

CHAPTER IX— *JUSTICE*—THE RIGHT OF PROPERTY

In *Justice* as in *Social Statics*, the chapter on the right to land is followed by a chapter on the right of property. That in *Social Statics* I have reprinted in full, to meet Mr. Spencer's subsequent assertion that it modified the radical conclusions of the preceding chapter. But it is hardly necessary thus to treat the similar chapter of *Justice*. It begins (Section 54):

Since all material objects capable of being owned are in one way or other obtained from the earth, it results that the right of property is originally dependent on the right to the use of the earth. While there were yet no artificial products, and natural products were therefore the only things which could be appropriated, this was an obviously necessary connection. And though, in our developed form of society, there are multitudinous possessions, ranging from houses, furniture, clothes, works of art, to bank-notes, railway shares, mortgages, government bonds, etc., the origins of which have no manifest relation to use of the earth; yet it needs but to remember that they either are, or represent, products of labor, that labor is made possible by food, and that food is obtained from the soil, to see that the connection, though remote and entangled, still continues. Whence it follows that a complete ethical justification for the right of property is involved in the same difficulties as the ethical justification for the right to the use of the earth.

Since all material things capable of being owned consist either of land or products of land, the roundabout connection between such things as are here specified and the earth, through the food consumed by laborers, is a queer one, which indicates what in some parts of *Social Statics* may be suspected, that in speaking of land Mr. Spencer, as is often the case with English writers, is really thinking only of agricultural land.

The difficulties of which he speaks are the difficulties he raises in *Social Statics*, by confounding equal rights with joint rights, and he here again takes issue with Locke and assumes, as before, that for production to give title, the right of the producer to the use of material must be shown to be "greater than the pre-existing rights of all other men put together." The forty-one years that have elapsed have left Mr. Spencer still entangled by this self-raised difficulty. But he now goes on to say that the difficulty arising from the question whether by labor "a man has made his right to the thing greater than

the pre-existing rights of all other men put together²³ ... may be avoided however. There are three ways in which, under savage, semi-civilized, and civilized conditions, men's several rights of property may be established with due regard to the equal rights of all other men."

In the savage condition, he says there is a tacit agreement that having equal opportunities of utilising such products, appropriation achieved by one shall be passively assented to by the others.

As to the semi-civilised condition, he says:

We meet with usages having the same general implications. ... It is perceived that the assent of the clan to ownership of food grown on an appropriated portion by any one, is implied in the assumptions of kindred ownership similarly established by all others ... In this case then as in the first, the right of property arises in conformity with the law of equal freedom.

So far then Mr. Spencer derives, and properly derives, the right of property from the exertion of labor under conditions in which all are equally free to make use of land. He now comes to his third division, where he is to show how in civilised conditions the right of property "may be established with due regard to the equal rights of all other men." I will quote this in full:

Though we cannot say that ownership of property, thus arising, results from actual contract between each member of the community and the community as a whole, yet there is something like a potential contract; and such potential contract might grow into an actual contract if one part of the community devoted itself to other occupations, while the rest continued to farm: a share of the produce being in such case payable by agreement to those who had ceased to be farmers, for the use of their shares of the land.²⁴ We

²³ Mr. Spencer speaks of such usages as that an unsuccessful hunter in passing might take a deer from a trap for food, leaving head, skin, and saddle for the owner, as implying the belief of the tribesmen that "this prey was in part theirs before it was killed.—But it no more implies this than the custom by which, among the early California rancheros, any traveller might catch a fresh horse, transfer his saddle and leave the tired one implied common property in horses, or than the kindly customs of essentially the same kind that are to be found wherever the struggle for existence that has developed with our civilisation has not become intense.

²⁴ Here is another instance of the habit of thinking of land as only agricultural land. The assumption here is that farmers are the only users of land, whereas the obvious truth is that there is no occupation that can be carried on without the use of land, and that many other occupations require the use of much more valuable land than does farming. In the occupancy of his London apartments Mr. Spencer himself is more of a land-user, value considered, than many a small farmer.

have no evidence that such a relation between occupiers and the community, with consequent authorized rights of property in the produce which remained after payment of a portion equivalent to rent, has ever arisen; for, as we have seen, the original ownership by the community has habitually been usurped by internal or external aggressors, and the rent taking the shape, if not of produce, then of labor or military service, has been habitually paid to the usurper, a state of things under which equitable rights of property, in common with equitable rights of all kinds, are submerged. But out of such usurpations there has grown up, as we have seen, ownership by the state and tenancy under it; from which there may again arise a theoretically equitable right of property. In China where "the land is all held directly from the Crown" "on payment of an annual tax," with composition for personal service to the government," the legitimate proprietorship of such produce as remains after payment of rent to the community, can be asserted only on the assumption that the emperor stands for the community. In India, where the government is supreme landowner, and where, until the zemindar system was established, it was the direct receiver of rents, the derivation of a right of property by contract between the individual and the community can be still less asserted without a strained interpretation. Nor at home, where the theory that each landowner is a tenant of the Crown is little more than a theory, is there any better fulfillment of the ethical requirement. Only here and there, where state ownership is not potential but actual, and ordinary rents are paid by occupiers to the Crown (which has now in such cases come to be identified with the community), has there been consequently established that kind of use of the earth which gives a theoretically valid basis to the right of private property.

Now what is it that Mr. Spencer here says? It is that a theoretically equitable right of property does not now exist in civilized conditions; but that it may arise if the now nominal and potential supreme ownership of land by the state is made real and actual by the taking for the use of the community, by the representatives of the community, of the rents that are (or should be) paid by occupiers of land.

Truly *Justice* is a surprising book. Here we have Mr. Spencer going back to the very principle he has just recanted.

In one sentence of this paragraph he says that we have no evidence that this equitable adjustment of the rights to land in conformity with the needs of the civilized state has ever arisen, since the original ownership of land by the community has been habitually usurped, and in another sentence he says vaguely that it has arisen

only here and there. But that it may arise and ought to arise, and would give an even theoretically perfect basis to the right of property, this section states, if not as clearly, but yet on careful reading as unmistakably as does *Social Statics* itself.

The paragraph just quoted is followed by this recapitulatory paragraph, with which the section closes:

But admitting that the establishment of an ethically complete right of property is beset with difficulties like those which beset the establishment of an ethically complete right to the use of the earth, we are nevertheless shown by a survey of the facts which existing primitive societies present, and the facts traceable in the early histories of civilized societies, that the right of property is originally deducible from the law of equal freedom; and that it ceases to be so deducible only when the other corollaries from the law of equal freedom have been disregarded.

Or to put this statement of the propositions of this section in fuller form, they are: (1) That the establishment of the right of property is beset by the difficulties of showing that the right of a man to the material element from which property is obtained is greater than the rights of all existing men put together. (2) But in primitive societies and in the early history of civilized societies, where the use of land is open to all, this equality of access to land enables us to deduce the right of property in things produced by labor from the law of equal freedom; and (3) it ceases to be so deducible where equality in the use of land is denied, as in civilized societies at present; but would again become deducible from the law of equal freedom if the rent of land were taken for the use of the society.

If Mr. Spencer had written *Justice* under coercion; if imprisoned in the chambers of an Inquisition, and under fear of the rack, he had been forced against his will, like Galileo, to recant what he still held to be true, we might well believe that this Section 54 of *Justice* contained his sign to posterity that, in spite of the denials he had just been compelled to make, he in his heart held to the truth.

But though, unfortunately, the conditions do not admit of such a conclusion, this section is perhaps an even stronger testimony to the power of truth. In the preceding chapter Mr. Spencer has forced back his better nature, and defended landlordism as well as the man who had written *Social Statics* could. But when after an interval of over forty years he begins to rewrite his old chapter on "The Right of Property," the truth he once held reasserts its sway, and though he

cuts out all that might give open offence to his new clients, the perception of truth, as by "unconscious cerebration," causes him in the very first section to relapse, and to tell us—unmistakably, if not clearly—that in the civilized state it is only the appropriation of rent to the use of the whole community that can give to property an ethical basis.

But Mr. Spencer soon recovers himself. Having in Section 54 shown that in rude societies there is a substantial basis for the right of property, but that in highly civilized countries, such as England, the equitable right of property has been submerged by the usurpation of landownership, he proceeds in Section 55 to assert, as he did in the preceding that the course of modern civilization has been more fully to establish this right.

Section 55 begins:

This deduction [i.e., of the right of property from the law of equal freedom through the equal right to the use of land], early recognized in custom and afterwards formulated by legislators, has come to be elaborated and enforced more and more fully as society has developed.

Then comes something about primitive societies, the patriarchal group and the house community, in which occurs the reference to inherent value already quoted on page 51, and the section thus closes:

To trace the development of the right of property as established by rulers and administered by their agents, setting out with the interdict on theft in the Hebrew commandments, and continuing down to modern days, in which proprietorships of all kinds have been legally formulated in multitudinous detail and with great precision, would be no less out of place than it would be superfluous. It suffices for present purposes to note that this implication of the principle of justice, perceived from the first perhaps more clearly than any other, has gained in the course of social progress increased definiteness of recognition as well as increased extension and increased peremptoriness; so that now, breach of the right of property by unauthorized appropriation of a turnip or a few sticks, has become a punishable offence; and there is ownership of a song, of a pattern, of a trade-mark.

The principle of justice in the right of property perceived from the first, as Mr. Spencer has just explained, is equality in the use of natural opportunities. Has this principle gained by a social progress, which as exemplified in England, now denies nineteen-twentieths of the people of all right whatever in the land of their birth, punishes them if they take a handful of wild fruit or a few sticks from the abundant offerings of nature, creates private ownership in a salmon-

fishery, a coal mine, an advowson or a hereditary pension, and condemns millions to chronic pauperism?

This is what Mr. Spencer's examination of the right of property in *Justice* amounts to: First showing that the right of property in civilized societies has to-day no ethical basis, he goes on to make believe that it has, and from this basis of make-believe to assume the ethical validity of existing conditions. And then he virtuously turns on the communists. They are a feeble folk and have no friends.

In this he follows the order of *Social Statics*, but the spirit is that of *The Man versus the State*. He ignores what he once saw plainly, the incentive to communistic and socialistic schemes in the bitter wrong and widespread suffering of the existing order, declares their motive to be the desire to take from the worker the produce of his work, and assumes that between them and existing social conditions lies the only choice. Here is the section:

§ 56. Supposing themselves to be justified, and indeed enjoined by moral principle, many in our days are seeking to override this right. They think it wrong that each man should receive benefits proportionate to his efforts—deny that he may properly keep possession of all which his labor has produced, leaving the less capable in possession of all which their labors have produced. Expressed in its briefest form, their doctrine is—Let unlike kinds and amounts of work bring like shares of produce—let there be "equal division of unequal earnings."

That communism implies violation of justice as defined in foregoing chapters, is manifest. When we assert the liberty of each bounded only by the like liberties of all, we assert that each is free to keep for himself all those gratifications and sources of gratification which he procures without trespassing on the spheres of action of his neighbours. If, therefore, one obtains by his greater strength, greater ingenuity, or greater application, more gratifications or sources of gratification than others, and does this without in any way trenching on the of action of others, the law of equal freedom assigns him exclusive possession of all such extra gratifications and of sources of gratification; nor can others take them from him without claiming for themselves greater liberty of action than he claims, and thereby violating the law.

In past times the arrangements made were such that the few superior profited at the expense of the many inferior. It is now proposed to make arrangements such that the many inferior shall profit at the expense of the few superior. And just as the old social system was assumed by those who maintained it to be equitable, so is this new social system assumed to be by those who propose it. Being, as they think, undoubtedly right, this distribution

may properly be established by force; for the employment of force, if not avowedly contemplated by implication. With a human nature such as has been known throughout the past and is known at present, one who, by higher power, bodily or mental, or greater endurance of work, gains more than others gain, will not voluntarily surrender the excess to such others: here and there may be found a man who would do this, but he is far from being the average man. And if the average superior man will not voluntarily surrender to others the excess of benefit gained by his superiority, the implication is that he must be obliged to do this, and that the use of force to oblige him is justifiable. That the many inferior are physically able thus to coerce the few superior is agreed on both sides, but the assumption of the communists is that the required coercion of the minority who are best by the majority who are worst would be equitable.

After what was said in the early chapter of this Part it scarcely needs pointing out that a system established in pursuance of this doctrine would entail degeneration of citizens and decay of the community formed by them. Suspension of that natural discipline by which every kind of creature is kept fit for the activities demanded by the conditions of life, would inevitably bring about unfitness for life and either prompt or slow disappearance.

An old fable tells us that when the plague raged among the animals they concluded that among them was some great criminal, who must be sacrificed to the wrath of heaven, and agreed that to discover him all should confess their sins. The fox volunteered to act as judge. He listened with equanimity to the lion's recital of flocks devoured and men slaughtered, declaring his majesty blameless, and in the same way excused all that the tiger, the hyena, the wolf, and the bear confessed. At length came a poor ass, who told how when his master had forgotten to give him his breakfast, he had nibbled a few leaves from his load of cabbages. "You impious rascal!" cried the fox, "it is you beyond doubt who have brought on us the anger of the gods!" and applauding the decision and following his lead, the lordly animals threw themselves on the poor ass and tore him to pieces.

As the nibbling of a cabbage-leaf is to Herod's slaughter of the innocents, so is the dream of a few communists compared with what the monopoly of land is actually doing. In the highest civilization in other respects that the world has yet seen this monopoly is, even now, entailing the degradation of citizens and decay of the community, so that Mr. Spencer cannot look out of the windows of his club without seeing men turned into advertising signs; or get into a cab without having some miserable wretch officiously hasten to close the door in

the hope of a penny; or travel through the three kingdoms without beholding the decay of population in the country and its congestion in the slums of towns. It is, even now, suspending "that natural discipline by which every creature is kept fit for the activities demanded by the conditions of life," so that men are being destroyed, one the one side by repletion and debauchery, and on the other side by privation and the denial of opportunities for honest work. It is, even now, taking the produce of their work from superior worker and inferior worker alike, and is giving the gratifications and sources of gratification earned by work to those who do no work—is piling up wealth in the hands of those who do nothing to produce wealth, who as landowners are useless appropriators and worse than useless destroyers. To this giant wrong, this most monstrous of all denials of the law of equal freedom, Mr. Spencer is as complaisant as the fox was to the lion, while he vents his indignation on the poor ass of communism.

The next and final chapter shows how far Mr. Spencer really wishes to assert the right of property. It was, as he knows, by violating the right of property in putting taxes on the products of labor that the larger tenants of English land made themselves its virtual owners and that private property in land has come to be established in those wide regions to which English institutions have been extended. And it is on the line of abolishing this taxation of labor and the products of labor that, as is now evident, the struggle for the resumption of equal rights in land will in English-speaking countries be made—nay, is already beginning to be made. So in the next section Mr. Spencer brings out his double-barrelled ethics to break down the right of property to open the door for what is essentially socialism and communism in the interests of the rich:

§ 57. While absolute ethics thus asserts the right of property, and while no such breach of it as is implied by the schemes of communists is warranted by that relative ethics which take account of transitional needs, relative ethics dictates such limitation of it as is necessitated for defraying the costs of protection, national and individual.

The truth recognized at the outset, that the preservation of the species, or that variety of it constituting a nation, is an end which must take precedence of individual preservation has already been cited as justifying that subordination of the right to life which is implied by exposure to possible death in defensive war, and as also justifying that subordination of the right to liberty which military service and subjection necessitate. Here it must be again cited as affording a legitimate reason for appropriating such portions

of the possessions and the earnings of individuals, as may be required for adequately resisting enemies. But while there is thus a quasi-ethical justification for whatever encroachment on the right of property is necessitated for the purposes of defensive war, there is no justification for any such encroachment for the purposes of offensive war.

No less manifest is it that the right of property is legitimately subject to one further restriction. Property must be trenched upon for supporting those public administrations by which the right of property, and all other rights, are enforced. In society wholly composed of men who duly respected on another's claims, no such partial invasion of the right of property would be called for; but in existing societies and in such societies as are likely to exist for a long time to come, the nearest approach to fulfilment of the law of equal freedom is made when the various deduced rights are sacrificed to the extent needful for preservation of the remainders. Relative ethics, therefore, warrants such equitably distributed taxation as is required for maintaining order and safety.

Since the ethical commands, "Thou shalt do no murder" and "Thou shalt not steal," mean also, thou shalt not permit thyself to be murdered or to be stolen from, the justification of defensive war needs no invention of relative ethics. Nor this needed to justify under extraordinary circumstance what under ordinary circumstances would be violations of the right of property. Take Johnstown, when the sun rose on wreck and ruin and death in their most awful forms, an on men and women half crazed with listening all night to the shrieks that came from the flaming mass of float-wood into which the flood was sweeping their nearest and dearest. In ordering the destruction of all liquor, the seizing of all food, and the impressment, should that be necessary, of all who could work, in a systematized effort to succour who still might be succoured and to bury what remained to bury of the dead, was not Arthur Moxham acting, in the name of the reason and conscience of the community, on the same eternal principles of right and wrong that in ordinary conditions would have forbidden these things? What in form was a denial of the rights of property and person was in its essence respect for life and property.

But while changing conditions may change the application of ethical principles, it is only as the change in a ship's course turns the compass-card in her binnacle. The change is in the conditions, not in the principles. And if there be an ethical right of property, then, except under conditions of imminent danger and dire stress, a commu-

nity cannot be justified in taking property by force from the individual.

What Mr. Spencer does in this section, in the name of his convenient fiction of relative ethics, is to justify the habitual violations of the right of property which are committed under the name of government in all civilized countries, and thus to make his philosophy of things as they ought to be, conform the better with things as the ruling classes desire to maintain them. And he does this effectually, for he leaves the right of property without defence, save in idle platitudes, against those forms of taxation which have everywhere proved so efficient in robbing the many and enriching the few.

To be sure Mr. Spencer justifies the taking of property by taxation only for purposes of defensive war and the maintenance of order and safety. But such limitations are practically no limitations. Neither an English jingo nor an American protectionist would quarrel with them. No invading foot has trod English soil, no hostile fleet has fired a shot at an English town, since the English national debt began to form. Yet what one of all the wars for which the English masses have paid in blood and privation and of which this great debt is the reminder, has not been advocated at the time as a defensive war? Is not our monstrous American tariff declared by its advocates to be necessary to the maintenance of order and safety? What has been the assigned reason for the maintenance of every fat English sinecure but order and safety?

Granted that Mr. Spencer would abolish the more flagrant abuses of taxation; or, as in the light of his changes on the land question we may more certainly say, granted that he is in favour of abolishing them so long as Sir John and Grace do not seriously object; yet in admitting that the right of property may justly be set aside by the state for ordinary public needs and uses, he opens the door for every abuse that the ruling power—the majority, if you please—may at any time choose to deem a use. He leaves no principle save the shifting one of expediency to guard the right of property against any interest or desire or whim the may gain control of the legislative power.

But the reign of relative ethics, like that of the fashioned devil, to which it bears some analogy, is not to be forever, for we are given to understand that when evolution has carried the descendants of what are now the human race to a point as far above us as it has carried us

above the monkey, and brought on the agnostic millennium, relative ethics are to vanish in the unknowable pit. So Mr. Spencer tells us that "in a society composed of men who duly respected one another's claims, no such partial invasion of the rights of property would be called for." But then, he continues, it is called for "in existing societies and in such societies as are likely to exist for a long time to come." What ground does that give me to assert that I am robbed directly by the blackmail demanded in the name of duty at the American post-office every time a friend sends me a book from a foreign country, or even from Canada, and am robbed indirectly every day of my life in the purchases I make? The protectionist, if a Spencerian and disposed to argue, would simply reply, "You are talking absolute ethics, whereas, Herbert Spencer has shown, we are now under the rule of relative ethics."

It is true, but in a sense that Mr. Spencer does not mean, that if men duly respected one another's claims, taking of individual property in taxation by the state would be necessary. For if men duly respected one another's claims to the use of land, all necessity for invading the right of property by taxation would disappear. Either by the single tax on land values or by the crude and clumsy scheme of land nationalization proposed by Mr. Spencer himself in *Social Statics*, enough revenue would accrue to the state to defray all needed expenses without taking a penny of any man's property. But if men are to continue to disregard each other's claims to the use of land, and to continue to treat that element as belonging to a few individuals—and this Mr. Spencer now insists on—then there is no possible improvement in society or in the race that could dispense with the taking of property by taxation.

Mr. Spencer evidently entertains the innocent notion that could the soldier and the policeman be done away with, there would be no further need for public revenues, and all organized government could be dispensed with. But would not civilized societies still need revenues for building and keeping roads and bridges, for paving and cleaning streets, or establishing lighthouses and supporting a fire service, and doing the many things which become increasingly necessary to the public health, safety, comfort, and convenience, as social integration goes on? Or in the millennium of the Spencerians, as in the millennium of the anarchists, is each one to pave, clean and light

the street before his door, when and how he pleases? are roads, bridges and public works, as to which competition is impossible, to be left to private individuals and companies, charging what they please and rendering what service they choose? and are all other public functions to be dependent on volunteer service or voluntary subscription?