tomas, 57, 2. (Salamanca edition, 1934, v.iii, p.7)

(2) "Alio modo proprie et striote jus gentium dicitur, quod non a natura sed ex communi populorum consensu fuit introductum: et sic praecepta decalogi non pertinent ad jus gentium. Neque refert quod eliciantur tanquam conclusiones ex principiis juris naturae; elicuntur enim tanquam conclusiones simpliciter necessariae, et ex eis consequenter

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Sylvius, moreover, points out that in distinguishing between the jus gentium and the jus Naturale, in q.57, a.3, although St. Thomas uses the terminology of the jurists, he must not be considered as thereby accepting it as univocal, nor should his argument establishing the jus gentium in its legal sense be applied to strict theological usage.

It must be observed that here St. Thomas follows the Jurists who by the natural law understand all that which is instinctive to a nature having some cognition of ends. ... According to this, the division of things and property which were introduced by the jus gentium, can be said to be of the natural law, that is to say in a secondary way according as the natural law embraces the jus gentium.

The Theologians, however, and with them St. Thomas, from another consideration often speak otherwise not only of the natural law but also of the jus gentium. For since brute animals, as they are not properly capable of injury and injustice, so (are incapable) neither of right nor justice; they ascribe the natural law to men...

Wherefore it must be said that the jus gentium neither is the same as the natural law, nor is it contained under it, but under positive law.

Probatur primo: The natural law is simply and absolutely just, and necessary from the nature of the object, nor does

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præsumitur independentem ab hominum usu vel receptione. Quod autem B. Thomas hic ait ad jus gentium pertinere ea quæ derivantur ex lege naturæ sicut conclusiones ex principiis; ut de jure gentium proprie seu stricte accepto verum sit, intelligi debet de iis quæ ex lege naturali derivantur tamquam conclusiones non omnino necessarie sed valde probabiles, et ab hominum usu seu receptione dependent ad hoc ut vim obligandi fortiantur; cum alioquin non versentur circa materiam simpliciter necessariam in ordine ad ipsius finem." Com. in Iam IIæ, 95, 4. Opera Omnia, vol 11, p.521, Paris 1714

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it in any way depend upon the will or consent of man; but the positive law is not necessary absolutely and from the nature of the object, but according to utility and congruence it has been introduced by the will and consent of men. But the jus gentium is not simply and absolutely necessary, but was introduced by human agreement... Secundo; The natural law is binding upon all people and at all times, but the jus gentium does not bind all nor always; for not all prisoners of war are made slaves, nor did the division of goods always obtain... Tertio; Natural law is either a first principle known of itself, or a conclusion deduced from it by some necessity, apart from any approval of men. But the jus gentium is neither such a principle, nor is it a conclusion so deduced necessarily, but only inferred as useful and expedient, in which, as congruous to human society, all, or nearly all peoples agree. Therefore the jus gentium does not pertain to the natural law. (1)

(1) "Advertendum autem quod B. Thomas hic sequatur Jurisconsultos, qui per jus naturae intelligunt omne id quod est ex instinctu naturae habentis aliquam cognitionem finis... Secundum haec, rerum divisio et proprietas quae jure gentium fuit introducta, potest dici esse juris naturalis, posteriori scilicet modo, secundum quem jus naturale complectitur jus gentium.

"Quae cum ita sint, alia tamen consideratione Theologi, et cum illis B. Thomas, saepe aliter loquantur tam de jure naturali tam de jure gentium. Quia enim bruta animalia, sicut non sunt propriae capacia injuriae et injustitiae; ita nec juris et justitiae. Jus naturale ascribunt hominibus..

"Quibus praemissis; dicendum est, jus gentium neque esse idem cum jure naturali, neque sub illo contineri, sed sub jure positivo.

"Probatur primo, jus naturale est simpliciter et absolute justum, et ex natura rei necessarium, neque ulle modo pendet ex hominum beneplacito vel consensu; jus autem positivum non est absolute et ex natura rei necessarium, sed secundum utilitatem et congruentiam est ex hominum beneplacito et consensu introductum; atqui jus gentium non est simpliciter et absolute necessarium, sed ex hominum voluntate fuit introductum...

"Secundo; Jus naturae omnes et semper obligat, jus autem gentium nec omnes nec semper; neque enim omnes bello capti fiunt servi; neque rerum divisio semper obtinuit.

"Tertio; Jus naturale, aut est primum principium per se notum, aut conclusio quae ex illo necessitate absoluta deducitur, sine ulle hominum beneplacito; Jus autem gentium neque est conclusio sic necessario deducta, sed solum collecta tanquam utilis et expediens, in quam, ut humanae societati congruentem, consenserunt omnes, aut fere omnes gentes; ergo jus gentium non est naturale." Com. in IIam IIae, 57, 3, op. cit. III, p.275.

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This note of congruence or expediency as the ratio formalis of the jus gentium is further stressed by Victoria in his commentary on the same article on St. Thomas:

The jus gentium does not follow necessarily from the natural law nor is it necessary simpliciter to the preservation of the natural law; because if it followed necessarily from the natural law it would be part of the natural law itself. It is evident that if it followed from the natural law necessarily, by a rigorous consequence, it would follow that the jus gentium pertained to the same order of necessity as the natural law and consequently would be of natural law, just as simple fornication is against the natural law because it follows from it by rigorous consequence. Nevertheless the jus gentium is necessary for the preservation of the natural law. It is not however altogether necessary but nearly necessary, because the natural law can be preserved but poorly without the jus gentium. For with great difficulty would the natural law be observed if there were no law of nations. (1)

Now human ownership, being based upon man's absolute need of material things for the preservation of his life and the attainment of his ends as a rational creature, is in the order of strict necessity and therefore pertains to the natural law in the strict sense of the term. And man's right of ownership is consequently inalienable by any human law, whether that law be the civil law or the jus gentium itself. But two things pertain to ownership, as we have seen above: use, or the potestas

- (1) "Respondet quod ^{jus} gentium non necessario sequitur ex jure naturali, nec est necessarium simpliciter ad conservationem juris naturalis, quia si necessario sequeretur ex jure naturali, jam esset jus naturale. Patet, quia si necessario sequatur ex jure naturali per bonam consequentiam, ut heri diximus, sequeretur quod sicut naturale jus est necessarium, ita et jus gentium, et per consequens esset jus naturale, sicut simplex fornicatio est contra jus naturale quia in bona consequentia sequitur ex jure naturali. Nihilominus tamen jus gentium est necessarium ad

utendi; and administration, or the potestas procurandi et disensandi. The former, taken in its strict sense of consumption, or the application of material things to immediate needs, is clearly in the order of absolute necessity, and for each individual. The latter, however, while of absolute necessity as regards the race, or the community, cannot be said to be of the same degree of necessity as regards the individual. For manifestly, although the community cannot survive unless some of its members are producers, an individual member of the community may lead a comfortable, although not a complete, human life by using the fruits of another's production.

We may therefore draw as a necessary conclusion from the natural right of ownership, and thereby reduce to the natural law itself, the right of man, simpliciter, to procure and dispose of material things. But whether this administration of material things be vested in the community as such, or in each individual, or in some individuals - in other words the determination of the subject of administration - cannot be said to be a matter of necessity, provided that sufficient production for common use be maintained. And being outside

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conservationem juris naturalis. Et non est omnino necessarium, sed bene necessarium, quia male posset conservari jus naturale sine jure gentium. Cum magna namque difficultate jus naturale serveretur, si non esset jus gentium." op. cit., p. 12.

the sphere of necessity, or of rigorous consequence, it is something indifferent to the natural law. It will receive its morality from the human will; either that of an authoritative legislator, in which case it will pertain to civil law; or by the common consent of mankind, in which event it will be part of the ius gentium.

But in q.66, a.1 we are still in the domain of the natural law. When St. Thomas replies, therefore, to the question of whether it is lawful for anyone to possess any thing as his own, he first distinguishes between the two forms of ownership, administration and use. "As to the latter, man should not have external things as his own (proprias), but rather as common, so that anyone may easily communicate them to others in their need."⁽¹⁾ Because use is

(1) "Quantum ad hoc non debet homo habere res exteriores ut proprias, sed ut communes, ut scilicet de facili aliquis eas communicet in necessitate aliorum." II II, 66, 2, c. ad fin.

a matter of strict necessity, it cannot be appropriated, in the sense of arbitrarily excluding others from its exercise.⁽¹⁾ The discussion of how this common use is to be realized will be the subject of Chapter V. Here it suffices that we establish the principle.

But as to the former, "the power of procuring and dispensing; .. it is lawful for man to possess things as his own."⁽²⁾ Lawful, not in the positive sense that private property has been instituted by the natural law; "because according to the natural law there is no distinction of possessions."⁽³⁾ But lawful in the negative sense that "private property is not contrary to the natural law."⁽⁴⁾

(1) "Peccat (dices) si alius ab usu illius rei indiscrete prohibeat." *ibid.*, ad 2.

(2) "Unum est potestas procurandi et dispensandi: et quantum ad hoc licitum est quod homo propria possideat." *ibid.*, c.

(3) "Quia secundum jus naturale non est distinctio possessionum." *ibid.*, ad 1.

(4) "Proprietas possessionum non est contra jus naturale." *ibid.*

It is thus that the Angelic Doctor reconciles the institution of property with his teaching on human ownership which he had elaborated in the preceding article. He has shown that whatever abuses there may be in practice, there is no conflict in principle, and this is the important point for the moralist, between human ownership and private property. In a later article he will sum up his teaching in the following words: "According to the natural law instituted by divine providence, inferior beings have been ordained to the relief of man's needs. The division, therefore, and the appropriation of things, established by human law, places no obstacle to the use of such goods for this end."⁽¹⁾ Thus also does he refute, as if by prophetic vision, the dogma of Proudhon; "Property is theft."⁽²⁾ Property, indeed, is theft if it violates man's natural right to the use of exterior things. It is not, however, theft if it be limited to the administration of exterior things instituted by human reason as a means to their wider use. The idealism of the socialist and the realism of the individualist are thus harmonised in the Thomistic distinction between administration and use. "No one truly knows unity who does not also know distinction."⁽³⁾

(1) "Secundum autem naturalem ordinem ex divina providentia institutum, res inferiores sunt ordinatae ad hoc quod ex his subveniatur hominum necessitati. Et ideo per rerum divisionem et appropriationem ex jure humano procedentem, non impeditur quin hominis necessitati subveniendum ex hujusmodi rebus. *ibid* 7, c.

(2) "Propriete c'est le vol" in Qu'est-que c'est La Propriete?

(3) "Personne ne connaît vraiment l'unité s'il ne connaît aussi la distinction." H. MARITAIN, Distingue Pour Unir, Paris 1932 vi.

By thus showing the non-repugnance between private ownership, in the Thomistic sense, and human ownership, St. Thomas has demonstrated the lawfulness of the former. But in what sense is it lawful? Is it lawful only in that it has been determined by civil law, and is therefore subject to abolition at the will of the legislator? Or is it founded rather upon that common agreement among men, based upon a common recognition of its suitability to the common good, which places it outside the sphere of the legislator and under the protection of the jus gentium?

That private property was instituted by the jus gentium was the common teaching of the medieval theologians. Thus we read in the Digest "By this jus gentium the nations determined the founding of sovereign government, the distinction of domain, the placing of boundaries to fields."⁽¹⁾ St. Thomas, moreover, uses the institution of property as an example of the jus gentium when discussing the latter in 57, 3. "For example, private property: if a certain field be considered absolutely, it matters little whether it belong to one man or another; but if it be considered with respect to its adaptability to cultivation and its peaceful use, in this respect there is a certain fitness that it belong to one man and not to another." ⁽²⁾ It is to this article, and the preceding one (on

(1) "Ex hoc jure gentium discretas esse gentes, regna condita, dominia distincta, agris terminos positos." I Digest., 1.

the distinction between natural and positive law), that he refers us when he states that "the distinction of possessions is rather according to human agreement, which pertains to positive law, as was stated above." (1) Therefore when St. Thomas says that, "Private property is an addition to the natural law devised by human reason," (2) he is merely affirming the universal observation of men as to the eminent suitability of private property to the political economy. It is this suitability, or utility, founded on, although not following with strict necessity from human nature, which has led to the establishment of property as a generally universal institution and thereby attributable to the law of nations. "Since those things which are of the jus gentium natural reason dictates as implying a proximate equality, it follows that they need no special institution, for they are instituted by natural reason itself." (3)

(1) "Secundum jus naturale non est distinctio possessionum sed magis secundum humanum conditum, quod pertinet ad jus positivum, ut supra dictum est." *ibid.* ad 1.

(2) "Proprietas possessionum non est contra jus naturale sed juri naturali superadditur per adinventionem rationis humanae." *ibid.*

(3) "Quia ea quae sunt juris gentium naturalis ratio dictat, puta ex propinquo habentia aequitatem, inde est quod non indigent aliqua speciali institutione, sed ipsa naturalis ratio ea instituit." *ibid.*, 57, 3, ad 3.

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(2) "Putat proprietatem possessionum: si enim consideretur iste ager absolute, non habet unde magis sit hujus quam illius: sed si consideretur per respectum ad opportunitatem colendi, et ad pacificum usum agri, secundum hoc habet quandam commensurationem quod sit unius et non alterius." II II, 57, 3.

Were the relation of private property to the common good an absolute instead of a proximate equality, it is evident that the division of goods would have been necessary even in the state of original justice. "Grace does not take away nature but perfects it."⁽¹⁾ And the same would be true, with even greater force, of those communities of men and women who have adopted common ownership as a means of perfection. But if private property was not necessary in the state of original justice, nor is it necessary for some under fallen nature, why should it not have been chosen rather than common ownership? Because property, of any sort, begets solicitude, which is an obstacle to the perfect love of God.⁽²⁾ "Yet there is a difference," says St. Thomas, "whether riches, either abundant or moderate, are owned privately or in common. For solicitude about one's own riches pertains to private love, by which one loves himself temporally; but solicitude over things that are owned in common pertains to the love of charity which "seeks not its

(1) "Cum enim gratia non tollat naturam sed perficiat." I, 1,8, ad 2.

(2) "Paupertas est sicut instrumentum vel exercitium perveniendi ad perfectionem...Est autem paupertas perfectionis instrumentum inquantum per remotionem divitiarum tolluntur quaedam charitatis impendimenta; quae sunt praecipue tria. Quorum primum est solicitude quam secum divitiae afferunt." II II, 188, 7.

own", but is intent on those things which are common."⁽¹⁾

Religious perfection, however, is not the vocation of the mass of men; and even religious communities might well find difficulty in living a common life if to their religious duties were added the responsibility of marriage and parenthood.

For the majority of men, both experience and a proper understanding of fallen nature show that private property is imperative.

"It is even necessary for human life, and for three reasons: first because each one is more solicitous in procuring what is his alone than that which is common to all or to many; because each, avoiding

work, leaves to his neighbour that which pertains to the community,"⁽²⁾

/ Man is by nature a working animal.
"Man is born to labor as the bird to fly."⁽³⁾

(1) "Different autem circa hoc utrum divitiae abundantes vel moderatae in proprio vel communi habeantur. Nam sollicitudo quae circa proprias divitias adhibetur pertinet ad amorem privatum, quo quis temporaliter se amat; sed sollicitudo quae adhibetur circa res communes pertinet ad amorem charitatis, quae non quarrit quae sua sunt, sed communibus intendit." ibid

(2) "Est enim necessarium ad humanam vitam propter tria; primo quia magis sollicitus est unusquisque ad procurandum aliquid quod sibi soli competit, quam id quod est commune omnium vel multorum; quia unusquisque, laborem fugiens, relinquit alteri quod pertinet ad commune." II II, 66, 2.

(3) "Job 5, 7.

~~Man is by nature a working animal.~~ Born naked, unable to eat in their natural state many of the fruits of the earth ill-equipped by nature to defend himself against aggressors, in need of special protection against the elements, slow to mature, feeble in old age, often debilitated by illness - life would be impossible for him had not nature, by giving him intelligence and manual skill, made him a workman. Particularly true is this since his fall into sin. Work has been given him not only as a necessity of nature but also as a penance: "Because thou hast eaten of the tree whereof I commanded thee thou shouldst not eat, cursed is the earth in thy work: with labour and toil shalt thou eat all the days of thy life."⁽¹⁾ Nor has the Christian dispensation removed the burden of this universal law. St. Paul, who throughout his apostolic career worked with his hands, has given us this admonition, "If any man will not work, neither let him eat."⁽²⁾ Not only is the individual's life dependent upon the fruit of his toil, but the designs of providence, expressed in the command; "Increase and multiply and fill the earth,"⁽³⁾ cannot be achieved except by human toil which makes possible the support of an everincreasing population. We may be certain, therefore, that there is no scientific achievement or mechanical invention which makes possible a more abundant life, which does not come under the order of divine providence of which man, the workman and the inventor, is but the instrument.

(1) Gen. 3. 19

(2) I Thess. 3.10

But man is also a "lazy animal".⁽¹⁾ "Unusquisque laborem fugiens relinquit alteri quod pertinet ad commune." Although he recognizes the need of toil, he finds work of any kind, be it mental or physical, difficult. True, at times, and in some men frequently, enthusiasm for creative activity or the motive of fraternal charity may make even hard work seem attractive; while experience shows that a life of idleness means for most men the loss of their sense of well-being. But at the same time, infirmity, or the wound left in the irascible appetite by original sin, gives man a habitual inclination to avoid whatever is hard and oppressive.⁽²⁾ Unless driven by some necessity, or lured on by the hope of some immediate reward, men tend to become soft,⁽³⁾ leaving to others what is not necessary for them to do themselves.

(1) "Un animal paresseux". SPICQ, op. cit., p. 318

(2) "Inquantum vero irascibilis destuitur suo ordine ad arduum est vulnus infirmitatis." I II, 85, 3.

(3) "Mollis dicitur qui recedit a bono propter tristitias causatas ex defectu delectationum, quasi cedens debili moventi." II II, 138, 1.

The precise disadvantage of common ownership, therefore, is that by robbing man of the necessary incentive to work, it encourages idleness and thereby is an obstacle to the quantity and quality of production which the well-being of the community demands. If St. Thomas opposes socialism it is not because his viewpoint is individualistic but because he knows that under social ownership the objectives of the socialists cannot be realized.

What incentive, then, does St. Thomas propose? Self-interest! "Magis sollicitus est unusquisque ad procurandum aliquid quod sibi soli competit." The Angelic Doctor has descended from the domain of metaphysics, according to which he established the principle of human ownership, to that of psychology to find justification for the appropriation of external goods. In his commentary on the Politics of Aristotle, he tells us: "It is necessary that possessions be privately owned as to the dominion of property, but in some way common. For from private ownership it follows that administration of possessions is divided when each one has the care of his own property. And from this come two advantages: of which one is that ...disputes among men are avoided...; and the other that each one will the greater increase his property, being intent upon and solicitous for those things he

possesses as his own."⁽¹⁾ The delight and satisfaction which a man finds in ownership are hard to describe. "For this delight comes from the fact that man loves himself; and because of this wishes himself good."⁽²⁾ How else are we to explain the diligence of the farmer or independent craftsman, the constant concern of the businessman, which contrast so sharply with the proletarianized wage-earner who is constantly agitating for shorter hours? The former never tire of work, because their natural repugnance to the discipline of labor is overcome by their delight in the fact that they are ever increasing their substance, to which is added the satisfaction which comes from enjoying the fruits of one's own toil.

Yet is this not a strange motive for a Doctor of the Church to urge, especially one who has written so beautifully of

(1) "Oportet enim possessiones simpliciter esse proprias quantum ad proprietatem domini, sed secundum aliquod modum communes. Ex hoc enim quod sunt propriae possessiones, sequitur quod procuraciones possessionum sunt divisae, dum unusquisque curat de possessione sua. Et ex hoc sequuntur duo bona: quorum unum est quod ... non fiunt litigia inter homines.. Aliud bonum est quod unusquisque magis augebit possessionem suam insistens ei sollicitus tamquam propriae." I Pol., II.

(2) "Et dicit quod non potest de facili enarrari quantum sit delectabile reputare aliquid esse sibi proprium. Venit enim haec delectatio ex hoc quod homo amat seipsum; propter hoc enim vult sibi bona." ibid.

Love of God and neighbour, and who has called solicitude over temporal things an obstacle to the perfect love of God? St. Thomas, following Aristotle, replies to this objection in the same passage, saying: "Nor is it vain that anyone should have love toward himself, but natural. Yet sometimes one is justly blamed for his self-love. But what is blameworthy is not that one simply loves himself, but more than he should; just as lovers of money are blamed, although all men love money to a degree; but lovers of money are held in disrepute because they love money more than they should."⁽¹⁾

Self-love, properly understood, is not only blameless but of obligation. For charity obliges us not only to love God but those things which belong to God, including one's self.⁽²⁾ Although man is bound to love God more than himself, as the principle of beatitude,⁽³⁾ and his neighbour because of God,

- (1) "Nec hoc est vanum quod aliquis habet amicitiam ad seipsum; sed naturale est. Quandoque tamen juste vituperatur aliquis ex hoc quod est amator sui ipsius. Sed quando hoc in vituperium dicitur, non est hoc simpliciter amare seipsum, sed magis quam oportet; sicut et amatores pecuniarum vituperantur, quas tamen omnes aliquo modo amant; quia amatores pecuniarum vituperantur inquantum amant eas magis quam oportet." *ibid.*
- (2) "Alio modo possumus loqui de charitate secundum propriam rationem ipsius, prout scilicet est amicitia hominis ad Deum principaliter, et ex consequenti ad ea quae sunt Dei; inter quae etiam est ipse homo qui charitatem habet." II II, 25, 4.
- (3) "Et ideo ex charitate magis debet homo diligere Deum, qui est bonum commune omnium, quam seipsum; quia beatitudo est in Deo sicut in communi et fontali principio omnium qui beatitudinem participare possunt." *ibid.*, 26, 3.

he is nevertheless bound to love his own spiritual nature more than that of his neighbour.⁽¹⁾ Moreover, his charity must extend even to his own body because by the works he performs through the instrumentality of his body he comes to the fruition of God; by which fruition beatitude redounds to the body itself.⁽²⁾ Such self-interest, then as prompts a man to take the necessary care of his own body and provide for its proper sustenance is not only blameless but praiseworthy. It is only when self-love is inordinate, when it is opposed to the love of God, or when it places the love of material things above the spiritual welfare of one's neighbour, that it is displeasing to God.⁽³⁾

Solicitude, on the other hand, is a habit by which the mind is quick to execute a due undertaking; and therefore pertains to the virtue of prudence.⁽⁴⁾ Solicitude about those things which are of necessity, whether for soul or body, is a

(1) "Sicut unitas est potior quam unio; ita quod homo ipse participet bonum divinum est potior ratio diligendi quam quod alius associetur ipsi in hac participatione. Et ideo homo ex charitate debet magis seipsum diligere quam proximum." II 11, 26, 4.

(2) "Per opera quae per corpus agimus ad perfectam Dei fruitionem possumus venire. Unde ex fruitione animi redundat quaedam beatitudo ad corpus..Et ideo quia corpus aliquo modo est particeps beatitudinis potest ex dilectione charitatis amari." ibid., 25, 5, ad 2.

(3) and (4) at foot of following page.

necessary virtue. The words of Jesus, moreover, "Be not solicitous for the morrow,"⁽¹⁾ are not to be taken, St. Thomas tells us, in the sense that nothing is to be reserved for the future;⁽²⁾ but rather should be interpreted according to St. Jerome; "Let thought of the present be enough for us; let us leave future things, which are uncertain, to God."⁽³⁾ While poverty, as an instrument of perfection, is recommended to those who are called to follow the counsels,⁽⁴⁾ only that solicitude over external things is sinful which leads the soul to reverence riches and to seek them by unlawful means.⁽⁵⁾

(1) Matt. 6. 34.

(2) "Quod Dominus dicit: 'Nolite solliciti esse in crastinum', non intelligitur quod nihil reservetur in futurum." II II, 188, 7, 2

(3) "Sufficit nobis praesentis temporis cogitatio; futura, quae incerta sunt, Deo relinquamus." Com. in Matt. 6. 34.

(4) "Ad perfectionem charitatis acquirendum primum fundamentum est voluntaria paupertas." II II, 186, 3.

(5) "Dicit Augustinus, 'Non hoc dicit ut ista non procurentur, quantum necessitatis est; sed ut non ista intueantur, et propter ista faciant quidquid in Evangelii praedicatione facere jubentur.'" ib. 188, 7.

(3) "Consociatio in plena participatione beatitudinis, quae est ratio diligendi proximum, est major ratio diligendi quam participatio beatitudinis per redundantiam." ibid., 26, 5.

(4) "'Sollicitus dicitur quasi solers citus,' inquantum scilicet aliquis ex quadam solertia animi velox est ad prosequendum ea quae sunt agenda. Hoc autem pertinet ad prudentiam, cujus praecipuus actus est circa agenda praecipere de praeconsiliatis et iudicatis." ibid., 47, 9.

The second argument given by St. Thomas to establish the advisability of private property is that it is conducive to public order: "Secondly, because human affairs are conducted in more orderly fashion if each man is charged with taking care of some particular things himself, whereas there would be confusion if everyone had to look after any one thing indeterminately."⁽¹⁾ True, if ownership were not the basis for this division of function, the required diversity of tasks might be provided for by the public authority. There would be, however, considerable difficulty both in finding suitable men for the various tasks and for determining their proper emoluments without giving rise to discord and contention. Moreover, although man is a social animal and depends upon the public authority to order the members of the community toward the common good,⁽²⁾ it is the part of the public authority

(1) "Ordinatus res humanae tractantur si singulis immineat propria cura alicujus rei procurandae; esset autem confusio si quilibet indistincte quaelibet procuraret." II II, 66, 2.

²
(3) "Naturale autem est homini ut sit animal sociale et politicum ... Si ergo naturale est homini quod in societate multorum vivat, necesse est in hominibus esse per quod multitudo regatur." De Reg. Prin. I, 1.

to fulfil only necessary functions and not to assume those which are properly in the domain of the individual.⁽¹⁾ Manifestly, the highly complicated economy of modern industrial civilization is based upon a higher degree of interdependence than that of the Middle Ages. But the principle still holds true that the economic order be based upon private initiative, the government giving the economy only such direction and stimulus as the common good may demand.

The fruit of a properly ordered economy is peace, which St. Augustine has defined as the "tranquility of order."⁽²⁾ This is the third reason which St. Thomas gives in favor of the institution of private property: "Thirdly, because a more peaceful state is ensured to man if each one is content with his own. Hence it is to be observed that quarrels arise more frequently where there is no division of property."⁽³⁾ "No man," St. Thomas tells us, "has peace in his heart as long as he does not possess what he desires".⁽⁴⁾ We must distinguish, however, between the lack of

(1) "Multis enim existentibus hominibus et unoquoque id quod est sibi congruum providente, multitudo in diversa dispergeretur nisi etiam esset aliquis de eo, quod ad bonum multitudinis pertinet curam habens." De Reg. Prin. I, 1. St. Thomas thus shows the proper end of society to be those things which of their nature are common.

(2) De Civ. Dei., 19, 13, c. prin.

(3) "Tertio, quia per hoc magis pacificus status hominis conservatur dum unusquisque re sua contentus est. Unde videmus quod inter eos qui communiter et ex indiviso aliquid possident, frequentius jurgia oriuntur." II II, 66, 2.

(4) "Non enim homo habet cor pacatum quamdiu non habet id quod vult" ibid., 29, 1.

peace which is a stimulus to hard work and that which comes from a sense of injustice or prompts a man to seek increased wealth through favoritism and unjust means. It is the latter which are responsible for strife between individuals and classes with resultant damage to the peace of the community.⁽¹⁾ Where the perfect charity existing in the wills of men made it possible for them to dwell in perfect harmony under community of goods, before the fall; the malice induced by original sin, together with concupiscence, makes it impossible for the majority of men to live in harmony in a communistic society. "In a state having all things in common, according to the Socratic ideal, there would be mutual accusations and disputes and all the other evils which Socrates says now exist in society. For the citizens would quarrel with one another because all did not work equally hard nor receive the same reward, and on many other scores."⁽²⁾ True, many evils now exist in the social order where property is divided. "But if anyone rightly considers the matter, these are not due to the fact that property is

(1) "Socrates per suam legem auferret a singulis civibus felicitatem: quia volebat quod non haberent aliquid proprium. Hoc autem est impossibile quod tota civitas sit felix nisi vel omnes vel plures partes civitatis felicitatem habeant." Pol. II, 5.

(2) "In civitate habente omnia communia, sicut Socrates dixit, inveniuntur mutuae accusationes et disceptationes, et omnia alia mala quae Socrates dicit nunc esse in civitatibus. Disceptabunt enim cives ad invicem de hoc quod non aequaliter laborant, nec aequaliter fructum recipiunt, et de multis etiam aliis. ibid.

not in common, but rather to the malice of men. For we see that those who possess some things in common have many more dissensions than those who possess things separately ...Man should consider not not only what evils are avoided by those who have things in common but also what good is prevented. For the lawgiver should tolerate certain evils lest the community be deprived of greater good."⁽¹⁾

Following Aristotle, St. Thomas mentions in his Commentary on the Politics a fourth reason for private property which he does not discuss in the corpus articuli of q.66, a.2. "It is most desirable that a man should give or be of aid to his friends, to strangers, or to anyone possible; but this can be done only when men have private property."⁽²⁾ Thus those who would set up a communistic state would make impossible the exercise of the virtue of liberality. "For it could not be known whether any man was liberal nor could any man perform an act of liberality, through the absence of private property, the use of which is the object of the virtue of liberality."

(1) "Sed si aliquis recte consideret, nihil horum fit propter hoc quod possessiones non sunt communes, sed propter malitiam hominum. Videmus enim quod illi qui possident aliqua in communi, multo magis dissident ad invicem, quam illi qui habent separatas possessiones....Homo non solum debet considerare quot malis priventur illi qui habent communes possessiones (et uxores), sed etiam quot bonis priventur. Debet enim legislator sustinere aliqua mala ne priventur majores bona." *ibid.*, 4.

(2) "Valde delectabile est quod homo donet vel auxilium ferat vel amicis vel extraneis vel quibuscumque aliis; quod quidem fit per hoc quod homo habet propriam possessionem." *ibid.*

The generous man is one who spends and gives what is his own. But what a man gives of those things which are common partakes little of liberality."⁽¹⁾ In the present article, however, the problem for St. Thomas is not whether property should be private as a means to liberality but whether the virtue of Christian charity, of which liberality is but a natural counterpart, does not demand that men be so generous as to call nothing their own. Of the many patristic writers who seemingly attacked the institution of private property, St. Thomas cites two in whose objections the Christian attitude to property is summed up.

He first quotes St. Basil: "The rich who deem as their own the common property they have seized upon, are like those who going beforehand to the play prevent others from coming, and appropriate to themselves what is intended for common use."⁽²⁾ In the third objection, the Angelic Doctor cites the testimony of St. Ambrose: "Let no one call his own that which is common."⁽³⁾

(1) "Non enim poterit esse manifestum de aliquo an sit liberalis, nec aliquis poterit actum liberalitatis exercere, ex quo non habet proprias possessiones, in quarum usu consistit opus liberalitatis. Prodigus homo propria expendit et dat. Quod autem aliquis det communia non est multum liberalitatis!" *ibid.*

(2) "Praeterea basilius dicit, exponens praedictum verbum divitis: Sicut qui preveniens ad spectacula prohiberet advinentes, appropriando sibi quod ad communem usum ordinatur, similes sunt divites, qui communes, quae praecoccupaverunt, aestimant sua esse." II II, 66, 2, obj. 2.

(3) "Praeterea, Ambrosius dicit, et habetur in Decretis: "Proprium nemo dicat quod est commune." *ibid.*, obj. 3.

Both objections are dealt with according to the distinction made in the corpus articuli between the appropriation of administration and that of use. Thus the playgoer is reprov'd not that he precedes the others but in that he prevents their use of his place. "And similarly the rich man does not act unlawfully if although he anticipates someone in taking possession of a thing which at first was common property, he shares it with others; but he sins if he indiscriminately excludes others from using it."⁽¹⁾ St. Ambrose, moreover, St. Thomas tells us, "is speaking of ownership as regards use, wherefore he adds, "He who spends too much is a robber."⁽²⁾

But if the Christian dispensation has not abolished private property, it tolerates it only on condition of the widest common use. "Hence Basil says: 'Why are you rich while another is poor, unless that you may have the merit of a good steward-

(1) "Et similiter dives non illicite agit si praecoccupans possessionem rei quae a principio erat communis, aliis etiam communicet; peccat autem si alios ab usu illius rei indiscrete prohibeat." *ibid.*, ad 2.

(2) "Ambrosius...loquitur de proprietate quantum ad usum; unde subdit: 'Plus quam sufficeret sumptui, violenter obtentum est.'" ad 3.

ship and be the reward of patience?"⁽¹⁾ Moreover, with the Christian it is not a question of mere liberality. "Those things which anyone possesses in superabundance must, by the natural law, be devoted to the sustenance of the poor."⁽²⁾

The discussion of how this common use is to be achieved under a system of private ownership will be the subject of the last two chapters of this work. In the present chapter we have endeavoured to show how St. Thomas has justified the institution of private property, quantum ad potestatem procurandi et dispensandi, demonstrating that it is opposed neither to the natural law nor to the divine positive law, but rather is required by the jus gentium. Man's right to private property, therefore, is not a natural right in the strict sense of the term because it is not based upon a strict necessity of nature. If it be called a natural right, it can only be in the wider sense of moral necessity based upon the shortcomings of human nature wounded by original sin. As such it can never take precedence over man's natural right of human ownership. "Those things which are of human law cannot dero-

(1) "Unde Basilus ibidem dicit, 'Cur tu abundas, ille vero mendicat nisi ut tu bonae dispensationis merita consequaris, ille vero patientiae premiis coronetur?'" *ibid.*, ad 2.

(2) "Res quas aliqui superabundanter habent, ex naturali jure denentur pauperum sustentationi." *ibid.* 7.

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gorate from what is of natural or divine law. But according to the natural order established by divine providence, inferior things are ordained for the purpose of succoring man's needs by their means. And therefore the division and appropriation of things which are based on human law, do not preclude the fact that man's needs have to be remedied by means of these very things... If the need be so manifest and urgent that it is evident that the present need must be remedied by whatever means at hand (for instance when a person be in some imminent danger and there be no other possible remedy), then it is lawful for a man to succor his own need by means of another's property, by taking it either openly or secretly: nor is this properly speaking theft or robbery."⁽¹⁾

In apparent contradiction to the above doctrine of St. Thomas, we have the statement of Leo XIII in the Encyclical Rerum Novarum that "every man has by nature the right to possess property as his own."⁽²⁾ "It must be within his right,"

(1) "Ea quae sunt juris humanae non possunt derogare juri naturali ver juri divino. Secundum autem naturalem ordinem ex divina providentia institutum, res inferiores sunt ordinatae ad hoc ex his subveniat huiusmodi necessitati. Et ideo per rerum divisionem et appropriationem ex jure humano procedentem non impeditur quin hominis necessitati sit subveniendum ex huiusmodi rebus... Si adeo sit evidens et urgens necessitas ut manifestum sit instanti necessitati de rebus occurrentibus esse subveniendum (puta cum imminet personae periculum et aliter subveniri non potest), tunc licite potest aliquis ex rebus alienis suae necessitati subvenire, sive manifeste sive occulte sublati: nec hoc proprie habet rationem furti vel rapinae." ibid.

(2) "Possidere res privatim ut suas, jus est homini a natura datum." Lettres Apostoliques de Leon XIII, vol.III, p.22.

the Sovereign Pontiff tells us, "to have things not merely for temporary and momentary use as other beings have them, but in stable and permanent possession."⁽¹⁾ This private ownership, moreover, "is according to nature's law;" ⁽²⁾ "in the law or nature herself," is found, "the foundations of the division of property."⁽³⁾ This "right of property... has ^{been} proved to belong naturally to individual persons."⁽⁴⁾ Indeed "private ownership is the natural right of man."⁽⁵⁾

The solution to this apparent difficulty is found in a consideration of the position the jus gentium holds in relation to the natural law and the civil law. The position it occupies is that of a middle ground between the two, partaking of some features of each. Being immediately derived

(1) "Bona homini tribuere necesse est non utenda solum, quod est omnium animantium commune, sed stabili perpetuoque jure possidenda." *ibid.*

(2) "Qua ex re rursus efficitur, privatas possessiones plane esse secundum naturam." p. 24.

(3) "In ipsius lege naturae fundamentum reperit partitionis bonorum possessionesque privatas." p.26.

(4) "Quod igitur demonstravimus, jus domini personis singularibus natura trinitum." *ibid.*

(5) "Bona privatim possidere...jus est homini naturale." p.36.

ex humano conductu, it can in a sense be called positive law. But on the other hand, this human agreement has been reached not by the deliberation of legislative bodies but by the spontaneous recognition of peoples the world over of the general suitability of certain institutions to the peace and order of society as well as to the needs of individual human life. Now we have seen that all human law which is valid must be derived in some way from the natural law. The civil law, in its own specific character, is derived by way of particular determinations of the natural law. Distinguished from it are those secondary principles which are derived not as determinations but as conclusions from the natural law. Some are necessary conclusions. They can be reduced to the natural law and are therefore of natural law in the strict sense. Others are not necessary conclusions, in the sense of an absolute necessity, but are derived because of a relative or moral necessity for the proper operation of the natural law. Because they are not derived by way of strict logic, they need, to be binding on the individual conscience, some greater certainty. This is supplied by the common agreement of mankind; and in this sense the jus gentium is of positive law. But, on the other hand, as conclusions derived from the natural law, although not

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by way of absolute necessity, they bear a close affinity to the derived principles of natural law which are of natural law in the strict sense. We may therefore properly speak of the jus gentium as pertaining to natural law in the broad sense. Or, to sum up, the jus gentium, viewed from the point of its immediate binding force, pertains to positive law. viewed from the point of its manner of origin, it pertains to natural law.

We have seen the difference of opinion which existed in the Middle Ages regarding the proper interpretation of the jus gentium. Today the jus gentium is generally taken in the sense of international law, that is, the civil law which governs relations between independent states. What the medieval theologians called the jus gentium is now commonly referred to as natural law, with the qualifying distinction of praecepta secundaria. Thus Noldin states: "Considered from the viewpoint of their force and efficacy, the precepts of the natural law are of two orders. Some are called primary which nature absolutely demands because without them the moral order is rendered impossible. Others are called secondary, toward which nature

is greatly inclined because without them the moral order is less perfect, and which she demands hypothetically. Thus nature demands the unity of marriage, insofar as it excludes polyandry, absolutely; but insofar as it excludes polygamy, nature demands the unity of marriage only hypothetically."⁽¹⁾

Private property, then, in the modern terminology, is a secondary precept of the natural law. For evidently society can exist without it, as has been shown at various times in history and which Soviet Russia demonstrates today. But, as St. Thomas has told us, private property is necessary for the higher standard of living which human dignity demands, and for the peace and order of society; which Soviet Russia and its inhuman tyranny also demonstrates today. When the Holy Father, therefore, vindicates against the Marxist reformers the right of private property as one of natural law, he

(1) "Considerata vi et efficacia praecepta naturae duplicis generis sunt, alia dicuntur primaria, quae natura absolute exigit, quia sine illis ordo moralis redditur imposibilis, alia secundaria, in quae natura valde quidem inclinatur, quia sine illis ordo moralis est minus perfectus, quae tamen hypothetice exigit. Sic unitatem matrimonii, quatenus excludit polyandriam, natura absolute exigit, matrimonium autem unitatem, quatenus excludit polygyniam, hypothetice exigit."
 NOLDIN SCHMITT, De Principiis Theologiae Moralis, Innsbruck 1934, p. 122.

is declaring that a socialist state is so opposed to human nature as to be unworkable, except at impossible sacrifices and that to confiscate private property earned by years of toil in the name of such a false Utopia is to deprive man of his natural right to the fruit of his labor.

Thus understood, the teaching on property in the Encyclical Rerum Novarum is not only in no wise at variance with the teaching of St. Thomas but is clearly of Thomistic inspiration. Thus after stating that "private ownership is the natural right of man," in the text quoted above, the Sovereign Pontiff goes on to establish his statement with an argument from necessity in which he quotes the Angelic Doctor himself: "To exercise that right, especially as members of society, is not only lawful but clearly necessary. It is lawful for man to possess things as his own. It is even necessary for human life." The reader will recognize the underlined sentences as the familiar words of St. Thomas in q. 66, a. 2. But the necessity which St. Thomas gives as the foundation of the right of private property is not the absolute but the hypothetical necessity of the modern moralists; a view which the Holy Father

- (1) "Eoque uti jure, maximi in societati vitae, non fas modo est, sed place necessarium. Licetum est quod homo propria possideat. Est enim necessarium ad humanam vitam." I. cit., p.

The rendering of plane necessarium as absolutely necessary in certain English translations is hardly conducive to a proper understanding either of Leo XIII or the Angelic Doctor. This is the reading given by Husslein, op. cit. p.

makes no attempt to correct. It is in this sense, therefore, of relative necessity that we should interpret the other texts in which the Sovereign Pontiff refers the right of private ownership to the natural law.

Chapter IV

PRIVATE PROPERTY: jus in re.

"He makes his own that portion of nature's field which he cultivates, the portion on which he leaves, as it were, the impress of his own personality."

Leo XIII

In our study of the problem of ownership we have discussed man's right to external things in two successive degrees: his right to possess external things; secondly first, his right to possess external things as his own (tamquam proprias). Both, however, are in the nature of abstract principles; while they establish the liceity of man's possession and appropriation of external things in general, they do not tell us why this particular thing should belong to this particular thing should belong to this particular man: In other words, they pertain to the jus ad rem and not to the jus in re. The latter is the subject of the present chapter.

We proceed to the jus in re from the jus ad rem in the same fashion in which we proceeded from human ownership, or the jus ad rem simpliciter to private ownership, or the jus ad rem propriam: by specification. In the former case we specified the mode of ownership, that it be private rather than common. In the present instance we are concerned with the means of ownership, or by what

specific title man makes a particular object his own.

Here we are not concerned with ownership in the wide sense of use. Manifestly, the only title required for that is extreme necessity, as described by St. Thomas in q. 66, a. 7, which we quoted at the end of the preceding chapter. Rather, we are concerned with ownership in its restricted sense of administration, or private ownership. And because we are considering the latter particularly from the viewpoint of its object, we have referred to this form of ownership as private property, the better to distinguish the jus in re from the jus ad rem.

Human ownership, we have seen, pertains to the natural law and is based upon the metaphysical principles of order and finality. Private ownership, on the other hand, pertains to the jus gentium, and is based upon a psychological fact, namely that it is best fitted to the weaknesses of fallen nature. What law, then, shall we say governs private property? Insofar as it is a determination of human ownership it pertains to the natural law; insofar as it is a determination of private ownership it pertains to the jus gentium; but to what law does it owe its specific nature? Commenting on q. 66, a. 2, ad 1, "The distinction of possessions is rather according to human

agreement, which pertains to the positive law,"⁽¹⁾ Cardinal Cajetan makes the following commentary: "In private ownership we distinguish two things: first, that one thing belong to one man and another to another; secondly, that this field belong to this man and that to the other. As to the first, private ownership is according to the jus gentium; for this is determined by reason, as is shown several times in the corpus articuli. As to the second, it is of positive law: since before this thing be appropriated by one man and that by another, it matter not if the contrary be done. For it has been defined that positive law⁽²⁾ is that which in its principle is indifferent." Cajetan, however, here uses jus positivum in its restricted sense, as is evident from the definition. For following Isodorus, St. Thomas divides human, or positive, law into the jus gentium and jus civile, the latter being properly concerned with those things which are indifferent: "Those things which are derived from the natural law by way of particular determination pertain to

(1) "Distinctio rerum..magis secundum humanum conditum, quod pertinet ad jus positivum." II II, 66, 2, ad 1.

(2) "Ad hoc dicitur quod in proprietate possessionum inveniuntur duo: primo, quod aliquid sit unius et aliquid alterius; secundo, quod hic ager sit istius et ille illius. Quoad primum, proprietas possessionum est a jure gentium; dicitur enim hoc ratio, ut in littera multipliciter ostenditur. Quoad secundum, est a jure positivo: quoniam antequam sit hoc appropriatum huic et illud alteri, nihil differt an contrarium fiat; definitum est enim quod jus positivum est quod a principio nihil differt, ex V Ethic." Com. in II II.

the civil law, according to which each state determines what is suitable to it."⁽¹⁾ Private property, then, in the restricted sense of the jus in re, is determined by the civil law.

Does this mean, however, that the civil law may act in a purely arbitrary fashion in determining the conditions of private ownership? On the contrary, although the determination, insofar as it is a determination, is left to the discretion of the lawgiver,⁽²⁾ it must at the same time be in accord with natural justice. "The human will can by common agreement make a thing just in those matters which of themselves have no repugnance to natural justice; and this is the sphere of positive law... But if anything is of itself opposed to natural justice it cannot be made just by the human will."⁽³⁾ The civil law, therefore, in laying down the conditions for acquiring property, must first have regard for distributive justice, according to which that which is common to society

(1) "quae vero derivantur a lege naturae per modum particularis determinationis pertinet ad jus civile, secundum quod quaelibet civitas aliquid sibi accomode determinat." I II, 95, 4.

(2) "Philosophus loquitur ("justum legale est quod a principio quidem nihil differt utrum sic vel aliter fiat") de illis quae sunt lege posita per determinationem vel specificationem quamdam praeceptorum legis naturae." ibid, 2, ad 1.

(3) "Voluntas humana ex communi condito potest aliquid facere justum in his quae secundum se non habent aliquam repugnantiam ad naturalem justitiam; et in his habet locum jus positivum.. Sed si aliquid de se habeat repugnantiam ad jus naturale, non potest voluntate humana fieri justum." II II, 57, 2, ad 2

is distributed among its members proportionately.⁽¹⁾ The laws for individual appropriation, therefore, must manifestly not interfere with the primary right of each individual to the common use of external things. But more, their scope should be such that they leave open as far as possible to all the members of society the opportunity to acquire ownership. For just as the right to human ownership, or use, is based upon a strict necessity of human nature; so too the right of private ownership, or the jus ad rem, is founded upon human nature, although in relation to its defects, and not, as we have seen, by way of strict necessity. Its claim, however, is superior to that of the civil law, just as the claim of the natural law is superior to that of the jus gentium.

Regard also must be had for that other species of justice which concerns not the relation between the whole and its parts but between the parts themselves. "For a twofold order may be considered in relation to a part. In the first place there is the order of one part to another, to which corresponds the order of one private individual to another: This order is directed by commutative justice, which is concerned about the mutual

(1) "Alius ordo attenditur totius ad partes; et huic ordini assimilatur ordo ejus quod est commune ad singulas personas; quem quidem ordinem dirigit justitia distributiva, quod est distributiva communium secundum proportionalitatem." *ibid*, 61, 1

dealings between two persons."⁽¹⁾ Not only should the lawgiver assure to the individual the opportunity to acquire property but he should so frame his legislation as to guarantee the secure tenure of property which has been justly acquired.

But methods of acquiring property may be many. In the case of conflict of claims, how shall the lawgiver be guided? Is the matter so entirely indifferent that it should be left to his arbitrary judgment, or is there some hierarchy of titles, some metaphysical principle according to which he should be guided in determining even the order of "istius and illius"?

To answer this question properly, we must review briefly what we have already seen concerning the foundation of human and private ownership. The former is based upon two things, the order of providence and nature of man, who being endowed with intelligence and free will can use, potest uti, external things and accumulate them to meet his future needs. Now although man needs no other title to use than the needs of his rational nature, work is none the less a condition of that use. For not only is use itself defined as the application of a thing

(1) "Potest autem ad aliquam partem duplex ordo attendi: unus quidem partis ad partem; cui similis est ordo unius privatae personae ad aliam; et hunc ordinem dirigit commutativa iustitia quae consistit in his quae mutuo fiunt inter duas personas ad invicem." ll 11, 61, 1.

(1)
to some operation, but apart from those few fruits which in their natural state are ready for human consumption, man makes final use of external things only after the application of labor, whether that be the work of the hunter or fisher, the farmer, or the craftsman. We may say, therefore, that work is in general required by the natural law as a condition for human ownership.

When we come, however, to private property and the domain of the jus gentium, we find that work is the end of individual appropriation. For the first reason given by St. Thomas for the necessity of private ownership is that under such a system more work will be done. Is it not but logical, therefore, to expect that when we come to the final specification of the right of ownership by civil law, that work will be given as the primary title to private property?

Unfortunately, St. Thomas has not given formal treatment to the problem of the acquisition of property or that of the titles to ownership. In q. 66, a.5, ad2, he discusses briefly the question of occupation, defending the lawfulness of keeping a res nullius or a res derelicta, whereas the finder of

(1) "Usus alienius rei importat applicationem rei illius ad aliquam operationem." l 11, 16, 1.

a hidden treasure must dispose of it according to the civil law. (1)
Again, in la 11ae, q.105,a.2, he mentions methods of acquiring property recognized by custom; such as division of unsettled lands, by lot, or proportionately; the periodic restoration of property to its original owners; its transfer by gift, sale and inheritance. (2)
But in neither passage is he formally concerned with the problem in question. He has, however, given us several indications of his views upon the principles involved, and from them we are able to construct a theory not alien to the spirit of the Angelic Doctor.

Ownership is directed to human activity (potest uti). Now all human activity in regard to external things is divided into the realm of the facere and that of the agere. The former is an action which is transient, terminating in the external thing;

(1) "Circa res inventas est distinguendum: quaedam enim sunt quae numquam fuerunt in bonis alicujus..et talia occupanti conceduntur; et eadem ratio est de thesauris antiquo tempore sub terra occultatis, quorum non extat aliquis possessor; nisi quod leges civiles tenetur inventor medietatem domino agri, si in alieno agri invenerit. quaedam vero res inventae fuerunt de propinquo in alicujus bonis; si pro derelictis habeantur, et hoc credat inventor, licet sibi eas retineat, non committit furtum."

(2) "Primo enim ipsae possessiones divisae erant in singulos; dicitur enim Num 33.53: 'Ego dedi vobis terram in possessionem quam sorte dividetis vobis.' Et quia per possessionum irregularitatem plures civitates destruuntur, ideo circa possessiones ~~quod in perpetuum alienentur, tertium ut proximi succedant morientibus~~ regulandas triplex remedium lex adhibuit; unum quidem ut secundum numerum hominum aequaliter dividerentur.. aliud ut possessiones non in perpetuum alienentur..tertium ut proximi succedant morientibus."

the latter remains in the agent himself. ⁽¹⁾ Corresponding to ⁽²⁾ these activities are the virtue of the practical intellect. art and prudence, which are defined respectively as the "recta ratio factibilium" and the "recta ratio agibilium". ⁽³⁾ As ⁽⁴⁾ virtues, both have the good as their object. "But some habits are virtues in this respect only, that they confer aptness for a good work; others ⁽⁵⁾ that they not only confer aptness for a good work but also confer the use." Art which has no regard for the appetite but only for the thing to be made, belongs to the former category; while prudence, being concerned with the good of the agent belongs ⁽⁶⁾ to the latter.

(1) "Differunt enim agere et facere; nam agere est secundum operationem manentem in ipso agente, sicut est eligere, intelligere et huiusmodi: unde scientiae activae dicuntur scientiae morales. Facere autem est secundum operationem quae transit exterius ad materiae transmutationem, sicut secare, urere, et huiusmodi: unde scientiae factivae dicuntur artes mechanicae." Metaph., 6, 1. (1152)

(2) "Et haec est ratio vel mens practica: quae quidem non solum principiatur activae operationi, quae non transit in exteriorem materiam, sed manet in agenti, ut concupiscere et irasci; sed etiam factivae, quae transit in exteriorem materiam, sicut urere et secare." Eth. 6, 2, ad fin.

(3) "Ars est 'recta ratio factibilium', prudentia vero 'recta ratio agibilium.' 1 11, 57, 4.

(4) "Virtus cujuslibet rei dicatur in ordine ad bonum." ibid., 55, 3.

(5) "Aliquis habitus habet rationem virtutis ex hoc solum quod facit facultatem boni operis; aliquis autem ex hoc quod facit non solum facultatem boni operis sed etiam usum." ibid., 57, 4.

(6) "Ars autem facit solum facultatem boni operis; quia non respicit appetitum; prudentia autem non solum facit boni operis facultatem, sed etiam usum; respicit enim appetitum, tanquam praesupponens rectitudinem appetitus." ibid.

Now St. Thomas has already told us that the use of external things must be common. Moreover, although he admits that the potestas dispendandi, which pertains in part to the agibile, or to use, may be appropriated, it is in the technical sense of supervising their right disposition, which pertains properly to the realm of the factibile. Man is not the dispenser of his possessions for his own good, but rather for the good of the work, which is their wise distribution. But the potestas procurandi, which is concerned solely with the technical task of preparing external things for human use, clearly pertains to the order of the factibile, or art. As the dispensatio can only follow upon the procuratio, the right of private property is founded primarily in the former. It pertains not to man's moral nature, to prudence or to the order of agibillium; but to his intellectual nature, to art, and to the order of making. Therefore while the consumer has a natural right to use external things for the needs of his moral nature, the right of ownership in its restricted sense of individual appropriation, pertains only to the workman or to homo faber. "Here is the metaphysical element in human nature which in a general way makes personal ownership a matter of necessity and which is the ground of the proprietary right."⁽¹⁾

(1) MARITAIN, Freedom in the Modern world, appendix 1, "Person and Property." Engl. Trans., New York, 1936, p. 196. The same notion is developed in Art and Scholasticism, chapter iv.

In what way is it a matter of necessity? Ad bonum operis. If good things are to be made for the common use, the artist or workman,⁽¹⁾ must have control of the materials needed for his art, must be a responsible agent, free to fashion the object of his art according to the dictates of his habitus. "It is of the necessity of manipulation, without which no natural product is of service to man, that there is the necessity of private ownership. And it is because the service of men implies good service and not bad that an artistic problem merges into and becomes a problem of morals. It is immoral to deprive men of what they need. Men need goods, but in order that goods be well made there must be individual appropriation of the means of production. It is thus that the denial of private property becomes a breach of morals... Where there is no private ownership in the means of production, there is injustice, and therefore a breach in the moral law, because the quality of things made or services rendered is reduced and men are deprived of what is due them." (2)

(1) An "artist" is anyone possessing an "art", be that a practical art, a liberal art or a fine art. All are workmen in the sense that all make things for the common use. Maritain (Art and Scholasticism) states that in the Middle Ages "artists" were those possessing the liberal arts, while those practising the fine arts were classed with the artisans or craftsmen.

(2) Gill, Eric, Work and Property, London 1937, p.108.

But art is more than a reason for individual appropriation, which pertains to the moral order. In the metaphysical order the exercise of art is individual appropriation. "In the ontological and immanent order each person possesses a proprietary right over himself, over his nature and his action.. This is in the metaphysical order the root principle of ownership, but it can only pass to the ownership of material and external goods by way of the factibile, the exercise of art or work. It is of the very essence of this activity to imprint on matter the mark of rational being."⁽¹⁾

This extension of man's dominion over external things is of the order of cause to effect. By workman makes a thing his in a twofold way. It submits to his power, and is thus said to be his as are the actions by which he subdues it.⁽²⁾ But is also his in a more special way, because by the exercise of his art he gives it a new form, placing in it a similitude of himself⁽³⁾

(1) MARITAIN, op. cit., p. 198.

(2) "Effectus autem dicitur in causa dupliciter. Uno modo secundum quod causa habet dominium super effectum, sicut actus nostri dicuntur esse in nobis." De Veritate, 27, 7.

(3) "Alio modo secundum sui similitudinem, secundum quod causa producit effectum sibi similem; et hoc contingit quatuor modis. tertio quando similitudo effectus est in causa non secundum esse naturale, sed spirituale, tamen quietum, sicut similitudines artificiatorum sunt in mente artificis, forma enim domus in aedificatore non est natura quaedam..sed est quaedam intentio intelligibilis in anima quiescens." ibid.

and leaving upon it "the impress of his own personality."⁽¹⁾
It is in this sense that the artist's work is said to be "creative".
And although we restrict man's participation in the divine
dominion to the exercise of providence, true creation being
incommunicable to man, we find in the artist's claim to the
fruits of his art an analogy, though a most imperfect one, with
the title of God to the universe because omnia per ipsum facta
sunt. Against God's claim, the artist's are nothing. But who
among men shall have a better claim to a particular thing than
he who has formed it by his art? "That which has thus altered
and improved it, becomes so truly a part of itself as to be in
a great measure indistinguishably inseparable from it. Is it
just that the fruit of a man's sweat and labour should be enjoyed
by another? As effects follow their cause, so it is just that
the results of labour should belong to him who has laboured."⁽²⁾

But an efficient cause may be either principal or instru-
mental. The former operates by virtue of its own form, to which

(1) "Jamvero cum in parandis naturae bonis industriam mentis
viresque corporis homo insumat, hoc ipso applicat ad sese eam
naturae corporeae partem, quam ipse percipit, in qua velut
formam quandam personae suae impressam reliquit." LEO XIII,
Rerum Novarum, l. cit., p.24.

(2) "Quibus autem rebus est melior factus, illo sic solo
inherent misceturque penitus, ut maximam partem nullo pacto
sint separabiles a solo. Atqui id quemquam potiri illoque
perfrui, in quo alius desudavit, utrumne justitia patiatur?
Quomodo effectus res causam sequuntur a quo effectus sunt,
sic operae fructum ad eos ipsos qui operam dederint, rectum
est pertinere." *ibid.*

the effect is assimilated; the latter is moved by the principle agent and not by its own form. Therefore the effect produced by an instrumental cause is not assimilated to the instrumental cause but to the principal agent.⁽¹⁾ "Thus a couch is not assimilated to the tool but to the art which is in the mind of the artist."⁽²⁾ By logical necessity we must say the same of the human agent who works not as his own master but in another's employ. He is not the owner of the object of his art because he is the instrument of the master. At the same time, however, he is still a person and cannot be reduced to the level of an inanimate instrument which has no intention with regard to the effect. For "the animate instrument not only is moved (by the principal agent) but also in a way moves himself inasmuch as by his own will he moves his members to operate; and therefore his intention is required by which he subjects himself to the principal agent."⁽³⁾ He therefore enjoys the proprietary right

(1) "Duplex est cause agens, principalis et instrumentalis. Principalis quidem operatur per virtutem suae formae cui assimilatur effectus..Cause vero instrumentalis non agit per virtutem suae formae sed solum per motum quo movetur a principali agente. Unde effectus non assimilatur instrumento sed principali agenti. III, 62, 1.

(2) "Lectus non assimilatur securi sed arti quae est in mente artificis." *ibid.*

(3) "Instrumentum animatum, sicut est minister, non solum movetur sed etiam seipsum quodammodo movet, inquantum sua voluntate movet membra ad operandum; et ideo requiritur ejus intentio, qua se subiciat principali agenti." *ibid.* 64, ad 1.

in proportion to the degree in which his art makes him master of the effect; and consequently has a claim in justice upon the employer for the products of his skill which he voluntarily alienates.⁽¹⁾ "By virtue of this dignity (which is proper to him as a person), the individual appropriation radically required by the factibile still operates for him on the side of the product, that is the profits, for which the fixed wage is a substitute."⁽²⁾

The Thomistic view of the relation between labor and property thus repudiates the Liberal concept of labor as a commodity to be purchased, like any raw material, at market price and giving the workman no proprietary right either as regards the product or the profits.⁽³⁾ But should we, on the other hand, identify it with the Marxist theory of value? Shall we say "that which determines the magnitude of the value of any article is the amount

(1) "Les matériaux ouvrables, les outils, les ateliers ont beau, dans la plupart des cas, appartenir aux patrons; l'exécution du travail est le fait de l'ouvrier, sa propriété; donc, en appliquant à transformer des matériaux qui sont au patron, à réaliser des produits dont ce patron est maître, il aliène volontairement son travail, et il a droit à une rétribution équivalents." SCHAIN, Philosophie Sociale, I, p.327, Paris 1919.

(2) MARITAIN, op. cit., p.199.

(3) "Labour was likened to a commodity and thus its price could be ordinarily no more than its cost of production, such wages as would enable the workman to live and rear a successor. The responsibility for this gloomy doctrine falls on Turgot, Say and Ricardo." DEVAS, Political Economy, London 1907. p.473.

of labour, or the labour-time, socially necessary for its production"?⁽¹⁾ The Marxist view seems closer to that of the Thomists than does that of the Economic Liberals because it gives supreme importance to the human element in production. Things are of economic value in one sense only, in that they minister to human needs; and they are made useful by the human labor that fabricates them (in the case of manufactured articles), produces them (in the case of animal, vegetable or mineral produce), or distributes them to suit human convenience. Thus ultimately, all economic value is reducible to labor. Marx, however, errs in failing to recognize the superior quality of the labor of the skilled craftsman, or of the entrepreneur, which represent not only the actual expenditure of labor in a given piece of production but also the labor involved in the acquisition of the required skills and in the constant worry and care involved in management. Capital, moreover, even when divorced from management, at least represents the fruit of past labor and therefore is, in a sense, an active instrument of production. Where a system of just prices⁽²⁾ obtains, there is no "surplus value", in the sense of a return in no wise related

(1) MARX, Capital, English edition, New York 1887, p.4.

(2) "Carius vendere vel vilis emere rem quam valeat, est secundum se injustum et illicitum." II II, 77, 1.

to work.

But not only is work the metaphysical basis of appropriation but every title to ownership is, or should be reducible to it. Occupation presupposes the intention of work to be done and provides the workman with the material necessary for his art. Inheritance is but the right of the workman, who is also a family man, to make proper provision for his children out of the fruit of his labor.⁽¹⁾ Contract, be it unilateral or bilateral, is but the right of the workman, who is a member of society, to exchange with his brethren the fruit of their respective labours.⁽²⁾

To the civil law pertains the function of giving the necessary determinations to this natural law of appropriation. That law, however, will be just only insofar as it respects labor as the primary title to ownership; and it will be conducive to the common good to the extent that it encourages the making of things for the common use. Any law which interprets property rights apart from their relation to labour and thereby places an obstacle to increased productivity, is manifestly unjust as it goes against the primary right of man to the common use of external things.

(1) "Naturaliter inest maribus in specie humana sollicitudo de certitudine prolis, quia eis imminet educatio prolis."
ibid., 114, 2.

(2) "Potestate vero privatarum personarum subduntur res possessae; et ideo propria auctoritate in his possunt sibi invicem communicare, puta emendo, vendendo, donando et aliis hujusmodi modis."
"Non enim sufficeret unus homo ad exercenda omnia quibus humana societas indiget; et ideo diversis officiis oportet occupari diversos." Quodlibetum 7.

Chapter V.

COMMON USE.

"It is the bread of the hungry
that you hoard; the garment of the naked
that you keep in your closet; the money
of the poor which you bury in the ground."

St. Basil.

Having demonstrated that the administration of external things should be in private hands, in the interest of increased productivity and the order and peace of the community, St. Thomas now proceeds in the latter part of q.66, a.2 to discuss their use. "The second thing that is competent to man regarding external things is their use. In this respect man ought to possess external things not as his own but as common, so that he is ready to communicate them to others in their need. Hence the Apostle says (1 Timothy. vi.17,18): "Charge the rich of this world.....to give readily, to communicate to others." (1)

The use of external things is, as we have seen, their application to human needs, as distinguished from their production and distribution. Use, insofar as it concerns the direction of things to their proper ends, pertains to the

(1) "Aliud vero quod competit homini circa res exteriores est usus ipsarum; et quantum ad hoc non debet homo habere res exteriores ut proprias, sed ut communes, ut scilicet, de facili aliquis eas communicet in necessitate aliorum. Unde Apostolus dicit: "Divitibus huius saeculi praecipe....facile tribuere, communicare de bonis." II II, 66,2.

virtue of prudence.⁽¹⁾ Its realm is the agibile, as opposed to the factibile which is the realm of art. But insofar as it is the use of external things, it is the proper object of the virtue of liberality. "Bene uti his rebus (quae extra nos sunt) pertinet ad liberalitatem."⁽²⁾ Liberality is a potential part of justice; potential because it is lacking the ratio debiti legalis which pertains to the notion of strict justice.⁽³⁾ "Justice gives to another what is his; liberality, what is one's own."⁽⁴⁾ It is not in the order of strict debt but rather conducive to a greater honestas, although without it the essence of honesty can be preserved.⁽⁵⁾ Its proximate matter is the interior passions by which man has an affection for money; money being used in the sense of any material

(1) Prudentia est circa ea quae sunt ad finem." II II, 49, 6.

(2) II II, 117, 1.

(3) "In virtutibus quae adiunguntur alicui principali virtuti duo sunt consideranda: primo quidem quod virtutes illae in aliquo cum principali virtute convenient; secundo quod in aliquo deficiant a perfecta ratione ipsius...Dupliciter aliqua virtus ad alterum existens a ratione iustitiae deficit; uno quidem modo a ratione aequalis; alio modo inquantum deficit a ratione debiti." *ibid.*, 80, 1.

(4) "Iustitia exhibet alteri quod est ejus; sed liberalitas exhibet id quod suum est." *ibid.*, 117, 5.

(5) "Aliud vero debitum est necessarium sicut conferens ad majorem honestatem, sine quo tamen honestas conservari potest; quod quidem debitum attedit liberalitas." *ibid.*, 80, 1.

(1) wealth. Its function is so to regulate these passions that an inordinate love of money will not keep a man from using his wealth as he should. (2) The liberal man, therefore, is one who uses his wealth properly, but particularly by giving freely to others. For although the right acquisition and stewardship of wealth pertains also to liberality, (3) its perfection is in giving. (4) Liberality, however, is not a motive for giving, but rather the virtue which facilitates giving as one should. (5)

Opposed to liberality are the vices of prodigality and avarice, the former chiefly by excess and the latter chiefly by defect. (6) The prodigal man is one who fails to acquire and preserve the wealth necessary for his state in life, but

(1) "Propinqua materia liberalitatis sunt interiores passiones secundum quas homo afficitur circa pecuniam." *ibid.*, 117, 3 ad 3.

"Et Philosophus dicit 'pecunias omnia didimus quorum dignitas numismate mensuratur.'" 117, 2, ad 2.

(2) "Ad liberalitatem pertinet praecipue ut homo propter inordinatam affectionem non prohibeatur a quocumque debito usu ejus." 3, ad 3.

(3) "Ad liberalitatem pertinet non solum uti pecunia sed etiam eam praeparare et conservare ad idoneum usum." *ibid.*, ad 2.

(4) "Liberalitas maxime laudatur ex datione." *ibid.*, 4.

(5) "Fit autem uti actio liberalitatis non per modum imperantis.. sed per modum exequentis medi.. vel per modum removentis prohibens." CAJETAN, Commentarium in IIam IIae, q. 117.

(6) "In moralibus attenditur oppositio vitiorum ad invicem et ad virtutem secundum superabundantiam et defectum. Differunt autem avaritia et prodigalitas secundum superabundantiam et defectum diversimode." II II, 119, 1.

particularly who spends money too freely upon himself or
others without regard for its proper use.⁽¹⁾ The avaricious
man, on the other hand, has an immoderate love for wealth
which makes him too solicitous in acquiring it and too
reluctant to part with it when the occasion demands.⁽²⁾ The
result is that the prodigal man fails to provide properly for
himself and others;⁽³⁾ while the avaricious man sins directly
against his neighbour, "because in external wealth one man
cannot have a superabundance unless another goes short, for
temporal goods cannot be possessed at the same time by many."⁽⁴⁾

- (1) "Ad prodigalitatem pertinet excedere quidem in dando,
deficere autem in retinendo et adquirando." *ibid.*
"Apostolus monet divites ut facile tribuant et commun-
icent sua, secundum quod oportet; quod non faciunt prodigi." 2 ad 2
- "Circa prodigalitatem attendimus quod superflue consumit
divitias." 3, ad 2.
- (2) "Supra debitum modum vult eas (divitias) acquirere vel
retinere." 118, 1.
- (3) "Prodigus peccat in seipsum dum bona sua consumit, unde
vivere debet; peccat etiam in alterum consumendo bona ex quibus
aliis debet providere." 119, 3, ad 1.
- (4) "Avaritia..secundum hoc est directe peccatum in proximum
quia in exterioribus divitiis non potest unus homo super-
abundare nisi alter deficiat; quia bona temporalia non possunt
simul possidere a multis." 118, 1, ad 2.

Every man's possessions should be sufficient to enable him to live liberally. That is, he should have enough wealth to enable him to provide properly for himself and his dependents, and to carry out the duties of his station, without being driven to penury by the insufficiency of his means. "Socrates says that the possessions of a city should be such that its citizens can live temperately. But it would be truer to say that they should be such as to enable them to live well..For some live temperately, yet miserably and in great want..The better determination is that they should be rich enough to live temperately and liberally. For on the one hand, if it be said simply to live liberally, it would follow that a man might live in superfluous pleasures. On the other hand, if it only be said that he should live temperately, he might live in need and in distress."⁽¹⁾ This is the "good life" which God has intended for man. God has stocked the earth with an abundance of goods in order that man might have sufficient wealth to meet all his physical needs; and to live, moreover, liberally, that is, free from that concern about material things which keeps man from the things of the spirit and is an obstacle

(1) "Dicit enim Socrates quod tanta debet esse possessio civitatis ut ea possint cives vivere temperate; sed planius diceretur si diceret, quod tanta debet esse possessio civitatis ut ex ea vivatur bene;;Contingit aliquem temperate vivere qui tamen misere vivit, id est cum magna penuria..Melior determinatio est ut dicatur quod tanta debet esse possessio ut vivatur temperate et liberaliter..Ex una enim parte si dicatur quod debeant vivere liberaliter, sequentur quod homo in superfluis delitiis vivat. Ex alia vero parte, si dicatur quod debet vivere temperate, sequetur quod possit homo vivere cum penuria et labore." P ol. II,6.

(1)
to a happy social intercourse. The "necessities of life" imply much more than what is required to keep body and soul together. They include all that man needs for the full development of his individual and social life. Whatever is useful for that end comes under the category of "necessary".

Strict necessity, to be sure, is that "without which a thing cannot be". (2) A man is in such necessity when he has only that without which he cannot sustain himself, his family and his dependents. (3) But necessary also in the broad sense is that without which a man cannot conveniently live in the state proper to his person and that of those whose care is entrusted to him. (4-6) Conveniently is here interpreted broadly to include a considerable margin without which life would not be strictly inconvenient and yet with which it does not constitute luxury. (5)

(1) "Valde delectabile est quod homo donet vel auxilium ferat vel amicis vel extraneis vel quibuscumque aliis." Ri. II,4.

(2) "Necessarium dicitur dupliciter: uno modo, sine quo aliquid esse non potest." II II, 32,6.

(3) "Aliquis in articulo necessitatis constitutus haberet solum unde potest sustentari, et filii sui vel alii ad eum pertinentes." ib.

(4) "Alio modo dicitur aliquid esse necessarium sine quo non potest convenienter vita transigi secundum conditionem et statum propriae personae et aliarum personarum quarum cura ei incumbit." ibid.

(5) "Hujusmodi necessarii terminus non est in indivisibili constitutus; sed multis additis non potest dijudicari esse ultra tale necessarium, et multis subtractis, adhuc remanet unde possit convenienter aliquis vitam transigere secundum proprium statum." ibid.

All that is necessary, in the sense which we have explained the term, is the object of human ownership, or use. Every man has a natural right to the use of whatever is in any way needed by his nature. The exercise of that right, however, is, as we have seen, conditioned. God has given man all that his nature requires, but he can enjoy it only by work. To facilitate a better exploitation of material goods and a degree of production which will make a higher standard of living possible, men have instituted the system of private ownership of the means of production. Each man is to be charged with the administration of a portion of the earth's goods which are to be his own responsibility. He has the right of accumulating, and disposing of, all the material wealth he can honestly wrest from nature. But although this wealth is his to administer because his work has left upon it the impress of his human personality, it is his to use only to the extent that it is necessary to him. All that he has in excess of the reasonable needs of his state in life is superfluous wealth.⁽¹⁾ His right of use, although conditioned by work, is founded upon the needs of his nature and cannot be extended to what is superfluous. The use of external things is

(1) "Dico superfluum..quod est supra id quod est necessarium."
II II, 32,5.

Here again we must distinguish between life and status, i.e. superfluum naturae and superfluum personae.

(concluded from previous page:)

- (6) What is necessary for life is necessarium naturae seu absolute; what is required by status is necessarium personae seu conditionate.

not subject to individual appropriation. "As to this (use) (1)
man should not have external things as his own but as common."

The better to appreciate the reasonableness of this doctrine, which may sound revolutionary to modern ears, we should recall what we said in Chapter II about the subject of the right of ownership (2). It is first of all to mankind in general, and to individual men only by their participation in a common human nature, that God has given external things. They have been given, not as ends, but as means to man's last end, eternal beatitude, which he will share in the supernatural society of the Kingdom of Heaven. It is, moreover, only by participation in human society here on earth that man is able to attain the state of natural well-being. The individual, left to his own resources, could hardly acquire the bare necessities of life. Whatever he enjoys above and beyond is primarily a social good in which the community allows him to share to a greater or less degree. The order of commutative justice is maintained by relating that share to man's labour and allowing the individual to dispose of what he has acquired at his own discretion. But distributive justice demands that what is superfluous to the individual be at the service of the community until the needs of every member have been satisfied.

(1) "Quantum ad hoc (usum) non debet homo habere res exteriores ut proprias, sed et communes." *ibid.*, 66, 2.

(2) p. 61.

It is for this end, a wider common use, that private property has been instituted. But if private property is an aid to increased production and to the peace and order of the community, it at the same time admits of grave abuse if its end, the common use, be not kept constantly in view. For although man needs the stimulus of necessity to make him work, there will always be many whose intelligence, health or years are insufficient to the task of earning a living unaided. There will, moreover, be many who, driven by avarice, will appropriate more than their share of the means of production and thereby deprive others of the opportunity of supporting themselves by their own efforts. There will also, because of the fact that wealth multiplies opportunities for growing richer, be a tendency toward dividing the community into economic classes which will be a barrier to the unity of the community and which will result in a substantial part of the community being condemned to live at a subhuman level of existence. It was precisely these evils that Plato and the socialists desired to remedy by insisting on common ownership of property. St. Thomas and Aristotle, agreeing with their objectives, insisted that human experience taught that the means they proposed would fail. They proposed instead a system which would combine the advantages of both socialism and individualism,

that would occupy a middle ground between the two; namely, private ownership and common use. Thus, St. Thomas says, "if possessions are private, and it is ordained by right laws and customs that the citizens share their goods with each other, such a system will have the good that comes from both the community and distinction of possessions."⁽¹⁾

How the use of private possessions is to be made common will be determined by the good judgment of the legislator.⁽²⁾ In certain communities the law states that some things shall be common as to use ipso facto, while others shall be common at the discretion of their owners.⁽³⁾ It is more in accord with the system itself, however, that the common use be made effective as far as possible by the owners themselves, and therefore Aristotle states, "it is the special business of the legislator to create in men this benevolent disposition."⁽⁴⁾ We shall leave to the following chapter

(1) "Si possessiones sunt propriae, et ordinantur per rectas leges et consuetudines quod cives sibi invicem communicent de suis bonis, habebit talis modus vivendi bonum quod est ex utroque: scilicet ex communitate possessionum et distinctione earum." 11 Pol. 4

(2) "Quomodo autem usus rerum propriarum possit fieri communis hoc pertinet ad providentiam boni legislatoris." *ibid.*

(3) "In quibusdam civitatibus bene dispositis est hoc statutum quod quaedam sint ipso facto communia quantum ad usum, quaedam autem fiant communia per voluntatem ab ipsis dominis." *ibid.*

(4) "Quomodo autem cives sic animati reddi possint, haec sunt partes lateris legum." Aristotle, Politics, 11, 4. St. Thomas' commentary varies somewhat from this, being based upon the older Latin text which reads: "Quomodo autem fiant tales (possessiones communes) legislatoris hoc opus proprium est."

the discussion of the function of the state in the matter of ownership and confine ourselves here to the part which the individual should play in rendering the common use effective. That way is pointed out for us by Aristotle's commentator: "Thus property will be divided, but because of the virtue of the citizens who will be liberal and beneficent toward one another, it will be common as to use, as is said in the proverb that friends have all things in common."⁽¹⁾

Liberality, we have seen, although regulative of giving, does not provide the motive for giving. Its virtue consists in giving secundum quod oportet. The act of liberality, therefore, must be commanded by a superior virtue the object of which is the quod oportet. But as we give, strictly speaking, only to others, it follows that the virtue or virtues commanding the act of liberality must concern our relations with others. Now of the four cardinal virtues, only justice, ex ratione sua, is ad alterum.⁽²⁾ It is this virtue, therefore, of which liberality itself is a potential part, aiding in its proper execution, upon which the common use must be founded.

(1) "Et hec modo erunt possessiones divisae, sed propter virtutem civium, qui erunt in invicem liberales et beneficii, erunt communes secundum usum, sicut dicitur in proverbio, quod ea quae sunt amicorum sunt communia." 11 Pol., 4.

(2) "Cum nomen justitiae aequalitatem importet, ex sua ratione justitia habet quod sit ad alterum." 11 11, 58, 2.

"Actiones quae sunt hominis ad seipsum sufficienter rectificantur rectificatis passionibus per alias virtutes morales. Sed actiones quae sunt ad alterum indigent speciali rectificatione. Et ideo circa eas est specialis virtus." *ibid.*, ad 4.

In the preceding chapter we considered the two species of justice which concern relations to a single individual. These are commutative, which obtains between individuals themselves; and distributive, which obtains between the community as a whole and the individual. Corresponding to the latter, however, is a third species of justice, properly called legal, but also called by St. Thomas general, and known popularly in our day as social justice.⁽¹⁾ It governs the relations of the individual to the community, and has as its object not that which is proper to the individual but that which is common. Strictly speaking, an act is commanded by legal justice only when it is determined by the lawgiver, and lacking this determination its claim cannot be vindicated; for it is the determination of the lawgiver, distributing what is common, which gives rise to the corresponding obligation in the individual to perform a specific act.⁽²⁾

(1) "Justitia ordinat hominem in comparatione ad alium..uno modo ad alium singulariter consideratum; alio modo ad alium in communi..Et secundum hoc actus omnium virtutum possunt ad justitiam pertinere, secundum quod ordinat hominem ad bonum commune. Et quantum ad hoc justitia dicitur generalis. Et quia ad legem pertinet ordinare in bonum commune..inde est quod talis justitia, praedicto modo generalis, dicitur justitia legalis." II II, 57, 5.

(2) "L'aumône..est due a autrui d'une maniere générale au nom de la justice générale ou sociale..Mais tant que la loi humaine n'intervient pas pour préciser les exigences de cette justice sociale, l'aumône, tout en s'inspirant de la justice, n'est pas encore, sous telle forme déterminée, un devoir de justice." L'Ami du Clergé, "L'aumône est-elle due en justice ou en charité?" June 22, 1933. pp. 391-395.

But failing this specific determination by the legislator, the natural law still requires that the individual be at all times ordered to the common good and perform such actions for the common good as the circumstances demand.

Is the common use of superfluous goods commanded by commutative or by social justice? In other words is it in the nature of a debt to the individual who is indigent, or to the community as a whole, the good of which demands that no individual be in want? If it be of commutative justice, it must be because of some claim upon the part of the indigent to the particular possession of the possessor by which it is due to the former rather than the latter. "*Nomen justitiae aequalitatem importat.*" At first glance it would seem that the indigent possesses no right to the superfluous goods of any individual unless by special decree of the lawgiver because, as St. Thomas tells us, "As many are in need and not all can be relieved by means of the same thing, the dispensing of relief to those in need is left to the discretion of the owners."⁽¹⁾ We must distinguish, however, between degrees of necessity. "In extreme necessity all things are common."⁽²⁾ And if the man so constituted can preserve his life only by the use of my possession, which I have appropriated

(1) "*Quia multi sunt necessitatem patientes, et non potest ex eadem re omnibus subveniri, committitur arbitrio uniuscujusque dispensatio propriarum rerum, ut ex eis subveniat necessitatem patientibus.*" II II, 66, 7

(2) "*In casu extremae necessitatis omnia sunt communia.*" *ibid.*, 32, 7.

according to the civil law specifying the jus gentium, then it becomes his by the higher title of the necessity of nature upon which all possession is based. "Through such necessity that becomes his which he takes to sustain his own life." (1) Moreover, here there is no question of my right of property, potestas dispensandi. "He who is suffering such (extreme) need may take from another what is required for to sustain his life, if he can find no one who is willing to give to him." (2) Nor is he guilty of theft in taking what belongs to him by the exigency of the natural law; "He can licitly relieve his needs from another's possessions by taking them either openly or secretly. Nor has such an action the formality of theft or robbery." (3) By giving to him, therefore, what is his by virtue of a higher right and not by disposition of the lawgiver, I perform an act of commutative justice. Such seems to be the mind of the Angelic Doctor although he does not formally ascribe this action to one species of the virtue of justice rather than the other. It is in this sense also that he is interpreted by certain of his modern

(1) "Per talem necessitatem efficitur suum illud quod quis accipit ad sustentandam propriam vitam." *ibid.*, 66, 7, ad 2.

(2) "Licet ei qui talem necessitatem patitur accipere de alieno ad sui sustentationem, si non inveniat qui sibi dare velit." *ibid.*, 32, 7 ad 3.

(3) "Licite potest aliquis ex rebus alienis suae necessitati subvenire, sive manifeste sive occulte sublati. Nec hoc proprie habet rationem furti vel rapinae." *ibid.*, 66, 7.

commentators. Thus Father Spieq, O.P. writes, "The obligation of giving of one's superfluous possessions is not imposed by commutative justice (such is the sense of strict justice among modern writers), because a particular poor man has not the right to the property of a particular rich man, except in the case of extreme necessity." ⁽¹⁾ And again, L'Ami du Clerge, "As regards an indigent in the classical case of extreme necessity, almsgiving is an act of strict justice. We have no need of insisting upon this well-known point."⁽²⁾

But if extreme necessity be required from the part of the indigent to constitute an obligation of commutative justice, what is required upon the part of the possessor? "On the part of the giver it is to be considered that that which is demanded

(1) "D'une part L'obligation de donner du superflu ne s'impose pas en justice commutative (tel est le sens de: justice stricte, chez les modernes), puisque tel pauvre n'a pas un droit strict aux biens de tel riche, sauf le cas d' extreme necessite." La Justice, l. cit. p. 556.

(2) "Enfin a l'egard d'un indigent dans le cas classique de la misere extreme, l'aumone est un acte de stricte justice. Nous n'avons pas besoin d' insister sur ce point bien connu." l.cit., p. 595.

of him as an alms be superfluous to him: according to Luke 11.41, 'That which remaineth, give alms.'⁽¹⁾ Yet in what sense superfluous? Superfluum naturae or superfluum personae?

This question was made the point of a special treatise by Cardinal Cajetan in which he refuted the theory held by certain fifteenth century commentators, notably Abbot Siculus, a "famous doctor of canon law," St. Antoninus, of the Order of Preachers and Archbishop of Clerence; and Baptista Trovamala, author of the Rosella Casuum. The latter held the opinion, Cajetan states, that according to the teaching of St. Thomas in IIa IIae, q. 32, "man is not bound, out of necessity for salvation, to give alms unless both these conditions are fulfilled, namely, that the giver has something that is superfluous, not only to nature, that is, life, but also to person, that is, the becoming status both of himself and those whose care is incumbent ^{upon him} and that it appear the poor man be suffering extreme necessity."⁽²⁾

(1) "Ex parte quidem dantis considerandum est ut id quod est in eleemosynas erogandum sit ei superfluum, secundum illud Luc. xi.41, Quod superest, date eleemosynam." II II, 32. 5.

(2) "Aunt quod secundum S. Thomam ibidem, homo non tenetur de necessitate salutis facere eleemosynam, nisi concurrentibus his duabus conditionibus simul, scilicet, quod dans habet aliquod superfluum, nedum naturae, idest vitae, sed personae, idest decentiae status, tam sibi quam suis, quorum scilicet ei cura incumbit; et quod appareat pauper patiens extremam necessitatem." De Eleemosynae Praecepto, I.5; quoted from Scripta Philosophica, Opuscula Oeconomicae-Socialia, Rome 1934. p.5 Cf. also Commentarium in IIam IIae, 32, 5-6.

This proposition, as is evident, includes two statements: first, that the precept is of obligation sub gravi (preceeding here from the nature of the obligation, whether of commutative justice, social justice, or charity) only in cases of extreme necessity; and secondly, that it extends only to goods which are superflua personae. It is with the latter proposition, however, that we are immediately concerned.

St. Thomas discusses this question in q.32, a.6. Distinguishing first between necessitas naturae and necessitas personae, he states that no one is obliged to give that which is required to sustain his life and that of his dependents, except in the extreme necessity of the Church or State, in which case he should risk the lives of himself and his family as the common good is to be preferred to his own good.⁽¹⁾ Nor is one obliged to give of that which is necessary for one's personal dignity, as no one is obliged to live inconveniently.⁽²⁾ Three exceptions, however, are

(1) "Nisi forte talis casus immineret ubi, subtrahendo sibi daret alicui magnae personae per quam Ecclesia vel respublica sustentaretur; quia pro talis personae liberatione seipsum et suos laudabiliter mortis periculo exponeret, cum bonum commune sit proprio preferandum." II II, 32, 6.

(2) "Inordinatum autem esset si aliquis tantum sibi de bonis propriis subtraheret ut aliis langiretur, quod de residuo non posset vitam transigere convenienter secundum proprium statum et negotia occurrentia; nullus enim inconvenienter vivere debet." *ibid.*

made to this rule. First, when one changes his status to enter religion, for then one gives all for Christ; secondly, when one can easily recoup one's loss; thirdly in the case of the grave necessity of the state or the extreme necessity of an individual.⁽¹⁾ "In these cases one would praiseworthily give away what would seem to pertain to the dignity of his position, in order that a greater necessity be relieved."⁽²⁾ Here the dispute centers around the use of the term laudabiliter. Does St. Thomas thereby signify that to give what one needs absolutely in the extreme necessity of the Church or state, or to give what one needs conditionally, in the grave necessity of the state or the extreme necessity of a private person, is only of counsel? "Praiseworthily is not distinguished from of precept but from blameworthy. Therefore the sense is not that the giver does well not from the force of the precept but rather from the

(1) "Ab hoc tria sunt excepienda. Quorum primum est quando aliquis statum mutat, puta per religionis ingressum; tunc enim omnia sua propter Christum largiens, opus perfectionis facit.. Secundo quando ea., tamen de fam^{li} resaciri possunt, ut non sequatur maximam inconueniens. Tertio, quando occurrit extrema necessitas alienius privatae, ^{per personam} vel etiam aliqua magna necessitas reipublicae." *ibid.*

(2) "In his enim casibus laudabiliter praetermitteret aliquis id quod ad decentiam sui status pertinere videretur, ut majori necessitati subveniret." *ibid.*

worthiness of the counsel: but the sense is that in these cases he does not wrongly but rightly. And it is evident both from the title (of the article) and the matter, that this is the intention of the Author. From the title, because in this article the discussion is whether one should give of that which is necessary, and not whether the giving be of precept or counsel. From the matter, because it is certain that not only the grave necessity of the republic but also the extreme necessity of any individual.. necessitate that the common good be placed before private good and the life of one's neighbour before the dignity of one's position."⁽¹⁾ We must conclude, therefore, that not only does the necessity of nature take precedence over the legal title to the superflua personae but also to the superflua naturae: and that consequently the obligation of commutative justice to succor those in extreme necessity who have no other means of preserving their lives, extends to what is superfluous not only to the possessor's position but also to all beyond the bare necessities of life. Only thus can the natural destination of goods to the service of man be maintained.

(1) "Iy laudabiliter non sumitur ut distinguitur contra ly ex debito praecepti, sed contra ly vituperabiliter. Ita quod non est sensus quod non ex vinculo praecepti, sed ex honestate concilii bene faceret: sed est sensus quod non malo sed bene faceret in his casibus. Et patet hanc esse intentionem Auctoris, ex titulo et materia. Ex titulo quidem, quia in hoc articulo discutitur an liceat de necessario dare et non an sit in praecepto vel in consilio. Ex materia autem quia constat quod tam magna necessitas reipublicae quam extrema necessitas alicujus occurrentis necessitat..praeponere bonum commune privato, et

According to the same principle of the hierarchy of needs, whatever is superfluous to the person is due those who have only what is necessary for nature and not what is necessary to the person. This is the second point contested by St. Antoninus and the other writers of his period. Cajetan, however, shows that their position is based upon a misinterpretation of the words of the Angelic Doctor. At the end of article 6 in which he discussed the question, "Whether to give alms is of precept,"⁽¹⁾ St. Thomas makes the following statement: "So, therefore, to give alms of one's superfluous goods is of precept; and to give alms to him (2) who is in extreme necessity. Otherwise, to give alms is of counsel."

(1) "Utrum dare eleemosynam sit in praecepto." II II, 32.5.

(2) "Sic igitur dare eleemosynam de superfluo est in praecepto; et dare ei qui est in extrema necessitati. Alias autem eleemosynam dare est in consilio." *ibid.*

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"vitam proximi opportunitis ad decentiam status, ut patet."
CAJETAN, Com. in IIam IIae, 32, 6.

St. Antoninus and the others of the same opinion interpreted this text in the sense that the phrase ei qui est in extrema necessitate qualified the subject dare eleemosynam de superfluo. But as Cajetan points out, the obvious interpretation of St. Thomas's words according to the rules of grammar is that two things are of precept, namely, to give alms out of one's superabundance, and to give alms to anyone who is in extreme necessity.⁽¹⁾ That the Master General of the Dominicans properly interprets his illustrious predecessor is evidenced by many texts of St. Thomas which Cajetan refers to in his epusculum. For our present purposes, however, it is necessary to quote but one in confirmation both of the principles involved and the proper interpretation of the two contested texts in articles 5 and 6. In his commentary on the fourth book of the Sentences, he sums up the whole problem of the precept of almsgiving in the following lucid words: "Since the use of riches is ordered to the relief of the necessities of the present life.. it is evident

(1) "Dixit enim in praecepto est dare eleemosynam de superfluo et dare eleemosynam ei qui est in extrema necessitate. Due ergo, grammaticaliter intelligende, praecipitur dixit: et quod detur eleemosynam de superfluo, et quod detur eleemosynam patienti extremam necessitatem." De Eleemosynae Praecepto, l.cit., p. 10-11.

that he who does not use his wealth for the relief of the needs of the present life, or who uses them inordinately, departs from virtue. But the order of such relief should be determined according to two things: First, on the part of those who are aided, first one's self, then one's dependents, and finally strangers. Secondly, on the part of the necessity itself, the order should be such that first absolute necessity should be relieved before any conditioned necessity, which is when one needs something for the proper conservation of his position. The precept of the law therefore obliges to this, that what one possesses above the perfect relief of himself and his dependents (namely of the household of which ^{he} is master) in respect to both necessities, he is to spend on alms in relieving others in respect to both necessities.. And likewise the precept of the law obliges that also the absolute necessity of strangers be relieved before the conditioned necessity of one's self or one's relatives. It is therefore commonly held that to give alms of one's superabundance comes under the precept; and to give alms to him who is in extreme necessity. But to give of that which is necessary according to secondary necessity, and not of that which is required by primary necessity, because this would be contrary to the order of charity." (1) see following page

It is in this same distinction between absolute and conditioned necessity that we find the basis for the distinction between the obligation to give out of one's superflua naturae to one in extreme necessity, and to give out of one's superflua personae to those who are in grave necessity in the sense of necessitas personae. Both are commanded by precept. But the former is, as we have seen, of commutative justice and destroys the discretionary power, or potestas dispensandi of the possessor.

- (1) "Cum autem usus divitiarum sit ordinatus ad subveniendum necessitatibus praesentis vitae (quae quidem subventio debet esse ordinata), patet quod qui divitiis non utitur ad subveniendum praesentis vitae necessitatibus, vel ordinate utitur, a virtute recedit. Ordo autem subventionis talis debet attendi quantum ad duo. Primo ex parte eorum quibus subvenitur, ut primo sibi, postea sibi conjunctis subveniat, et deinde extraneis. Secundo, ex parte necessitatis, talis debet esse ordo, ut prius absolutae necessitati subveniatur, quam alicui necessitati condicionatae, quae est cum quis indiget aliquo ad sui status decentem conservationem. Et ideo praecceptum legis ad hoc obligat, ut illud quod superest alicui post subventionem perfectam sibi et sibi conjunctis (puta familiae quam gubernare debet) respectu untriusque necessitatis, in eleemosynas expendat ad subveniendum aliis respectu utriusque dictarum necessitatum.. Et similiter praecceptum legis obligat quod etiam necessitati extraneorum absolutae prime subveniatur quam necessitati propriae vel propinquorum condicionatae. Et ideo dicitur communiter quod dare eleemosynam de superfluo cadit in praeccepto; et sic dare eleemosynam ei qui est in extrema necessitate. Dare autem de eo quod est necessarium necessitate secunda, non autem de eo quod est necessarium necessitate prima, quia hoc esset contra ordinem caritatis." In IX Sent. dist. 15, q.2, a.1 sol. 4.

The latter, however, barring a specific decree of the legislator, is left to the discretion of the owner, as is evident from q.66, a.7: "The dispensing of their own possessions for the relief of the indigent is entrusted to the judgment of the respective owners."⁽¹⁾ But clearly, if the matter be left to the discretion of the proprietor, it cannot be a case of commutative justice, else the indigent would be justified in taking what was his regardless of the possessor's wishes. Yet if a man in extreme necessity has a right in commutative justice to what he needs to maintain his life, because "the use of riches is ordered to the relief of the necessities of the present life," why has not the man in conditioned necessity a similar right under commutative justice to that he needs for a decent living? The reason given by St. Thomas that, "many are in need, and not all can be

(1) iam cit., p.142, note 1.

relieved by means of the same thing,"⁽¹⁾ points to a problem in administration but does not, of itself, indicate why the obligation should not be referred to the same virtue. The solution must be sought in the fact that as man has an absolute right to his life, his right to what is physically necessary to preserve his life is also absolute. It is his absolutely and individually, apart from any consideration of his social nature. But his right to the amenities of life, to that which is required ad sui status decentem conservationem, is not absolute but conditioned. It is conditioned upon his membership in society, in which alone, as a social animal, he is able to achieve a standard of living suited to the dignity of his person. This condition in no wise changes the natural destiny of external goods. But it does mean that man receives them not directly as an individual good, but indirectly by participation in the common good of society. Now while what is of absolute right pertains to strict or commutative justice, what is of conditioned right, by participation in the common good, pertains rather to that species of justice the function of which is to distribute what is common: which is, as we have seen distributive justice on the part of him who has the care of the community, and legal or social justice on the part of the private individual who is

(1) *ibid.*

charged with the dispensation of that which is common.⁽¹⁾ The duty, therefore, of dispensing one's surplus to the indigent in conditioned necessity is a duty of social justice.

For the vindication of this right of social justice the poor man cannot take the law into his own hands, as his right to what is superfluous to the rich must be determined. But if the rich man, upon whom the duty of dispensing his surplus first falls, does not use his wealth for the common good, he does the poor an injustice which the government is duty bound to rectify.⁽¹⁾ Yet the common use will hardly be effected if justice be the only virtue upon which it is based, or if the distribution of surplus wealth be judged solely from the viewpoint of rights. Four centuries before Christ, Aristotle, to whom we are indebted for the principle of private ownership and common use, made the following observation regarding social and commutative justice: "It seems that friendship or love is the bond that holds states together, and that legislators set

(1) "Fundatur legale debitum in hoc casu super ipsa divitiarum justitia, quae cum in genere boni utilis sint, superfluitas non dispensata sed retenta contra utriusque utriusque utilitatem occupatur: nam et contra retinentem occupatur, quia sua est ut sibi prosit dispensatio: et contra indigentium utilitatem occupatur, quia quod in eorum usum cedere debet, occupatur. Et ut Basiliius dixit, ipsorum indigentium est ex debito, licet non de facto. Et ideo indigentibus fit injuria non dispendendo superflus. Quam injuriam princeps, qui custos justus est, ex officio auferre potest et debet, si constat evidenter." CAJETAN, Com. in Iiam Iiae, 118, 4.

more store by it than by justice; for concord is apparently akin to friendship, and it is concord that they especially seek to promote, and faction, as being hostility to the state, that they especially try to expel. If people are friends, there is no need of justice between them; but people may be just and yet need friendship. Indeed it seems that justice, in its supreme form, assumes the character of friendship."⁽¹⁾ Commenting on this, St. Thomas remarks, "It therefore seems to pertain much more to moral philosophy to be concerned with friendship than with justice."⁽²⁾

St. Thomas treats expressly De Amicitia in q.114. "A man should be properly ordered to other men in common conversation, not only in deeds but in words: that he conduct himself becomingly toward everyone. There should therefore be some special virtue which observes this fittingness of order. And this is called friendship or affability."⁽³⁾ This virtue is a

(1) Ethics, IV, ch.I. English translation by J.E.C. Weldon, D.D., London 1892, p.246.

(2) "Multo ergo magis ad moralem pertinet considerare de amicitia quam de iustitia." In IV Ethic.I.

(3) "Oportet autem hominem convenienter ad alios homines ordinari in communi conversatione, tam in factis quam in dictis; ut scilicet ad unumquemque se habet secundum quod decet. Et ideo oportet esse quandam specialem virtutem quae hanc convenientiam ordinis observet. Et haec vocatur amicitia seu affabilitas." II II, 114, I.

potential part of justice and is akin to liberality from which it is distinguished ratione materiae. The former disposes one to give to another what material things are due him; the latter to give him the external signs of friendship in word and deed which proper social intercourse demands. Friendship, however, in this sense of the term was unnamed by Aristotle who described it as a mean between obsequiousness and surliness or contentiousness. ⁽¹⁾ He distinguished it, moreover, from true friendship, which it resembles, the latter implying affection as well. Among the Latins the virtue was known as affability. St. Thomas calls it either affabilitas, or amicitia; in the latter case, however, with a qualifying hujusmodi or praedicta to distinguish it from friendship in the strict sense. For St. Thomas distinguishes a twofold friendship: "One of which consists principally in the affection with which one loves another.. and what pertains to this friendship we have said above concerning charity. The other friendship.. consists only in exterior words or actions; and this has not the perfect formality of friendship but only a certain resemblance to it, in that one conducts himself properly towards those with whom ⁽²⁾ he converses."

(1) 'The extreme states here appear to be opposed to one another rather than to the mean state, because the mean state has no name?' Ethics, IV, 12., 1. cit., p.126.

(2) "Quorum una consistit principaliter in affectu quo unus alium diligit.. quae autem ad hanc amicitiam pertinet, supra

Justice concerns man's relations ad alterum. It renders another what is his due. Friendship, or charity, concerns man's relations not ad alterum simpliciter, but ad alterum ut proximum,⁽¹⁾ in other words as his fellow man or neighbor. It renders him not his due but good.⁽²⁾ Whereas the obligation of justice arises from the thing possessed, the duty of charity is toward the person loved.⁽³⁾ Natural charity admits of degrees based upon intimacy, but it extends necessarily to all human beings: "For there is a natural love among those who are of a common descent in that they share common customs and a common life. And especially natural is that love which all men have for one another because of the likeness of a common nature. We therefore

(1) "La justice se rapporte à autrui; mais, dans cet autrui, c'est la charité qui nous fait envisager les raisons de proximité plus ou moins grande." L'Ami du Clergé, l. cit., p.392.

(2) "Non quilibet amor habet rationem amicitiae, sed amor qui est cum benevolentia; quando scilicet sis amamus aliquem ut ei bonum velimus." ll 11, 23,1.

(3) "L'obligation de la justice se prend donc de la chose même, des biens possédés. Le devoir de la charité s'adresse à la personne même du prochain." SPICQ, L'Aumône: Obligation de Justice ou de Charité; in Mélanges de Mandonnet, vol.1, Paris 1930

(2) Concluded from page - 173
de caritate dicta sunt. Aliam vero amicitiam posuit quae consistit in solis exterioribus verbis vel factis. Quae quidem non habet perfectam rationem amicitiae, sed quandam ejus similitudinem; inquantum scilicet quis decenter se habet ad alios cum quibus conversatur." ll 11, 114.1.

praise the philanthropists, that is, those who have love for their fellow man, as fulfilling that which is natural to man,"⁽¹⁾

The foundation of natural charity, whether in the broad sense of friendship or the more intimate sense of love, is communica-⁽²⁾tion. But this common sharing in a natural good which is its basis, is also the motive force for its proper act which is the mutual sharing of all good things.⁽³⁾ It is for this reason that the mutua benevolentia amicitiae⁽⁴⁾ is indispensable to achieving the common use which is the end of external things. This natural love of man for man should bridge the differences which separate rich and poor, fortunate and unfortunate, strong and weak, and assure that in the name of a common humanity no one should suffer want. Ea quae sunt amicorum sunt communia. Nor can justice alone be sufficient for this task. Justice, which is ad alterum alienates the thing possessed. But he who gives out of charity is still its possessor through the mutual bond uniting him with the object

(1) "Est enim naturalis amicitia inter eos qui sunt unius gentis ad invicem, inquantum communicant in moribus et convictu. Et maxime est naturalis amicitia illa, quae est omnium hominum ad invicem, propter similitudinem naturae speciei. Et ideo laudamus philanthropos, idest amatores hominum, quasi implentes id quod est homini naturale." *Ethic. VIII. 1.*

(2) "Convivere requiritur ad amicitiam sicut proprius actus ejus." *Ethic. VIII. 5.*

(3) "Talis autem mutua benevolentia fundatur super aliqua communicatione." *II II 23, 1*

(4) "Nec benevolentia sufficit ad rationem amicitiae sed requiritur quaedam mutua amatio." *ibid.*

of his affection. Indeed, he is the richer for giving; for he has reserved to himself the higher good of friendship.⁽¹⁾

The perfection of love, however, is not the natural charity through which we love our fellow man because he is united to us by human ties, but rather supernatural charity, or charity in the strict sense of the term, through which we love our neighbor because he is united by grace to God whom we love above all things.⁽²⁾ Destined to eternal beatitude by participation in the divine beatitude, he is no longer the object of a merely natural affection but is to be loved with the same love with which we love God himself.⁽³⁾ Moreover, by his actual or potential membership in the Mystical Body of Christ, he becomes our fellow member in a supernatural organism, thereby effecting a unity with us more intimate than that of any natural social intercourse and analagous to that of the members of our own body.⁽⁴⁾

(1) "Dum enim illiquis pecuniam concedit amico et sibi ipsi acquirit bonum honestum, manifestum est quod magis bonum sibi ipsi attribuit." *Ethic.* IX, 9.

(2) "Hoc enim debemus in proximo diligere, ut in Deo sit." II II, 25, 1.

(3) "Propter hoc habitus caritatis non solum se extendit ad dilectionem Dei, sed etiam ad dilectionem proximi." *ibid.*

(4) "Sicut tota Ecclesia dicitur unum corpus mysticum per similitudinem ad naturale corpus hominis.. ita Christus dicitur caput Ecclesiae secundum similitudinem humani capitis." III, 8, 1.

Although our union with our neighbor will be perfected only in heaven, we signify it in the most perfect manner here on earth by participation in the sacrament of the Eucharist,⁽¹⁾ of which St. Paul has said: "For we, being many, are one bread, one body, all that partake of one bread."⁽²⁾ Nor are we made one only with each other but also with Christ so that the least member of his Mystical Body becomes identified with him: "If you did it to the least of these My brethren, you did it unto Me."⁽³⁾

If the pagan philosopher, guided only by the light of natural reason, could make friendship, or natural charity, the virtue par excellence for the achievement of the common use of this world's goods, we need not be surprised that the Christian moralists, following Christ's teaching on the two great commandments, love of God and love of one's neighbor, should deal with the problem of common use chiefly in the light of the precept of charity. "As the Apostle says, 'He who loves his neighbor fulfils the law:'"⁽⁴⁾ for all precepts of the law particularly ordered to one's neighbor, seem to be ordered to the end that men shall love one another. But out of charity it follows that

(1) "Sacramentum corporis Christi.. est sacramentum Ecclesiae unitatis." III, 67, 2.

(2) 1 Cor. 10. 17.

(3) Mat. 25. 40

(4) Rom. 13. 8

men share their goods with one another." (1) True, spiritual gifts are to be preferred in themselves to material ones; and therefore the spiritual works of mercy are ranked above the corporal works of mercy. (2) But "it is better to feed a man dying of hunger than to preach to him; and the same applies to one who is indigent." (3) Moreover, charity demands that we not only wish our neighbor well but that we do well by him. (4) "But to wish and do well to anyone it is required that we come to his aid in time of need, which is done by almsgiving. (5) Almsgiving therefore is of precept."

If the term alms has come to be associated with the dreary comfort of a public almshouse, it is by the same corruption

(1) "Sicut Apostolus dicit: qui diligit proximum legem implevit: quia scilicet omnia praecepta legis, praecipue ordinata ad proximum, ad hunc finem ordinari videntur ut homines se invicem diligant. Ex dilectione autem procedit quod homines sibi invicem bona communicent." l 11, 105, 2, ad l.

(2) "Primo.. donum spirituale preeminet corporali; secundo.. spiritus nobilior est corpori; tertio.. spirituales actus sunt nobiliores corporalibus, qui sunt quodammodo serviles." ll 11, 32, 3

(3) "Magis esset pascendum fame morientem quam docendum; sicut et indigent, (secundum Philosophum, melius est ditari quam philosophari). " ibid.

(4) "Ad dilectionem autem proximi pertinet ut proximo non solum velimus bonum sed etiam operemur, " ibid., 5.

(5) "Ad hoc autem quod velimus et operemur bonum alicujus requiritur quod ejus necessitati subveniamus, quod fit per elemosynarum largitionem." ibid.

of the original concept which has reduced the term charity to the ministrations of the paid social worker. In the ages of faith there was nothing miserable about alms-giving.. It was the recognized duty of those of means to use their abundance to aid the less fortunate. It was at once a social and a religious act: "a work in which one gives to the needy out of compassion because of God" (1) The needy were not limited to those in extreme poverty, but included all the poor; whom St. Thomas describes as those who "hire out their labour" (2) The compassion was not the cold, and often contemptuous, handing of a pittance to "the unworthy poor", but the recognition of a spiritual bond through membership in the Mystical Body of Christ, no part of which could be content while another suffered. Nor did the fact that the giving of alms was referred to the love of God as its final cause (3) detract from the humanity of the gift. It rather guaranteed a constant motive for giving which no personal spite or pessimistic view of human nature could destroy. Doubtless, many failed to observe the precept as perfectly as they should.

(1) "Opus quo datur aliquid indigenti ex compassione propter Deum". *ibid.* 1.

(2) "Mercenarii, qui locant operas suas, pauperes sunt, de laboribus suis victum querentes quotidianum." 1 11, 105, 2, ad 6.

(3) "Quia misericordia est effectus caritatis, ex consequenti dare elemosynam est actus caritatis, misericordia mediante." 11 11, 102, 1.

But the constant presentation of the necessity of alms-giving as a work necessary for salvation could not but have been an important factor in effecting a large measure of common use of external things.

The question of alms-giving is treated by St Thomas in his treatise on charity, 11a, 11ae, q. 32. As the reader will have observed, many of our texts with which we established the duty of the common use as an obligation of social or commutative justice are taken from this question of the Summa. According to the schoolmen, following the Fathers, any gift made to the indigent was classed as alms whether it was strictly an act of justice or an act of charity.. For it became the Christian to dispense of his superfluous goods not in the fashion of civic functionary, nicely weighing the balance between his abundance and his neighbour's need, motivated only by a sense of duty toward a fellow citizen, but rather "with delight, and promptly and in every fitting way, because of God; which cannot be done without charity." (1) The precept of alms-giving was extended only to superfluous goods, except in the case of extreme necessity, as we have seen. Such gifts were elicited by social justice. Yet they are properly called alms when motivated by compassion and the love of God.

(1) *Dare eleemosynas materialiter potest esse sine caritate; formaliter autem eleemosynans dare, idest propter Deum, delectabiliter et prompter et omni eo modo quo debet, non est sine caritate.*" *ibid.*

"There is nothing to prevent an act which is elicited by one virtue being attributed to another as commanding it and ordering it to its end."(1) It is properly attributed to charity, moreover, as an act of superior virtue, namely charity, cannot be formally commanded by an act of inferior virtue, such as justice, although materially an act of alms-giving may be an act of charity, justice, religion, penance or liberality.(2) The counsel of charity, distinct from the precept only as regards obligation, extends beyond the order of justice and liberality to include all except what is necessary for life itself,(3) and even to this for the heroic act of charity in which one gives his own life that another may live.(4)

We may distinguish, therefore, in the act of alms-giving, as distinguished from the precept, four ascending degrees. First, what is of commutative justice: that which is given to a man in extreme necessity. Secondly, what is of social justice in the strict sense: that which is given according to the express direction of the law-giver. Thirdly, what is of social

(1) "Nihil prohibet actum qui est proprie unius virtutis elicitive, attribui alteri virtuti sicut imperanti et ordinanti ad eum finem." *ibid.*

(2) "Actus superioris virtutis... formaliter sumptus non imperatur ab inferiori virtute. Materialiter autem sumptus actus superioris virtutis potest imperari ab inferiori virtute." Cajetan, Com. in IIam IIae. 32, 1.

(3) "De hujus modi ergo eleemosynam dare est bonum: sed non cadit sub praeccepto, sed sub consilio.. nullus enim inconvenienter vivere debet." *II II, 32, 6.*

(4) "Non est de necessitate caritatis quod homo proprium corporis exponit pro salute proximi.. Sed quod aliquis sponte ad hoc se offerat pertinet ad perfectionem caritatis." ibid., 26, 5, ad 3.

justice in the wide sense, and strictly of the precept of charity : that which is given out of one's superfluous goods to the indigent. Fourthly, what is of the counsel of charity: that which is given beyond the demands of the natural law of common use. Insofar as the love of God motivates the giver of his gift as an alms, whatever the nature of the obligation. We need not fear, therefore, that increased measures taken by the state to insure the common use of property will eliminate from society the virtue of charity. With the varying needs of man brought about by changing social conditions, " to-day's justice is yesterday's charity; to-day's charity is tomorrow's justice." (1)

It should be borne in mind regarding the common use, both from the point of view of justice and that of charity, that the duty of giving of one's abundance to the needy in no wise cancels the duty of all men to work. Giving must at all times be regulated by the virtue of liberality, the proper act of which is to give sicut oportet. To give to those who will not work is to take from those who are in need through no fault of their own. It is a false charity, moreover, which out of

(1) " La justice d'aujourd'hui, c'est la charité d'hier; la charité d'aujourd'hui, c'est la justice de demain." GILLET, C.P., Justice et Charité, in Revue des Sciences Phil. et Théol., /29, P.22.

regard for a man's physical needs encourages in him the vice of sloth and allows him to neglect his duty toward himself and society. Moreover, the best form of alms that one can give a man possessed of all his faculties is the opportunity to earn his own living. This alone can give him the independence which his personality demands; and in this way only can the destiny of inferior things to serve the needs of free men, who exercise a providence over themselves, be maintained.

Nor should it be imagined that to give a man a job is a poor substitute for giving an alms, viewed from the point of view of the sacrifice made by the giver. So to conduct one's business that the most men can be employed at the best wages compatible with the consumer's welfare and the just needs of the proprietor himself, is the type of charity most needed in our day when unemployment and periodic layoffs are the bane of the worker's life. No alms can take the place of a job in giving a worker his self-respect. Nor does the fact that the employer receives a return detract from the worthiness of his act. The principle has been given us by St. Thomas as when speaking of trade- which the medieval ^{moralists} viewed with just suspicion. "Nothing prevents gain from being directed to some necessary or even virtuous end, and thus trading becomes lawful. Thus, for instance, a man may intend the moderate gain which he seeks to acquire by trading for the up-

or again, a man may take to trade for some public advantage, for instance lest his country lack the necessaries of life, and seek gain, not as an end, but as payment for his labor."⁽¹⁾ The business man or manufacturer who regards his enterprise as a public service and conducts it to the best interest both of consumer and employee, observing both the precept of a fair wage and that of a just price, practices the duty of almsgiving far more perfectly than he who, motivated only by the desire to make satisfaction for his sins, gives indiscriminately without regard for the condition of the indigent or his own duty of bona dispensatio.

Indeed, furnishing work to those who are dependent upon wages for their livelihood is the normal way for the man of means to fulfil not only the precept of almsgiving but also the common use dictated by the natural law.⁽²⁾ Whoever does not himself possess the means of production⁽³⁾ is, as we have seen, classed among the poor to whom the owners of property have the duty of dispensing whatever they possess beyond their own lawful needs. He is dependent therefore upon the owner in a way analagous to that in which

(1) "Nihil prohibet lucrum ordinari ad aliquem finem necessarium, vel etiam honestum. Et sic negotiatio licita reddetur. Sicut cum aliquis lucrum moderatum, quod negotiando quærit, ordinat ad domus suæ sustentationem, vel etiam ad subveniendum indigentibus: vel etiam cum aliquis negotiationi intendit propter publicam utilitatem, ne scilicet res necessariae ad vitam patriæ desint, et lucrum expetit non quasi finem sed quasi stipendium laboris." 11 11, 78, 1.

(2) See foot of following page.

(3) Money, as the means of production par excellence in capitalist society comes under this classification.

man himself is dependent upon the divine providence, of which the property owner has become the minister, sibi et aliis providens. But just as God provides for man in accord with the requirements of his nature, allowing him to produce things for his own needs, so too should the property owner normally exercise his potestas dispensandi by facilitating for the worker the production of what he requires for a decent human life. And only by the combined productive activity of both employer and employee can there be produced that necessary abundance of material wealth out of which those unable to work must be supported according to the same human standard. No dispensation of mere commodities, however well-intentioned it may be, can take the place of this prior duty of organizing the means of production for the common good.

It was the failure to recognize the Thomistic principle of the hierarchy of goods and the precise nature of the duty of ownership which gave rise to those abuses of almsgiving against which the Reformers preached so violently. "The Roman Church, it was held, through the example of its rulers, had encouraged

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- (2) "Fournir du travail a autrui, c'est, pour le riche, la facon normale de remplir la fonction sociale de la fortune et d'associer le 'droit d'autrui' aux avantages de son propre droit. Le 'droit d'autrui', ou la 'propriete humaine' ne condamne que la richesse egoiste et sterile." RENARD, Theorie de L'Institution, l. cit., p. 530.

luxury and ostentation: the members of the Reformed Church must be economical and modest. It had sanctioned the spurious charity of indiscriminate almsgiving: the true Christian must repress mendicancy and insist on the virtues of industry and thrift..It had rebuked the pursuit of gain as lower than the life of religion..the Christian must conduct his business with a high seriousness as itself a kind of religion." (1) But the Reformers, in attempting to carry out their most Thomistic purpose, neglected the Thomistic teaching on avarice, the just price and the common good. More important still, abandoning the Catholic doctrine that the evils wrought in human nature by Original Sin found their proper cure in the Incarnation, they exalted the principle of private property to an extent that the Thomistic principle of common use must have seemed to them the sheerest radicalism."The doctrine afterwards expressed by Arthur Young when he wrote, 'everyone but an idiot knows that the lower classes must be kept poor, or they will never be industrious, (2) was the tritest commonplace of Restoration economists. It was not argued; it was accepted as self-evident." (3)

(1) TAWNEY, op. cit., p. 110.

(2) The Poores' Advocate, 1654, p.6.

(3) TAWNEY, op. cit., p. 241.

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Since St. Thomas' day the machine has opened up undreamed of, and it would seem unlimited possibilities for the "more abundant life". Furthermore, the twentieth century has witnessed the arrival of the "mass man", who now for the first time is able by sheer weight of numbers to force a more just distribution of the material things of life. An increased social consciousness on the part of all classes may well point to a new reign of justice. But even then the principle of Aristotle, which has been given a new meaning by St. Thomas, will still hold true: "It seems that friendship or love is the bond that holds states together, and that legislators set more store by it than by justice." Charity, St. Thomas has shown us, must inform the virtue of social justice if the common use is to be attained. And in our own day, the Sovereign Pontiff has echoed the thought of these two great sociologists as the close of his encyclical On the Reconstruction of the Social Order: "How completely deceived are those inconsiderate reformers who, zealous only for commutative justice, proudly disdain the help of charity! Clearly charity cannot take the place of justice fairly withheld. But even though a state of things be pictured in which every man receives at last all that is his due, a wide field will nevertheless remain open for charity. For justice alone, even though most faithfully observed, can remove indeed the cause of social strife, but can never bring about a union of hearts and minds. Yet this union, binding men together, is the main principle of stability in all

institutions, no matter how perfect they may seem, which aim at establishing social peace and promoting mutual aid. In its absence, as repeated experience proves, the wisest regulations come to nothing. Then only will it be possible to unite all in harmonious striving for the common good, when all sections of society have the intimate conviction that they are members of a single family and children of the same Heavenly Father, and further that they are 'one body in Christ, and everyone members of one another,' ⁽¹⁾ so that 'if one member ^{(2) (3)} suffer anything, all members suffer with it.'

(1) Rom. 12. 5.

(2) 1 Cor. 12. 26.

(3) "Quam ergo falluntur incauti illi reformatores, qui solam

justitiam eamque commutativam servandam curantes, caritatis auxilium superbe reificent! Profecto justitiae ex officio debitae et inique denegatae caritas vicaria succedere nequit. At, etsi omnia sibi debita quisque hominum supponatur tandem adepturus. Amplissimus caritati semper patebit campus: sola enim justitia, vel fidelissime exhibita, socialium certaminum causas quidem remove, numquam tamen corda unire animosque copulare poterit. Iam vero quaecumque ad pacem firmandum mutuumque inter homines auxilium promo vendum sunt instituta, quantumvis perfecta videantur, in mutuo animorum vinculo, quo sodales invicem uniantur, potissimum habent suae firmitatis fundamentum, quo deficiente, ut saepius experiendo didicimus, optima quaeque praescripta irrita evadunt. Itaque tunc solum vera omnium in unum commune bonum conspiratio haberi poterit, cum societatis partes intime sentiant se unius esse magne familiae membra eiusdemque caelestis Patris filios, immo se unum corpus in Christus, 'singuli autem alter alteruis membra,' ita ut 'si quid patitur unum membrum, compatiantur omnia membra.' "Quadragesimo Anno, in Acta Apostolicae Sedis, June 1931, p. 223.

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Chapter VI

THE STATE AND OWNERSHIP

"Where there is no
governor, the people
shall fall."

Prov. XI. 14

In the course of this study we have discovered in the writings of St. Thomas certain definite principles upon which to base a Thomistic theory of ownership. We have learned from the Angelic Doctor that God, the absolute owner of all things, has destined material things for the service of man; that man, made to the image of God, enjoys, by virtue of this order of providence, an analogous dominion over material creation which he is free to use for his legitimate needs; that although because of man's social nature the use of these things is to be common, the proper ordering of society demands that their administration be private; that the inequalities resulting from private ownership are to be remedied by justice, but above all by charity.

These principles comprise, in substance, the teaching on ownership that is found in the first two articles of q.66. Although in elaborating them we have had occasion to refer to numerous other questions of the Summa, as well as to

several other of the Angelic Doctor's works, it has been largely by way of explanation of the doctrine contained in the articles themselves. Might we not therefore be content to close our investigation here, confident that we have at least outlined St. Thomas's teaching on property in its entirety? In answer to this question we must recall that in q.66, St. Thomas is treating formally not of property but of theft. Having established that, under certain definite restrictions, man may possess things as his own, he therefore leaves the subject of ownership and proceeds to discuss whether (1) taking occultly what belongs to another pertains to theft. If we are to integrate his teaching on property, we must look elsewhere in his writings.

Our guide in this must be the principle which has determined the course of our investigation thusfar, namely order. We have seen that human ownership is based upon the order of divine providence, that private ownership is lawful insofar as it orders material things to the common use. We have seen the part that social justice and charity must play in rendering that order

(1) "Utrum sit de ratione furti occulte accipere rem alienam."
II II, 66, 3.

effective. But the ordering of means to ends, pertains, as we have seen to the virtue of prudence. Thus the individual who uses his wealth for his own needs and the needs of others practices not only justice and charity, but prudence as well. If in meeting his own needs, he fails to have regard for the common good, he is not truly prudent; ⁽¹⁾ but he who uses his wealth for the common good, seeks his own good as well. And for the twofold reason that he can have no individual good without the common good, while as a part of the whole he shares ⁽²⁾ in the common good itself.

Yet the prudence which directs things to one's private good and that which directs them to the common good are of different species. ⁽³⁾

(1) "Quia igitur ad prudentiam pertinet recte consiliari, judicare et praecipere de his per quae pervenitur ad debitum finem, manifestum est quod prudentia non solum se habet ad bonum privatum unius hominis sed etiam ad bonum commune multitudinis."

II II, 47, 10.

(2) "Qui quaerit bonum commune multitudinis ex consequenti etiam quaerit bonum suum, propter duo. Primo quidem quia bonum proprium non potest esse sine bono communi vel familiae vel civitatis aut regni..Secundo quia, cum homo sit pars domus et civitatis, oportet quod homo consideret quid sibi sit bonum ex hoc quod est prudens circa bonum multitudinis." ibid., ad 2

(3) "Necesse est quod prudentiae different specie secundum differentiam horum finium. Unde scilicet una sit prudentia simpliciter dicta quae ordinatur ad bonum proprium; alia autem oeconomica quae ordinatur ad bonum commune dumus vel familiae; tertia, politica, quae ordinatur ad bonum commune civitatis vel regni." II II, 47, 11.

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The latter, properly known as polity (politica), is common to all men, as all are bound to seek the common good. (1) And yet the individual is not charged with ordering things to the common good in the same way that he orders them to his own good. For the latter, he is fully responsible. As to the former, it pertains principally to him who has the care of the community and is found in the citizen⁽²⁾ as in an instrument.

This is not the place to make a study of Economic Liberalism. But we may be certain that as surely as the Angelic Doctor rejected the proposals of the Communists as impracticable, he would have opposed with equal logic the theory that the common good is best attained when each citizen unrestrictedly seeks his own gain. True, the disposing of his surplus goods is normally to be left to the judgment of each owner; (3) and the private individual has such dominion over his property that he can sell or exchange it on his own authority. (4)

(1) "Quis quilibet homo, inquantum est rationalis, participat aliquid de regimine secundum arbitrium rationis, inquantum convenit ei prudentiam (politicam) habere." *ibid.*, 10.

(2) "Manifeste est quod prudentia quidem est in principe ad modum artis artis architectonicae. in subditis autem ad modum artis manu operantis." *ibid.*, 12

(3) "Committitur arbitrio uniuscujusque dispensatio propriarum rerum." *ibid.*, 66, 7

(4) "Potestate vero privatarum personarum subduntur res possessae: et ideo propria auctoritate in his possunt sibi invicem communicare, puta emendo, vendendo, donando, et al." I II, 105, 2.

Yet it is the lesson of history that unless the distribution of wealth is properly ordered by law the state will be endangered.⁽¹⁾ In fact, as Aristotle has observed, "in the opinion of some, the regulations of property is the chief point of all, that being the question upon which all⁽²⁾ revolutions turn."

The reason for this need should be obvious to anyone with a cursory knowledge of human nature. Man should be so motivated by love of his neighbour as "spontaneously and gladly to give him his due, and even in superabundance; wherefore the-fulfilling of the whole (divine) law depends on love."⁽³⁾ But the hard fact is that "because some are not so interiorly disposed that of their own accord they do what the law commands, they must be exteriorly impelled to render justice⁽⁴⁾ through fear of penalties."

(1) "quia per possessionum irregularitatem plures civitates destruuntur..ideo circa possessiones regulandas triplex remedium lex adhibuit." I II, 105, 2.

(2) St. Thomas's commentary on this passage reads: "quibusdam legislatoribus visum est maxime necessarium esse quod bene ordinetur de substantiis, idest possessionibus civium; quia ex his praecipue oriuntur omnes seditiones civitatum, quas principaliter legislatores remove intendunt." in Pol. II, 8.

(3) "qui enim diligit aliquem, sponte et delectabiliter ei reddit quod debet et etiam liberaliter superaddit; unde tota legis impletio ex dilectione dependet." III C. Gent. 128.

(4) "quia aliqui interiorius non sunt sic dispositi ut ex seipsis sponte faciant quod lex jubet, ab exteriori trahendi sunt ad

(194)

To vindicate the rights of the victims of greed and injustice is the duty of the government. "The ruler, who is the 'guardian of justice', ex officio can and must remedy such (1) injustice."

(1) iam cit. p.

(4) concluded from previous page.
justitiam legis implendam; quod quidem fit dum timore
poenarum..legem implent. ibid.

(195)

Yet even supposing that every member of the community was of such excellent character as to carry on his affairs with both justice and charity, it would still be necessary for the state (we here use the term in the sense of the government) to supervise the national economy. "If it is natural for man to live in the society of many, it is necessary that there exist among men some means by which that group may be governed. For, where there are many men together, and each one is looking after his own interest, the group would be broken up and scattered unless there were also some one to take care of what appertains to the common weal."⁽¹⁾ It is this task of ordering the life of the nation for the common good, rather than the vindication of justice, which is the primary duty of the state. Therefore, although

(1) "Si ergo naturale est homini quod in societate multorum vivat, necesse est in hominibus esse per quod multitudo regatur. Multis enim existentibus hominibus et unoquoque id, quod est sibi congruum, providente, multitudo in diversa dispergeretur, nisi etiam esset aliquis de eo, quod ad bonum multitudinis pertinet, curam habens, "De Reg. Prin. 1, 1.

English translation by Rev. Gerald Phelan, Ph.D. Toronto, 1935, p. 20.

both prudence and justice are the virtues most proper to a ruler, prudence pertains more to the ruler, whose proper function is to direct, and justice to the subjects, whose proper function is to carry out the directions of the state. (1)

This duty of ordering the life of the community to the common good, extends, moreover, and essentially, to the economic order. The ruler must ever have in mind that the ultimate end toward which his government is directed is the eternal beatitude of his subjects. It is therefore his duty to promote such good living among his people as is conducive to the attaining of the happiness of heaven. But for this good life, two things are required. The first is virtue. "The second, which is secondary, and, as it were, instrumental, is a sufficiency of those bodily goods whose use is necessary for an act of virtue." (2) It is therefore the duty of the ruler who is

(1) "Istae duae virtutes sunt maxime propriae regi, scilicet prudentia et iustitia..Qui tamen dirigere magis pertinet ad regem, exequi vero ad subditos, ideo regnativa magis ponitur species prudentiae, quae est directiva, quam iustitiae, quae est executiva." 11 11, 50, 1.

(2) "Ad bonum autem unius hominis vitam duo requiruntur: unum principale quod est operatio secundum virtutem (virtus est enim qua bene vivitur; aliud vero secundarium et quasi instrumentale, scilicet corporalium bonorum sufficientia, quorum usus est necessarius ad actum virtutis." De Reg. Prin. 1, 15.

charged with the common good to see "that there be at hand a sufficient supply of the things required for proper living."⁽¹⁾

That St. Thomas should insist upon the presence of a directive force charged with the proper ordering of the economy is but in keeping with the general tenor of his theological system in which the idea of order is paramount. It is in the order of the economic and political life that he finds his second and third arguments for private ownership: "there would be confusion if everyone had to look after any one thing indeterminately; quarrels arise more frequently where there is no division of the things possessed." It is understandable that the mind of the Angelic Doctor would instinctively reject the notion of a purely communist society, especially in the Marxist sense of one which would abolish the state; or rather in which the state would "wither away" when, after the experience of socialist living, "all have learned to manage, and independently are actually managing by themselves social production..and..the necessity of observing the simple fundamental rules of every-day social life in common will have become a habit."

(1) "Tertio vero requiritur ut per regentis industriam necessariorum ad bene vivendum adsit sufficiens copia." *ibid.*

(1)

But if St. Thomas's view of human nature prevented his accepting such an idyllic conception of Society, might we not have supposed that his love of order and his insistence upon the common use would have made him favor a form of state socialism, such as that advocated by Marx as the transition between capitalism and communism? In such a society a strong government would have full authority to organize the entire means of production for the common good, and to add to the stimulus of a graduated wage⁽²⁾ scale the fear of summary punishment for those whose social consciousness was insufficiently developed to impel them to full productive activity. We find the answer to this difficulty in the second cardinal principle upon which the Angelic Doctor has based his theory of ownership. Man's

(1) LENIN, The State and Revolution, English edition, in Handbook of Marxism, p. 759.

(2) Lenin, following Marx, distinguishes between Socialism, which is the first phase of Communist society, and the higher phase of Communism, or Communism - to use a scholastic and non-Marxian expression - in the strict sense. In the former there will be economic inequality due to varying productive capacity, for Socialism gives "for an equal quantity of labor, an equal quantity of products." Communism, on the other hand, establishes true equality: "from each according to his ability: to each according to his needs." op. cit. pp. 751, 752.

right to own is based not only upon the order of divine providence which has destined external things for his needs, but also upon human liberty by which man is capable of exercising dominion, in contrast to the lower animals who can only use in the wide sense but cannot own. Although the divine governance orders all men to their last end, it never does so at the expense of human freedom. God moves man toward good in two ways, "instructing him by his law and aiding him by his grace."⁽¹⁾ But gratia non tollit naturam. God saves no man's soul at the expense of his freedom.

It would be an inversion, therefore, of the entire order of divine providence if to attain a higher degree of material prosperity man were forced to sacrifice the very gift upon which his right to external things is based. "Human government is derived from the divine government, and should imitate it. God, although omnipotent and infinitely good, allows, nevertheless, certain evils to

(1) "Principium autem movens ad bonum est Deus, qui et nos instruit per legem et juvat per gratiam." 1, 11, 90, prol.

(2) "Humanum regimen derivatur a divino regimine, et ipsum debet imitari. Deus autem, quamvis sit omnipotens et

summe bonus, permittit tamen aliqua mala fieri in universo quae prohibere posset: ne eis sublati, maiora bona tollerentur, vel etiam pejora mala sequerentur. Sic ergo in regimine humano illi qui praesunt, recte aliqua mala tolerant, ne aliqua bona impediuntur, vel etiam ne aliqua mala pejora incurrantur." 11 11, 10, 11.

(200)

occur which he could prevent; lest through removing them, greater goods be lost, or even greater evils follow. They therefore who head human governments rightly tolerate certain evils lest they hinder certain goods, or even lest greater

(2)
evils be incurred." Neither is order to be sacrificed a false liberty; nor should liberty be sacrificed in the name of ~~in the name of~~ an order, which, because it makes impossible

primary human values is the soul of disorder. The problem of reconciling these apparently divergent tendencies - that of the individual to freedom and that of the state to increasing exercise of authority - is the task of prudence. Needless to say it will not be accomplished by deserting the Liberalism of the nineteenth century for the Totalitarianism which characterises the fourth decade of the twentieth century. "Virtue is in the mean; in the extremes is vice." (1)

The problem is not one of whether liberty or order shall be supreme, but of how so to order liberty that the essential liberty of all shall be preserved. As St. Thomas has shown that the right to administer material things is proper to the individual, it follows that the state should take upon itself only those economic functions which the individual is unable to carry out properly without defeating the end of all administration, the common use. Thus the state may well reserve to itself the right of ownership over those natural resources,

(1) "Medium competit virtuti; extrema autem vitiiis."
Ethic. 11, 7.

the private ownership of which might hinder their necessary development for the common weal. More properly the state will through necessary taxation take from the wealthy a part of their surplus for the maintenance of those necessary social services that the common good demands. It should supervise all contracts, whether of labor or of sale, to make certain that the rights both of worker and consumer to a fair wage or just measure are observed. It should exercise its proper directive function in the co-ordination of those disparate branches of production upon which the community depends for its necessary supply of goods. These functions, which will be fewer or greater as the state approaches a simple agricultural or a highly industrialized economy, are but applications of the single principle that he who has the care of the community must order the activity of its members to the common good.

But if we are to be true to the principle that economic activity is primarily private even though directed toward the common good, we must not make the mistake of identifying the economic order with the political order, both, insofar as they are comprised by the social relationship, are communities. Materially they may be considered identical in that the political includes the economic. But formally they are distinguishable in that the economic order is concerned

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only with the production and distribution of wealth while the political order is concerned with the entire temporal welfare of men. As the economic is contained in the political, and is inferior to it by reason of the dignity of its object, it is necessarily subordinate to the political order.⁽¹⁾ But insofar as it is itself a community, although an imperfect one, and has its own common good, it should pursue that good as far as is possible spontaneously subject only to such direction from the political order as is necessary to co-ordinate its activity with the life of the state as a whole. Thus Maritain, endeavoring to suggest the way in which the Thomistic social philosophy could best be adapted to the highly complicated modern industrial economy, writes, "The economic and political order of civil society would embody distinct and compact social groups, be they called corporations or guilds or what you will. But each of these lesser unities in the social order would have its own spontaneous life not derived from the state. Thus, in the economic sphere each group would exist as a moral person made up of

(1) "Opertet enim quod proportio eorum quae sunt ad finem sit secundum proportionem finium.. Est enim communitas quoddam totum in omnibus autem totis, talis ordo invenitur quod illud totum quod in se includit aliud totum sit principalius..Manifestum est autem quod civitas includit omnes alias communitates."
Pol. I. I.

those who, as manual or intellectual workers or lenders of capital, collaborate in one organic task, these moral persons being endowed with as much autonomy as the organization of the social whole will allow, and thus being something entirely separate from the public services of the state. In this conception, which avoids statism as much as possible, the organic City would be ruled not by the wheels of a bureaucratic machine but by decisions taken by men chosen as leaders of their several organizations and having in their respective ranks all the privileges and all the obligations of responsible office. ⁽¹⁾"

The development of this notion of the corporate organization of the economic order pertains more to a treatise on society than to a study of property. Yet not only is a proper ordering of economic activity necessary if property is to fulfil its social function, but a proper understanding of the theory of property is necessary for the establishment of a sound corporate economic order. The problem which confronts the Catholic economic reformer today is not simply one of how to organize economic life as to assure the wide-spread common use of commodities, but more properly how that life can be organized to enable as

(1) Op. Cit. p.57

many individuals as are capable, to actualize their right to own the means of production. For though common use is the end of individual ownership, the right to possess as his own such natural resources as he requires for his own support is a right given by the jus gentium not to a favored few but to every individual. True, the actualization of that right is dependent upon the labor of the individual. There are, moreover, certain forms of productive property which are too large for the individual workman to own and operate. But an economic order in which the ownership of the means of production is concentrated in the hands of a few is manifestly as unjust as one in which the use of commodities is restricted to a favored class while the majority are forced to live in penury.

We have seen that it is the duty of the private owner to feed the man in extreme necessity and to give work, as far as lies in his power, to the propertyless laborer. But barring the extraordinary case due to misfortune, a man would be in extreme need only because he was unable to find work; and he would be unable to find work only because he had not the necessary material to work with, that is, because he had no property. By giving him a job, without at the same time giving him the opportunity to become an owner, I remedy only half the injustice. True, I enable him to meet his basic physical needs. But I deprive him of that moral good which his fallen nature demands, namely the incentive to increased productive activity which the possibility of ownership brings, and that peace of soul in the possession of his own property which is a component of the general peace of society. Moreover I deprive him of that artistic good of being able to make such things as his art dictates are good. In both cases I interfere with his essential liberties; and insofar as he is dependent upon me both for his means of livelihood and the direction of his art he is that less a free agent, that less a man.

We may well ask, therefore, which is the greater evil; a social system in which the state, as owner of all the means of production, is absolute master of the destinies of its

subjects, or one in which a few individuals exercise this same power without being charged, as is the state, with the responsibility for the common good. In the former there is the disorder of identifying the political with the economic power. But in the latter is the greater disorder of subordinating the political power to the economic power so that the community is organized not in the interest of the common good but for the private good of the few who own the means of production.

The resulting social evils are manifold. By eliminating the responsible workman we have produced not good things for human use but only such products as will bring a profit to the owners. The complete dependence of the employee upon the employer for his means of existence means the dictatorship of the latter over the former's politics, morality and religion. When production is temporarily unprofitable for the owning class, production must cease regardless of the needs of the working class for goods.

Any attempt, therefore, at ordering the social economy for the common good, will ultimately be successful insofar as it is the ordering of men who are free; and who are free because they are owners. To insist upon such complete restoration of property as would make impossible the necessary technical efficiency which is required to provide all with a

descent livelihood would be to go against the primary end of ownership. But on the other hand, it is clearly the duty of the state to effect as widespread distribution of property as is compatible with the inequalities of human nature and to prevent any accumulation of wealth in the hands of private persons which is a threat to the common good of the economic order or of the political order itself.

Only in this way can the destiny of material things to serve mankind be realized. Only in this way can man's destiny to attain his final end through the free use of material things be attained. Only in this way too can the peace of society be maintained. Commenting on the Politics, St. Thomas remarks concerning the fall of Sparta, which because of the inequality of wealth found itself deprived of fighting men: "It is advantageous that through the regulation of property a state be filled with men, which cannot be done otherwise. Because if possessions are concentrated in the hands of a few, the rest, because of their poverty will desert the state." (1)

In our own day, when the disappearance of the frontier has made immigration impossible, men desert the state in another

(1) "Opportunum est quod per regulatas possessiones civitas viris repleatur, quod aliter fieri non potest. Quia si possessiones ad paucos devolvantur, alii propter paupertatem desererent civitatem." Pol. II, 13.

way; by refusing to produce children for its continuance. Pius XI, therefore, is but echoing the observation of the Angelic Doctor and his classical predecessor when he states in his encyclical On Social Reconstruction, "It is true that there is a formal difference between pauperism and proletarianism; nevertheless the immense number of propertyless wage earners on the one hand, and the superabundant riches of the fortunate few on the other, is an unanswerable argument that the earthly goods so abundantly produced in this age of industrialism are far from rightly distributed and equitably shared among the various classes of men. Every effort, therefore, must be made that at least in the future a just share only of the fruits of production be permitted to accumulate in the hands of the wealthy, and that an ample sufficiency be supplied to the workingmen. The purpose is not that these become slack at their work, for man is born to labor as the bird to fly, but that by thrift they may increase their possessions and by prudent management of the same may be enabled to bear the family burden with greater ease and security, being freed from the hand-to-mouth uncertainty which is the lot of the proletarian. Thus they will not only be in a position to support life's changing fortunes, but will also have the reassuring confidence that, when their own lives are ended, some little provision will remain for those whom they leave behind them. These ideas were

"not merely suggested but stated in frank and open terms by Our Predecessor. We emphasise them with renewed insistence in this present Encyclical; for unless serious attempts be made, with all energy and without delay to put them into practice, let nobody persuade himself that the peace and tranquility of human society can be effectively defended against the forces of revolution." (1)

(1) "An licet verissimum sit proletariam conditionem a pauperismo esse probe discernendam, ipsa tamen immanis multitudo proletariorum ex altera parte, ex altera vero quorundam praedivitem ingentissimae opem argumento sunt omni exceptione majori, divitias hae nostra, quam vocant 'industrialismi' aetate tam copiose partas, haud recte esse distributas diversisque hominum classibus haud aequae applicatas.

"Quare omni vi ac contentione enitendum est, ut saltem in posterum partae rerum copiae aequa proportionem coacerventur apud eos qui opibus valent, satisque ample profundantur in eos qui operam conferunt, non ut in labore remissi fiant, - natus est enim homo ad laborem sicut avis ad volatum, - sed ut rem familiarem parsimonia augeant; auctam summius administrando facilius ac securius familiae onera sustineant, atque emersi ex incerta vitae sorte, cuius varietate jactantur proletarii, non solum vicissitudinibus vitae perferendis sint pares, sed etiam post huius vitae exitum iis, quos post se relinquunt, quodammodo provisum fore confidant.

"Haec omnia a Praedecessore Nostro non solum insinuata, sed clare et aperte proclamata, hisce Nostris Litteris etiam atque etiam inculcanda; quae nisi pro virili ac nulla interposita mora suscipiantur ad effectum deducenda, ordinem publicum, pacem et tranquillitatem societatis humanae contra novarum rerum concitatores effasiter defendi posse nemo sibi persuadeat."

Quadragesimo Anno, in Acta Apostolicae Sedis, June 1931, pp. 198, 199.

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