

## CHAPTER 4 — PROPERTY

It is another evidence of the superiority of John Stuart Mill in logical acumen that he seems to have been the only one of the accredited economic writers who has recognized this necessary relation between the laws of distribution and the origin of property. From the introductory section of his book "Distribution," the section I have already quoted in full, he proceeds at once to a consideration of the origin of property, and indeed the first two chapters of the Book are entitled "Of Property."

But he is consistent in error. The same want of discrimination that leads him to treat distribution solely as a matter of human institution leads him to treat property solely as a matter of human institution. Hence, his consideration of property does not, as it should, help him to see the incongruity of the notion that while the laws of production are natural laws the laws of distribution are human laws; but gives to that error such seeming plausibility as one error may give to another. Contradictions and confusions are however as marked in his discussion of property as in his discussion of distribution:

*Private property, as an institution, did not owe its origin to any of those considerations of utility, which plead for the maintenance of it when established. Enough is known of rude ages, both from history and from analogous states of society in our own time, to show, that tribunals (which always precede laws) were originally established, not to determine rights, but to repress violence and terminate quarrels. With this object chiefly in view, they naturally enough gave legal effect to first occupancy, by treating as the aggressor the person who first commenced violence, by turning, or attempting to turn, another out of possession. The preservation of the peace, which was the original object of civil government, was thus attained; while by*

*confirming, to those who already possessed it, even what was not the fruit of personal exertion, a guarantee was incidentally given to them and others that they would be protected in what was so.*

All this I deny. It is in fact blank contradiction. Let the reader look over and consider it. In the first sentence we are told that private property did not originate in considerations of utility. In the second, that "tribunals (which always precede laws) were originally established, not to determine rights, but to repress violence and terminate quarrels." In the third, that they did this by treating as the aggressor the person who first commenced violence. In the fourth, that the preservation of the peace was the original object of such tribunals, and that by securing possession where there was no right they incidentally secured possession where there was right.

Thus, the first sentence asserts that private property did not originate in considerations of utility, and the three succeeding sentences that it did. For when all consideration of right is eliminated what remains as a reason for the preservation of the peace by the repression of violence and determination of quarrels, if not the consideration of utility? What Mill tells us is that society originally acted on the principle of the schoolmaster who says, "if I find any fighting I will not stop to ask the right or wrong, but will flog the boy who struck the first blow, for I cannot have the school thrown into disorder." If this is not a substitution of the principle of utility for the principle of right, what is it? And to this contradiction of himself, Mill adds that by confirming wrongful possession, society incidentally guarantees rightful possession! — something in the nature of things as impossible as that two railway trains should pass each other on a single track.

The fact is that Mill in his consideration of property is caught in the toils of that utilitarian philosophy which seeks to make the

principle of expediency take the place of the principle of justice. Men can no more do this consistently than they can live without breathing, and Mill in his very attempt to base the institution of property on human law is driven despite himself into recognizing the moral law, and into talking of right and wrong, of ought and ought not, of just and unjust. Now these are terms which imply a natural law of morality. They can have no meaning whatever if expediency be the basis of property and human law its warrant.

The contradictions of this paragraph are shown through the whole consideration of property it introduces. While he strives to treat property solely as a matter of human institution, over and over again we find Mill forced to abandon his position and appeal to something superior to human institution — to right or justice.

Thus, in what follows the paragraph I have quoted, we find statements utterly contradictory of the notion that property has its origin in expediency and is determined by human enactment. In the very next section to that in which we are told that the origin of property is not in justice but in expediency, not in the desire to determine rights, but the desire to repress violence, we are told:

*The social arrangements of modern Europe commenced from the distribution of property which was a result not of a just partition, or acquisition by industry, but of conquest and violence: and notwithstanding what industry has been doing for many centuries to modify the work of force, the system still retains many and large traces of its origin. The laws of property have never yet conformed to the principles on which the justification of private property rests. They have made property of things which never ought to be made property, and absolute property where only a qualified property ought to exist.*

Here we are told that, as a matter of fact, human laws of property did not originate in the expediency of repressing violence,

but in violence itself; that they have never conformed to what we can only understand as the natural law of property, but have violated that natural law, by treating as property things that under it are not property. For to say that a human law ought to be different from what the legislature enacts is to say that there is a natural law by which human laws are to be tested. What indeed that natural law of property is by which all human enactments are to be tested, Mill a little later shows himself to be conscious of, for he says:

*Private property, in every defense made of it, is supposed to mean the guarantee to individuals of the fruits of their own labor and abstinence.*

And this basis of a natural right of property — a right which is unaffected by and independent of all human enactments — is still further on even more definitely and clearly stated:

*The institution of property, when limited to its essential elements, consists in the recognition, in each person, of a right to the exclusive disposal of what he or she have produced by their own exertions, or received, either by gift or by fair agreement, without force or fraud, from those who produced it. The foundation of the whole is, the right of the producers to what they themselves have produced.*

After thus conceding everything to natural law, Mill becomes concerned again for human law, and appeals to the “categorical imperatives” of Kant, the ought of moral law, to give sanction under certain circumstances to human law, declaring that:

*Possession which has not been legally questioned within a moderate number of years, ought to be, as by the laws of all nations it is, a complete title.*

Then, recognizing for a moment the incongruity of making a legal

possession — that is to say possession by virtue of human law — equivalent to possession by virtue of natural law, he continues:

*It is scarcely needful to remark, that these reasons for not disturbing acts of injustice of old date, cannot apply to unjust systems or institutions; since a bad law or usage is not one bad act, in the remote past, but a perpetual repetition of bad acts, as long as a law or usage lasts.*

Now Mill himself has always spoken of property as a system or institution, which it certainly is. And he has just before stated that the existing systems or institutions of property have their source in violence and force, and therefore are certainly in his own view unjust and bad. Hence what he tells us here is in plain English that the sanction of prescription cannot be pleaded in defense of property condemned by the natural or moral law. This is perfectly true, but it is an utter contradiction of the notion that property is a matter of human law.