

# BOOK III — DISTRIBUTION

## PART I

### THE VARIOUS MODES OF DISTRIBUTION

#### CHAPTER I — THE PRESENT MODE

##### I. THE INEQUALITY OF WEALTH

In all ages the poor have been many and the rich have been few — *paucis humanum genus vivit* — and that not only in poor societies, as is natural, but in the wealthiest ones as well. Wealth, therefore, is very unequally distributed — we cannot yet say “unfairly,” for that is the very question we have to investigate.

We can at least say, however, that the inequality of wealth has provoked bitter complaints in every age: the quarrel between the rich and the poor is as old as the world.

It might have been hoped that this quarrel would grow less intense as the wealth of nations increased. But it has not been so, for if the general level rises it does not follow that the distance between rich and poor grows less, — quite the reverse. The number of paupers diminishes, it is true; far more men reach a position of comfort than formerly; but the heights of fortune are continually being overtopped by yet dizzier heights. Between the wages of an agricultural labourer and the dividends of a millionaire trust king there is a bigger difference than between the income of a serf and that of a feudal baron.

If we represent the different ranges of income — such as they appear, for instance, in income tax statistics — by horizontal oblongs whose length is proportional to the number of persons included in each, and place them one over the other, we shall get a figure resembling a pyramid — or rather an arrow-head, or a top — whose base represents the poorer classes and the apex the rich. If the base of the pyramid is wide in proportion to its height, this shows that the inequality of incomes is not very great — which is the case in France, — and the greater the inequality of incomes the greater will be the

distance from base to summit. If the inequality is extreme, the top of the figure takes the shape of a needle.<sup>1</sup>

The following table<sup>2</sup> illustrates this point. It shows the number of persons assessed to super-tax for the year 1918-19, classified according to the income on which they were assessed. The third column contains the quotient of the second figure divided by the first — that is to say, the average income per head.

Class	Number of Persons	Total Incomes Assessed £	Average Income Per Head £
£ 2,500-£ 5,000 . . . . .	39,680 . . . . .	136,334,000 . . . . .	3,436
£ 5,000-£ 10,000 . . . . .	15,330 . . . . .	105,500,000 . . . . .	6,882
£10,000-£ 15,000 . . . . .	4,450 . . . . .	54,320,000 . . . . .	12,207
£15,000-£ 20,000 . . . . .	1,750 . . . . .	30,280,000 . . . . .	17,303
£20,000-£ 25,000 . . . . .	910 . . . . .	20,290,000 . . . . .	22,297
£25,000-£ 30,000 . . . . .	595 . . . . .	16,250,000 . . . . .	27,311
£30,000-£ 40,000 . . . . .	375 . . . . .	19,720,000 . . . . .	34,296
£40,000-£ 50,000 . . . . .	320 . . . . .	14,180,000 . . . . .	44,313
£50,000-£ 75,000 . . . . .	305 . . . . .	18,300,000 . . . . .	60,000
£75,000-£100,000 . . . . .	135 . . . . .	11,680,000 . . . . .	86,667
over £100,000 . . . . .	150 . . . . .	30,000,000 . . . . .	200,000

Here the inequality of wealth is obvious at a glance, although the table only includes those whose income exceeds £2,500 a year. It does not include those who are "disinherited": there are many others who have nothing at all.

But, it will be said, what does it matter if inequality of wealth increases, so long as there is an increase in the general well-being? What difference does it make that the rich grow richer, so long as there are fewer who are poor? Only envy can find grounds for complaint in this. The important thing is that all should advance, but not that all should advance at the same pace.

Nor do people fail to add that this social inequality is not only inevitable but in some respects beneficial. It is inevitable, in that it results from the many other inequalities — physical, mental, and

<sup>1</sup> M. Vilfredo Pareto thinks he has found the mathematical equation for this figure — what he calls the *income curve*. And from a comparison of the statistics of different countries now and in the past, he thinks he can draw the conclusion that the form of this curve is almost invariable, the same in all places and at all times, even "for countries whose economic conditions are as different as those of England, Ireland, Germany, the Italian cities (in the Middle Ages), and even Peru (in the eighteenth century)." It would follow from this, then, not only that inequality of wealth is a universal law, but also that the range of inequality is not susceptible of any appreciable change.

<sup>2</sup> [Substituted for Professor Gide's illustration, which is drawn from French sources and relates to succession, in the absence of exact income statistics.]

moral — which nature has created between different individuals, and of which the inequality of wealth is to some extent only a corollary. It is beneficial because, so long at least as human societies are in a state of comparative poverty, the inequality of wealth acts as a stimulus to production to an even greater extent than want. It keeps all men on the alert, from the top to the bottom of the social ladder, by giving them a constant prospect of advancement. It gives full scope to individual initiative by concentrating powerful capital in the hands of those who are most bold. It endows the works of man with fruitful variety, thanks to the infinite series of wants and resources that it establishes among them.

Yet, for as long as these old arguments have been repeated, they do not seem to have succeeded in reconciling the masses to the inequality of wealth. In fact, it is far less readily accepted nowadays than it used to be; and this is easily explained.

To begin with, this inequality is almost the only one that continues at a time when *the other inequalities that used to distinguish man from man have disappeared one after another*. The laws have recognized civil equality; the growing diffusion of education is even tending to produce a measure of intellectual equality. Inequality of wealth alone remains and increases, and whereas it was once concealed behind greater inequalities, it now stands out in the foreground and concentrates all the anger upon itself.

In the second place, economic inequalities are far more pervasive than the older forms of inequality: their social effects are more extensive, both for good and for evil. They may even be said to dominate and, as it were, to have absorbed all other inequalities — those of nobility, power, intelligence, and eloquence — in the sense that nowadays these latter forces can scarcely exist without the support and assistance of wealth.

The possession of wealth modifies the conditions of life for those on whom its favours or its rigours are bestowed, far more than it used to do. No doubt in the days of Charlemagne, just as to-day among the Arabs of southern Algeria, no gulf of hatred was dug between fellow-citizens by the inequality between rich and poor. That is because wealth, and the pleasures that it could procure, were scarce and little varied. To-day, on the contrary, wealth and the pleasures it brings are enormously multiplied, so that the rich can fill both hands at the shops in Vanity Fair, while the poor can merely look covetously through the windows.

Nor does inequality of fortune involve only inequality of enjoyment or of power. Statistics show that life is three times as long,

on an average, among the rich as among the poor,<sup>1</sup> so that, by the cruel irony of fate, the smaller a man's share of wealth, the greater the tribute he has to pay to sickness and death. Worse still, the poorer the man, the greater the tribute he has to pay to vice and crime, for statistics show also — what *a priori* reasoning could have foretold — that the criminality of the poorer classes is greater than that of the well-to-do. Consequently, modern science has burst like a soap bubble that axiom of commonplace morality that health and virtue are the companions of poverty. The poor have no longer even that consolation.

Finally, the inequality of wealth appears to be in no way natural, but much rather *artificial* — the result of a certain kind of social organization, of certain economic institutions, such as property and inheritance, created and maintained by those who profit by them.

If with some immaterial dynamometer we could measure the intellectual or moral inequalities that exist among men, we should probably find that they very rarely coincide with inequalities of wealth. This is not to say that wealth is not often due to certain qualities of initiative, boldness, and perseverance — such qualities as make men conquerors and victors over fortune, — but it is a matter of common observation that fortune seems in no way proportional to the merits or the virtues of men. Still less does it seem proportional to the amount of trouble taken, for it seems, on the contrary, as was bitterly remarked by John Stuart Mill, that the scale of remuneration goes on falling in proportion as the work becomes harder and more painful, until a point is reached where the hardest toil is scarcely sufficient to provide the necessaries of existence.

Yet, however little flattering to human nature this observation may be, public opinion more readily accepts those inequalities of

<sup>1</sup> According to statistics for the city of Paris for 1912, the death rate varies in different quarters of the city in a ratio of more than 4 to 1. Thus:

Porte Dauphine	7.9 per 1000	Père-Lachaise	23.7 per 1000
Champs-Élysées	9.0 per 1000	Salpêtrière	33.5 per 1000

Anyone who knows the different quarters of Paris will find this comparison sufficiently clear and startling.

[The figures for the London Metropolitan Boroughs, however, are somewhat less striking, and their correlation with inequalities of wealth is less marked. At the two ends of the scale we find:

Woolwich	10.6 per 1000	Bermondsey	21.4 per 1000
Hampstead	12.3 per 1000	Finsbury	21.6 per 1000]

The inequality is even worse in the case of infant mortality.

In statistics of suicide, although the causes are numerous and varied, poverty always appears in the front rank, without a rival.

fortune that are due entirely to chance than those that are the reward of talent or even of work. This is because these merits and talents are themselves inequalities, envied or disputed, on which the new inequality, that of wealth, becomes grafted. If the gifts of chance are those that arouse least jealousy, it is because they are the only ones to which everyone alike can lay equal claim.

It is to be observed that people are not usually jealous of the winners of lottery prizes, and that their good fortune is rather greeted with a kindly welcome. The reason for this is that everyone knows that the chances in the lottery are the same for all, and the primitive sense of justice of the man in the street is satisfied: he allows Fortune her bandage so long as she has also her wheel. But when he looks at the distribution of wealth, there seems to be something wrong with the wheel that turns up the winning numbers.

What is to be aimed at, then, is not so much equality of fortunes as *equality of chances*, ensuring that each shall have the same possibility of making his fortune.

In fact, if the inequality is personal and temporary it is not an evil; the unfortunate thing is its permanent character — the formation of social classes placed one upon the other and as unchangeable as geological strata. For then the inequality of wealth has none of those stimulating effects, from the economic point of view, that we have just indicated and that might indeed be expected of it. When it becomes a class inequality it discourages those at the bottom of the scale by depriving them of all chance to rise, while it lulls to sleep those who are securely placed in a definite position at the top. It breaks the bond of mutual social dependence by digging a gulf between Dives and Lazarus that can never be bridged. It renders idle alike the hands of those who are too poor, for they have no chance of producing anything, and of those who are too rich, for they no longer feel any need to produce. It gives birth to the two evils of idleness on the one hand and pauperism on the other, and thus produces two classes of parasites, one at each end of the social scale.

The great war, among so many other tragic results, will have had the effect of still further aggravating this inequality. We have already heard much of the "new rich," but now there will be no lack of "new poor" — including not only all those whom the war has ruined, but all those also who, with the same income as before, are crushed between the rise of prices on the one hand and the enormous increase of taxation on the other.

Yet all these consequences of inequality are not sufficient ground for condemning it, for the real question is not whether some have

more than others, but whether the excess *has been taken from the others*. This is the question to which the theory of distribution endeavours to give a reply. Let us suspend our judgment, therefore, for the present.

## II. THE WEALTH OF NATIONS

The extreme inequality of wealth, then, appears as a social evil whose causes must be investigated, so that it may, if possible, be remedied. But we must cherish no illusions as to the results that would follow from a better distribution of wealth, supposing such to be possible. Indeed, when the total to be divided is small, the most ingenious arrangements can never make the individual shares large. Now in the case of modern communities, even those that figure in the front rank, we should speak rather of the poverty of nations than of "the wealth of nations."

The following table shows the capital and income (in millions sterling) of a number of countries before the war, and the capital and income per head of the population (in pounds sterling):

	<i>Total Capital</i>	<i>Capital per head</i>	<i>Total Income</i>	<i>Income per head</i>
United States.....	38,880	380	7,200	72
Germany.....	17,600	264	2,000	32
England.....	16,000	360	2,200	50
France.....	11,200	280	1,820	36
Italy.....	4,000	116	480	14
Belgium.....	1,800	256	200	23

From this table<sup>1</sup> it can be seen how small the share of each individual would be on the basis of an equal distribution. It would be better, certainly, to reckon the amounts per household instead of per head, as children do not enjoy independent incomes. For this purpose the figures per head need only to be multiplied by 4 or 5. This would give approximately £140 to £160 as the average income of a French or German family (on a basis of equal distribution), £220 to £320 for an English or American family, and £60 for an Italian family.

It will be said, no doubt, that an income of, say, £200 a year (in pre-war money) would be adequate for the majority of the inhabitants of these countries. Arithmetically this is beyond dispute, and it is a great mistake for books written in justification of the existing economic order to try to dispute it. We will merely say that a so-

<sup>1</sup> [We omit Professor Gide's account of the method adopted to obtain these figures, as it differs from the English method. The latter is described in Smart's *Distribution of Income* (Macmillan).]

ciety whose population had to subsist on this average income would have to renounce all expenditure on luxuries, and, of course, all the progress to which luxury gives rise (see below, Book IV, Chap. I, § V). And if it limits its desires to this modest competence, which is scarcely more than King Henry's<sup>1</sup> famous "fowl in the pot," it could undoubtedly obtain it by more economical methods than a social revolution.

The individual share would be smaller still if, instead of dividing all fortunes without exception, as we have supposed in the calculations given above, we were to *divide only the fortunes of the rich*, which is the ideal of popular socialism. In that case the portions would be ridiculously small. If we could flatten out Mont Blanc and spread its material over the whole area of France, we should only raise the level of the soil by about six inches. Similarly, if all incomes in the United Kingdom above £10,000 a year were divided equally among all the inhabitants, they would not provide £5 a head. This result, disconcerting as it may be at first sight, is explained by the *relatively small number of the rich*.

Are we to conclude from the slenderness of the national wealth and the impossibility of giving a large share to everyone that the question of distribution is of little importance? Quite the contrary; for it is precisely in cases of insufficiency that distributive justice is most imperatively necessary — we know something of this from our experiences of food rationing! — and it is in times of abundance that the question of distribution may be ignored. But the conclusion that must be drawn from the figures given above is this: that if we wish to make a marked improvement in the condition of everyone, middle classes as well as wage-earners, it is to production that our efforts must be directed. That is where modern socialism differs, as we shall see, from the older form. Distribution is rather a legal or judicial question, but the economic problem of to-morrow is how to increase production to a maximum.

Yet it must not be forgotten that production is to a large extent dependent on distribution, in the sense that if the latter is unjust, the former cannot be abundant. Labour can only be fruitful if the labourer knows that he will gather the fruit. And perhaps that is the very reason why our modern societies are not richer than they are.

<sup>1</sup> [Henry IV, or Henry of Navarre, king of France from 1589 to 1610, whose ideal was that every peasant should be able to have his fowl in the pot every Sunday.]

## III. HOW THE DISTRIBUTION OF WEALTH IS EFFECTED

If everyone produced independently, like Robinson Crusoe on his island, everyone would keep for himself whatever he had made, and the question of distribution would not even arise. The rule *cuique suum*, "to each man his own," would naturally be applied.

But such a system, in which, by hypothesis, there would be no exchange and no division of labour, is incompatible with any kind of social life. Even among savages who live by hunting and fishing it is never entirely realized. And in modern societies we should all be very disagreeably surprised if an attempt were made to put it into practice — if, for instance, the baker or the shoemaker were told, "You have produced so many loaves, or so many pairs of shoes. Very well; keep them; that will be your share." It is plain that what we each of us demand is not the produce of our labour in kind, but its fair equivalent. Now is this demand satisfied in our modern societies?

In every civilized society each individual, by the sale of his goods or the hiring-out of his services, is continually pouring *values* into the stream of circulation; and he is also continually drawing out *other values*, in the shape of various kinds of income. Each of us puts on the market what he possesses — the landowner his crops, the house-owner his houses, the capitalist his capital, the manufacturer the produce of his factory — and the man who owns neither land nor capital offers his arms or his brains. Naturally, each tries to sell his products or to hire out his services at the best possible price; but this does not rest with him, for the products and services sell on the market at the price fixed by the law of supply and demand, which means, if we go back to the explanation of value already given (p. 194), that they sell at a higher or lower price according as the desire of the public for them is more or less intense. Consequently it is the public — the consumer — who fixes the share that we receive, by the price that he assigns to our products or services and that he consents to pay us. And it is these shares, under the various names of *wages*, *salaries*, *rent*, *interest*, or *profits* on the sale of goods, that constitute our income.

In short, therefore, it is the law of supply and demand that determines the distribution of wealth.

Economists of the optimist school, however, are prepared to carry the discussion even into the sphere of justice. Is not the law of supply and demand, they say, which determines the equivalence of the values exchanged — is not this law the very machinery by



which everyone is enabled to withdraw from the total mass a sum of values equivalent to those he has put into it? And is not this equivalence thus measured in the most impartial and least arbitrary manner, since exchange on the market is a free contract? No doubt the values that each one receives are very unequal; but is it not in conformity with justice, as well as with social utility, that the most desirable and the rarest kinds of wealth — those that meet the most pressing needs of society and are yet insufficient in quantity to satisfy those needs — should be paid for at the highest price? Is not commutative justice also distributive justice? We can only estimate the value of services rendered by the price that society assigns to them. If the public assigns a high price to my products and a low one to yours, does it not in this way exactly measure the degree of importance and of social utility that it attributes to our respective products or labour? But the public, it will be said, is not a good judge. Who, then, can be a better judge than the consumer? After all, if everyone is remunerated by the value of what he has produced, it may be said that he is remunerated *according to the services he has rendered to society*.

Moreover, these inequalities find a limiting influence in competition. Competition always tends to correct the injustice involved in such a system, for if such and such a product or service happens to be quoted at an excessive price, a crowd of rivals, anxious to profit by this piece of luck, immediately rush into the same industry or profession and quickly bring back the value to the level of the cost of production, by increasing the supply of these products or services. Ultimately, that is to say, the value of everything *tends to be determined by the trouble and expense it has cost*. What better rule than this could be imagined for determining distribution?

From the practical point of view also, it is said, the existing system of distribution is incomparably superior to any other system that can be imagined, because *it goes by itself* — it works automatically. The law of supply and demand does away with the intervention of any authority; it is not for the legislator to hand each one his share — like a mother dividing a cake among her children — for each one gives himself his share. Authority has only to intervene to prevent his taking the share of someone else.

That, then, is the classical doctrine. But how can the mode of distribution be a just one if the law of supply and demand is the sole distributor of fortune? It is a natural law, if you like, but precisely because it is *natural*, it is *amoral* — as far removed from any concern with morality or justice as any other natural law, such as

the circulation of the blood, which makes all hearts beat alike, for good and for evil, or the rotation of the earth, which, as the Gospel says, "maketh the sun to rise on the evil and on the good."

There is no kind of work — if I may venture to give it that name — that has ever been more highly paid than that of boxing: it may bring in as much as £4,000 a minute. If we ask why this kind of work is paid a hundred thousand times more than that of the ploughman, the school of Bastiat could only reply: "Because the first renders society a service a hundred thousand times as great as the second; and the *proof* of this is that society is willing to pay a hundred thousand times as much for it."

Very well; but if this is so we must no longer talk about social justice, for the services that are indispensable to existence, from manual toil up to the labour of inventors who have died of poverty, have scarcely any exchange value, whereas such acts as merely require certain natural gifts or favourable circumstances, and that provide a small number of wealthy people with the most fleeting and perhaps even the most immoral enjoyment, are sought after at a high price and make the fortunes of those who can perform them.

Moreover, competition can scarcely be relied on to correct these inequalities and to bring each man's remuneration to a rate that corresponds more closely to the trouble or merit involved. For it is precisely upon the commonest kinds of work and service that competition acts, depreciating them still further, whereas luxuries and rarities, the so-called noble services, are always more or less monopolies, even by their very nature.

It should be observed that people who come into the market to exchange their products or services, do so under extraordinarily unequal conditions. The chances of fortune, the winning tickets, are only accessible to those who can lay down their stake — who have already acquired some property, — and their chances of gain are proportional to the value of the stake. Between the workman who has nothing to offer but his arms — a commodity that is superabundant on the market, and therefore of little value — and the capitalist who brings along his money-bags, or the landowner, urban or agricultural, who brings land that is indispensable to existence, there is a vast difference in the possibilities of making a fortune. Many favourable opportunities for making profitable investments, many bits of information from financiers and rulers, are offered to the rich capitalist and denied to the small *rentier*, and still more to the wage-earner.

It is obvious, then, that inequalities of remuneration result most

of all from inequalities in men's original shares of property. The distribution of income is necessarily predetermined by the appropriation of land and capital. It is not sufficient to declare that "each draws out the equivalent of what he has put in." We must still discover where each has obtained that which he puts in. Why do some come on to the market, or rather into the world, provided for even from birth, and almost sure of the lion's share from the very beginning?

By whom, then, have they been endowed? By their own labour? By law? Or by force? That is the question we must now examine.

We must remember, again, that if this system really possesses the vaunted superiority of "going by itself," it is certainly not true that it made itself. If it goes by itself it is because the machinery is by this time well established. But when it had to be started — when individual ownership had to be created, with all its attributes of rent and interest and so forth — it required centuries of conquests, a hundred revolutions, a thousand laws, and all the might of kings, nobles, or parliaments. And, to tell the truth, this transformation still goes on without ceasing, so that it would be very hard to discover how much of the so-called natural order remains underneath the existing economic order.

#### IV. HOW PROPERTY IS ACQUIRED

The subject of property does not occupy a great place in books on political economy. There are many such books, and most important ones, especially in other countries than France, where it is not even mentioned in the table of contents. This is because it is held to belong to legal rather than to economic science. This is true; but yet, if the right of property is the basis of all other rights — at least of real rights, — then it must also play a large part in political economy, for it is the necessary precondition of exchange, and therefore the central point of the whole mechanism of distribution, as we have just seen.

What, then, is meant by property?

The use of things almost always implies their possession. To use bread, we must eat it; to use clothes, we must wear them; to use a house, we must dwell in it; to use the earth, we must cultivate it. But possession does not of necessity involve ownership: we may enjoy a thing by right of usufruct, as a borrower or tenant, and so forth, without owning it. Ownership or property, therefore, only appears when appropriation is distinguished from the mere personal

utilization of wealth. We only own a thing when we have the right to keep it without making use of it, but preventing anyone else from touching it. The right of property is the right to do what we like with a thing, including the right to do nothing with it: a right without limits and without conditions — the *jus abutendi*. Such, at least, is the legal conception of the right of individual property, as it was cast in bronze by the Roman lawyers.

How is the right of property acquired? By *labour*, of course, it will be said; for we can scarcely imagine such a formidable right being conferred upon man by an act of creation, in the form of production *ex nihilo*. That, indeed, is just how economists understand and justify the right of property. But lawyers are very far from doing the same!

It is a fact well worthy of remark, though not often noticed, that neither in the text of the Roman law nor even in the articles of the French civil code, though born of the Revolution, does labour appear among the various modes of acquisition of property that they enumerate. So far as the past is concerned, this is intelligible, for in ancient times labour could not serve as a mode of acquiring property since it was almost always slave labour — in other words, the worker was himself the property of his master. But what about the present day? Well, even to-day labour *by itself* never constitutes a legal title to property: the characteristic feature of the "labour contract," as it is called, is that the wage-earning labourer has no rights to exercise over the produce of his labour. It is the man who sets him to work — the employer — who acquires and keeps the ownership of the product (see the chapter on *Wage-Earners*, below). And even when the worker who produces independently — peasant or artisan — has the right of property in his produce it is not by any means because it is the fruit of his labour, but because he is the owner of the land or the raw material, and his property rights extend to all that is added to these, by way of improvement.

What, then, are the modes of acquisition of property that are formulated in law? — The only ones that law is concerned with, or at any rate the ones that are of most importance, are purchase, gift, and succession (either testamentary or intestate). But all these modes are concerned with the transmission of property — that is to say, with property that passes from one person to another. None of them shows us, therefore, the foundation of property, since they all assume it to be already in existence. What we want to see is property at its birth: we want to know how it originally came into being.

Now besides these modes of *derivative* acquisition the lawyers do indeed enumerate certain modes of original acquisition; but the Code is as laconic about these as it is prolix about the others. Yet even in our old societies the birth of property surely ought not to be a rare occurrence, since new wealth is continually being created.

The lawyers indicate three original modes of occupation, but these may be summed up in one: namely, actual possession becoming transformed into a right.

To begin with, it is *occupation* that appears as the primary fact from which all property right is derived. It must be observed, moreover, that though there may seem to be little morality about this, yet so far as it involves taking possession of wealth that belongs to no one, the fact of occupation constitutes a right that is morally superior to the right of conquest, which involves the expulsion of the weak by the strong.<sup>1</sup>

*Accession* or *incorporation* is a mode of acquisition founded on the rule that the accessory follows the principal. In this way the owner of the soil obtains not only all that is detached from it in the shape of fruits and crops (with the exception, in some legal systems, of the produce of the subsoil) but also the buildings and plantations that have been raised on his land by the labour of another. And it is in virtue of the same principle that the ownership of the object manufactured by the workman is assigned to the capitalist who supplied the raw material. Accession, therefore, is only a kind of extension of the right of occupation and can only possess the same qualities.

But these two modes of acquisition only occupy a few articles in the French civil code. A larger amount of space is devoted to the third, which is *prescription* (or *usucapion*,<sup>2</sup> as it was called in Roman law). This assigns the ownership of anything to the man who has possessed it for a certain time — and even without the need for any lapse of time, in the case of a transferable object. Prescription, in the case of real property, does away with the need for going back to the original fact of occupation, which would be impossible to verify; and in the case of products, it does away with the need for verifying

<sup>1</sup> Originally, however, the right of occupation is only the same thing as the right of conquest, and in ancient societies men did not fear to call it by its proper name. The typical form of quiritarian property in Rome was that which was acquired *sub hasta*, under the spear. And an old Greek song says: "My wealth is my spear, my sword, and my buckler, the defence of my body; with them do I plough, and reap, and gather in the harvest of my vines." (Quoted by Guiraud, *La propriété en Grèce*, p. 127).

<sup>2</sup> [Also called *usucapion*.]

whether there has been accession or not. In fact, therefore, prescription is to-day the sole legal basis of property, so far as its origin is concerned. Now there is nothing more in that, by its very definition, than a crude fact destitute of all moral value. What prescription does away with is precisely the need to discover whether property really originated in labour and saving: from the legal point of view it covers all original sins.

If the lawyers are satisfied, then, it is easy to understand that economists and moralists are not, and that they have striven to find a more solid foundation for the right of property than the mere fact of possession — namely, the labour of the producer.<sup>1</sup> But unfortunately it is not easy to prove that such is really the case.

Anyone who tried to use this criterion in actual practice would be strangely deceived. Make a list of your inherited possessions. "Is this house the product of your labour?" "No; it came to me from my parents." — "Are these fields and this forest the product of your labour?" "No; they are not the product of anybody's labour." — "These goods that fill your shops, or these crops stored in your granaries, are they the product of your labour?" "No; they are the product of the labour of my workmen." — "Well, then . . . ?"

Another foundation has therefore been sought for in *social utility*. This is the fortress in which the defenders of individual property have had to take refuge, and so far it has held out against all attack. It is true that many cases can be adduced in which the owner's interest goes counter to the general interest — the classical example is the forest that the owner's interest impels him to cut down, while the nation's interest is to keep it; and there are many others. But this does not matter, for there are many more cases, and more serious ones, where, conversely, dilapidation and sterilization can be attributed to the absence of individual ownership. On the whole, history and facts show us that individual property has up to the present been the best means, and even the essential condition, of the utilization of wealth, and the most active stimulus to production.

Only, if that is the reason for the existence of the right of property, it follows that the individual is no longer an owner in his own

<sup>1</sup> Attempts have also been made to find a foundation in *natural right*. But what does this mean, except that property is an indispensable condition of personal independence, since he who possesses nothing is compelled to put himself at another's service in order to live? Hence there is no more revolutionary theory than this, for if property is a natural right, what are we to say to all those who have been deprived of it and who demand it?

interest, but in the interest of all. Property is no longer "private property," but becomes a *public function*, in the loftiest and most literal sense of the term. No longer, therefore, will it be absolute, in the old Roman sense of the word, but only to the extent that sovereignty over things and the right to dispose of them freely, are indispensable to the best utilization of them. It may vary according to circumstances and surroundings. We may admit the right of absolute ownership to be useful in some cases — for instance, in the case of a pioneer in a new country (like the *dominium ex jure Quiritium* of the Roman peasant) — but we may also acknowledge that this absolute character ought to be relaxed in the case of the ownership of a factory, a mine, a railway, a forest, or a waterfall. Certain conditions may be imposed on the owner, if only the obligation to cultivate his land.<sup>1</sup> And the right of expropriation in the interests of public utility, etc., will be more readily admitted.

We must now see what are the *objects* to which the right of property may apply; what *persons* may exercise it; and what are the *powers* that it confers.

#### V. THE KINDS OF WEALTH TO WHICH PROPERTY RIGHTS MAY APPLY

At the present day all forms of wealth may be the object of individual property rights, with the single exception of those which by their very nature are incapable of appropriation, like the sea and the great rivers. And, as a matter of fact, in all the countries of Europe almost all wealth is appropriated. But it has not always been so. There was a time, on the contrary, when the sphere of individual property was infinitely small.

At the beginning it applied only to certain kinds of wealth, and these were at first precisely those that have long ceased to be the object of property rights in all civilized countries — namely, slaves and women. It embraced also objects of direct personal use, such as jewels, arms, and horses, the individual ownership of which was evidenced by the custom of burying them with their owner in his tomb; often, indeed, his slaves and his wives were treated in the same way!

Then property came to include houses — not yet as individual property, but as family property — because the house was the home,

<sup>1</sup> During the war the obligation to cultivate land — and especially to grow wheat — was expressly imposed upon the landowner by law. As we shall see later, the law of France provides for the forfeiture of property rights in mines in case of their not being exploited. [This is not the case in England.]

the resting-place of the household gods, and these gods belonged to the family.

Still later, it extended to a portion of the land, first to the land in which were the tombs of the ancestors, for these ancestors also were a kind of family property. But, despite this first step, individual ownership of land, the most important and almost the only wealth of the ancients, was established very slowly. Yet the time is not far distant now when individual ownership will have covered the whole earth and all that it bears on its surface. To-day only the lofty mountains and a portion of the forests still maintain a precarious independence.

In course of time each kind of property has in turn assumed special importance: among pastoral peoples it was cattle; under the feudal system it was land; when the era of the steam-engine arrived, it was coal-mines. Individual ownership has even been extended in our own times to include new objects, unknown to the ancients. Of these the principal kinds are the following:

(1) *Transferable securities* — shares in property, or simply credit claims, generally in the shape of credit instruments — pieces of paper that can be slipped into a pocket-book, and that constitute nowadays the most convenient and desirable form of wealth. Thanks to these, property has been torn up out of the soil and has taken wings: more than this, it has become as it were dematerialized. The owner no longer sees it or touches it, but none the less he laughs at governments that try to seize it. It may be estimated that something like half the total fortune of a civilized country takes this form.

(2) *Immaterial wealth*, the ownership of which is still not properly established and defined. Each kind would require a chapter to itself: we must be content with merely enumerating them:

- (a) Industrial property, in the shape of *patent rights*.
- (b) Property in *trade marks*.
- (c) Property in a *business connexion*, or *goodwill*.
- (d) *Literary* property.

It is possible that in the future individual property may take still other forms of which we have at present no idea.

The conception of property, then, appears as evolving under the influence of two opposite, but logically interdependent, causes: extension in regard to its object, and limitation in regard to its duration and attributes.



## VI. THE PERSONS WHO MAY ACQUIRE PROPERTY

We have just seen that the *object* of property rights goes on continually extending and varying. Is it the same with the *subject* of these rights — with the classes of persons who may acquire them and become property owners? Yes, it is.

Originally, their number was very limited: there was no true owner but the sovereign, and, later on, the head of the family. In any case slaves and foreigners, and sometimes women, were excluded. To-day not only is the right of holding property recognized as belonging to every human being, but it has even been extended to fictitious persons, called *artificial persons*, moral persons, or bodies corporate.

Legal personality — that is to say, the capacity to receive and possess goods — was first attributed to the gods, in the person of the colleges of priests attached to their temples, and later on to the Christian churches and religious communities. The extension of this form of property, and the storms it aroused in the course of history, are well known.

States, cities, parishes, and great public services such as charitable foundations, hospitals, schools, and so forth, have all been invested with the right to hold property.

Associations — even private ones — have also become property owners. But they have not obtained this right without resistance on the part of the State. The right to possess has been accorded most readily to associations of an economic character, to those that are called “companies,” and that seek industrial or commercial profit. But, contrary to what one would have thought, the right was long refused (especially in France) to non-profit-making associations — those that aim at higher and more disinterested objects. And at this very moment it is only granted them grudgingly. For this old antipathy for what is called *mortmain*, or the dead hand, there is first of all an economic cause — the idea that wealth owned by a community will be badly administered, or in any case withdrawn from circulation and from trade for an indefinite period. But there is a still more important political cause, in the fear of seeing these associations become powerful enough to stand up against the State and take its place in the performance of the great social services.<sup>1</sup>

This dread of *mortmain*, that dates from very early days, appears to us to be out of date. If public utility is the real basis of property,

<sup>1</sup> [We omit a short account of the French law on the subject.]

as we have just shown, then surely it could nowhere be more legitimately placed than in the hands of those "artificial persons" which represent all that is most disinterested — education, public health, poor relief, mutual dependence, the rights of man and the rights of nations, science, religion, peace, the Red Cross and similar organizations, or even pleasure and recreation in the form of innumerable arts and sports. To these, then, it would be impossible to give too large a share. They are, as it were, a salvation from the abuses of individual property. It is very much to be desired that a portion of wealth should be withdrawn from individual interests and devoted to altruistic purposes. The economic objection that this means driving wealth out of circulation may have some weight in the case of land, but none in the case of houses or securities. Let legislators be content, therefore, with limiting the right of corporate bodies to hold property to cases where land is concerned — this, existing only in limited quantity, might possibly even be reserved for living persons, — but in the case of all other values given to artificial persons, there is no economic reason for fixing any other limits than those that result from the object aimed at by the association or foundation.

Finally, the right of holding property has been given not only to associations but also to works — we might even say, to ideas. That is what is called a *foundation*, or endowment. It is sufficient that a man should have wished to make himself useful after his death, and have provided sufficient funds for the work to be carried on, for him to be able to live perpetually, to possess, and even to grow rich by new acquisitions. The will of the dead man lives a second life, incarnated in the foundation that he has established. Yet here the law of France is even more rigorous than in the case of associations.

As a matter of fact there is an essential difference between the moral or artificial personality attributed to a foundation and that attributed to an association. For the latter is still a kind of living being that is constantly being renewed and that dies as soon as its usefulness is ended. But a foundation is rather a dead man who survives, embalmed and immovable, incapable of changing and adapting itself to inevitable vicissitudes, and hence there necessarily arrives a day when it crumbles into dust. A foundation for the worship of Jupiter cannot last when there are no more altars to Jupiter, and foundations for saying masses would necessarily lapse in a country that passed from catholicism to protestantism.

VII. THE ATTRIBUTES OF PROPERTY RIGHT:  
INHERITANCE

"The right of property," says Article 544 of the Napoleonic code, "is the right to enjoy and to dispose of things *in the most absolute manner.*" Although this definition has ceased to be entirely true, because the right of property is subjected nowadays to continually increasing restrictions, it brings out clearly the nature of property as an absolute right — absolute in two senses: (1) in that it embraces the whole of the satisfactions that can be obtained from a thing, including even the stupid satisfaction of destroying it;<sup>1</sup> (2) in that it is not limited in time, or only at least by the durability of its object. *Perpetuity* and *free disposal*, then, are the two characteristics of the right of property.

## § 1

When the right of property applies to goods which perish when consumed, or whose length of life is very short, its perpetuity is of no great economic interest, since it cannot be actually realized. But when the wealth appropriated is by its nature everlasting, or at least very long-lived, then the right of property, expanding along with its object, appears in all its greatness and with all its consequences.

How numerous are these objects that last for ever? First there is land, whose length of life has no other term than that of the planet that bears us, or at least of the geological cycles that mould its surface. And that is exactly why landed property has always been of an exceptional kind; we shall have to devote a special chapter to it. Houses have not the same character of perpetuity, considered as buildings, but they share in it at least so far as concerns the ground on which they are built. Works of art, especially those carved in marble or cast in bronze, may also aspire to immortality; and it is the same with metallic money. Nevertheless in the case of these kinds of wealth, and especially the last, the perpetuity of the right of property is deprived of almost all its importance in practice (except in the matter of hoarding) by the frequency of exchange, which brings them back every moment into the whirlpool of circulation.

But if the object of the right of property is sometimes perpetual, the subject is not — unless it is an artificial person. The owner dies. That is a critical moment for the right of property. What is to

<sup>1</sup> An owner, however, may not set fire to his house. There we find a first restriction on property right — one that is due to the risk to which the fire would expose the man's neighbours.

become of it? Since the right does not die, it must pass to some other holder. Who is this to be? Is it to be the one designated by the dead man? Very well; although, as we shall see directly, that is a right that has not been admitted without some hesitation. But if the dead man has not designated anyone, who is to succeed him then? The law says, "his nearest relatives." But what is the reason for this intestate devolution, as it is called?

It has been sought to justify it on the following grounds:

(a) As a reasonable interpretation of the wishes of the dead man when he has expressed none. Is it not natural to think that in the case of near relatives — children, husband or wife, father, mother, or even brother or sister — if the deceased had wished to disinherit them he would have said so definitely? If he has said nothing, should it not be presumed that he wished to leave his possessions to them?

Very good — so far as the nearest relatives go; but when it comes to a distant one, the dead man's silence cannot be interpreted as a presumed wish and a definite designation.

(b) As an application of the *alimentary obligation*, consecrated by nature and by all legislation in regard to certain relatives — children, parents, and husband and wife. Surely it is a duty towards those to whom we have given life, those from whom we have received it, and those with whom we have shared it.

No doubt there are such obligations which death cannot extinguish; but none the less the reason is inadequate, for if inheritance had no other foundation than the alimentary obligation it ought not to exceed the limits of an alimentary allowance.

There is no sound argument, therefore, in favour of succession *ab intestato*, at any rate in the collateral line. It is a survival from the days when property still existed only in the family form.

Yet even from the family point of view this kind of succession cannot be said to be useful in strengthening the family, especially when it goes counter to the express wishes of the head of the family. So true is this that the LePlay School, which aims at making the family the basis of the social order, expressly demands that testamentary freedom should be granted to the head of the family, or at least that the portion reserved for heirs of the blood should be very much restricted.

From the economic point of view it must be admitted that this mode of succession has an ill effect rather than a stimulating one. It either releases the children from all need for effort, by ensuring to them their paternal heritage without their having done anything

to deserve it, or else, by making some distant cousin succeed to the property of an uncle in America, it turns the legal devolution of estates into a lottery.

Many economists, therefore, and even those who are not socialists, are desirous nowadays of abolishing succession *ab intestato*, at least in the collateral line. In France it was settled by a law of 1917, due to the war and budget necessities, to abolish it beyond the sixth degree of relationship, thus confining it to near relatives.

## § 2

The other essential attribute of the right of property, as we have said, is the right of *free disposal*. We have just quoted the definition in the French civil code: "The right to enjoy and to dispose of things in the most absolute manner." In this definition, as all law students know, the one essential attribute of the right of property is the right of disposal — the *jus abutendi*, as the Roman law more forcibly expressed it. Where this attribute is wanting, you have only the right of usufruct. But this right to dispose of a thing at one's pleasure has not always been in existence. Property only gradually enlarged itself thus. In this respect it went through the same progressive development as in regard to its object. And the title of the Romans to fame, from the legal point of view, is simply that they gave to property this sovereign character which it had not previously enjoyed — and which, too, it is now beginning to lose, under the influence of new ideas.

So far as can be conjectured, the following is the order in which property became successively invested with its essential attributes:

(a) The first right was probably that of *making use* of the goods — exploiting them by the labour of free wage-earners. That is the attribute that has had the most serious social consequences, because it gave rise to the "noble" class — the class of those who are freed from the toil of working for their daily bread and enabled to devote their lives partly to leisure and partly to such occupations as confer power and influence — *otium cum dignitate* — such as politics, letters, and art.

(b) The right of *giving* seems to have been one of the most ancient modes of disposal of wealth — at least for transferable objects, — and to have preceded even the right to sell (see p. 185). In fact, if the owner has the right to consume a thing for the satisfaction of his own needs, why should he not have the right to let another man consume it? If he may destroy it, why should he not be able to give

it? Is it not the noblest and most enviable privilege belonging to the right of property to be able to share its benefits with others?

(c) The right of *selling* and *letting on hire* seem only to have appeared much later — at least so far as landed property is concerned. Aristotle declared, in the fourth century B.C., that this is a necessary attribute of the right of property, but he does not seem to say that it was generally recognized as such in his day. Indeed, there are many reasons why it should not have been. To begin with, so long as property exists in the family form and under the seal of religious consecration — which was the character of ancient property — alienation is impossible because it is an impious act on the part of any member of the family. Moreover, division of labour and exchange were not yet in existence, each family being self-sufficient; and movable wealth was scarce, and everyone kept it, sometimes even until it was buried with him in the tomb, so that in these circumstances sale could only be an exceptional and abnormal act. Consequently, when it begins to appear, we find it surrounded by extraordinary formalities: it is a sort of public event. Thus the *mancipatio* had to take place before five witnesses, representing the five classes of the Roman people.

(d) The right of *bequest* — that is to say, the right of disposing of one's goods after death by means of a will — is the culmination of the right of property, since it prolongs this right beyond death. It is not in any way an application or an extension of the right of succession, as might be imagined. On the contrary, the right of disposing of one's possessions at death, far from being connected with succession *ab intestato*, has always been found in conflict with it (see above, p. 344). There has been a struggle between two conceptions — that of supreme individual ownership progressively extended till it includes testamentary freedom, and that of the ancient family ownership, the family property being retained, each head of the family receiving it in turn as a trust, and being obliged to transmit it to the succeeding generation. It is thought that even at Rome, where individual ownership developed with such vigour, a father had no right of bequest previous to the Law of the XII Tables (450 B.C.). The testamentary act was surrounded with solemnity; it had to be performed by taking to witness (*testamentum*) the people assembled in their tribes, thus borrowing the sacred form used in the promulgation of laws — *uti pater legassit, ita jus esto*, said the Law of the XII Tables (*legassit, has made a law!*). All this shows clearly enough that the act was not an everyday performance. The law nowadays has singularly lowered the dignity

of this right by allowing a will to be made by a *holograph* instrument, as it is called — a simple document without any other formality than the date and signature.<sup>1</sup>

This conflict ended in some countries, such as the United States, in the complete victory of individual ownership in the shape of absolute testamentary freedom. But it was not the same everywhere, and in France under the rule of the Napoleonic code testamentary freedom is limited,<sup>2</sup> to the benefit of certain heirs to whom the law assures a minimum portion of which the testator cannot deprive them. Fathers of families, it is true, generally use their freedom reasonably enough, and rarely disappoint the hopes of their natural heirs — in other words, testamentary succession only confirms the results of succession *ab intestato*. In France it very rarely happens that a father uses even the limited power that the law allows him to dispose of the “disposable portion” of his property. It is only when there are no children, husband or wife, or near relations that the testamentary right has free scope, and it must be acknowledged that it is not always used in an intelligent manner. This right of bequest is a formidable one, in that it enables an individual to make a perpetual settlement without the possibility of any reconsideration of the decision. There are few men who are capable of exercising so high a function as this.

It is indisputable, however, that a man's power to dispose of his wealth not only during his life but even after his death is a powerful stimulus, if not to production — for bachelors are no less anxious to get rich than married men, — yet at any rate to saving. There are many men in the world — to the honour of the human race be it said — who work and save less for themselves than for others. If you compel them to think only of themselves, they will work less and spend more. In this case much wealth will be selfishly squandered in unproductive consumption, and many years will be withdrawn from productive labour by premature retirement.

But though property, through the attributes just enumerated, has given an impetus to the production of wealth, and thereby to civilization, which undoubtedly nothing could have replaced, it is far from being the case that the same benefits can be attributed to it so far as the distribution of wealth is concerned. Although it is

<sup>1</sup> [This is the simplest, but not the only kind of will permitted by French law; in England, of course, the signatures of witnesses are also ordinarily required.]

<sup>2</sup> [In England there is absolute testamentary freedom: every man is allowed to dispose of his property, of whatever kind, in whatever way he pleases.]

the foundation of the social order, as it is said, this right of property becomes the cause of profound but inevitable disturbances.

To begin with, ownership of a product becomes transformed, if only by the right of exchange, into ownership of the *value* of that product. In the same way, property is subjected to all the fluctuations of supply and demand, all chances, fortunate and unfortunate, all the tricks of fortune and luck, and takes on that unstable and uncertain form that characterizes wealth in modern societies. And even supposing that it originates in the individual labour or saving of its first author, it will often be difficult to discover the original title amid the transformations wrought by exchange.

The power to lend, to lease, or to rent property has created the class of *rentiers* — those, that is to say, who are able to live on the income of their capital or land, which is made use of by another man's labour, without needing to work themselves. Besides this, it cannot fail to give rise to many conflicts — between creditors and debtors, between rural landowners and farmers, and between urban landowners and their tenants. In the first two cases the conflict has been of great importance in economic history, and even in political history; the third case is more recent, but looks like being no less violent.

The right to make use of property creates a division of society into two classes, wage-earners and employers — the former working in the service of others, and the latter, in appearance at least, appropriating the fruits of their labour. It thus prepares the way for the struggle between labour and capital.

Finally, by its attribute of perpetuity, the right of property necessarily outlives the original owner and passes to his heirs, who will be unable to show the same personal title to it. Many men will find themselves owners of wealth that they have not themselves produced, but which may be presumed to have been the produce of the labour of their ancestors in a more or less distant past — a presumption not readily admitted by the “disinherited.”