CHAPTER V

PRIVATE LANDOWNERSHIP A NATURAL RIGHT

THE conclusions of the preceding chapter include the statement that individuals are morally justified in becoming and remaining landowners. May we take a further step and assert that private landownership is a natural right of the individual? If it is, the abolition of it by the State, even with compensation to the owners, would be an act of injustice. The doctrine of natural rights is so prominent in the arguments of both the advocates and the opponents of private landownership that it deserves specific treatment. Moreover, the claim that private landownership is a natural right rests upon precisely the same basis as the similar claim with regard to the individual ownership of capital; and the conclusions pertinent to the former will be equally applicable to the latter.

A natural right is a right derived from the nature of the individual, and existing for his welfare. Hence it differs from a civil right, which is derived from society or the State, and is intended for a social or civil purpose. Such, for example, is the right to vote, or the right to hold a public office. Since a natural right neither proceeds from nor is primarily designed for a civil end, it cannot be annulled, and it may not be ignored, by the State. For example: the right to life and the right to liberty are so sacred to the individual, so necessary to his welfare, that the State cannot rightfully kill an innocent man, nor punish him by a term in prison.

Three Principal Kinds of Natural Rights

Although natural rights are all equally valid, they differ

in regard to their basis and their urgency or importance. From this point of view we may profitably distinguish three principal types.

The first is exemplified in the right to live. The object of this right, life itself, is intrinsically good, good for its own sake, an end in itself. It is the end to which even civil society is a means. Since life is good intrinsically, the right to life is also valid intrinsically, and not because of consequences. Since there is no conceivable equivalent for life, the right to life is immediate and direct in all possible circumstances.

Among the natural rights of the second class, the most prominent are the right to marry, to enjoy personal freedom, and to own consumption-goods, such as food and clothing. The objects of these rights are not ends in themselves, but means to human welfare. Confining our attention to marriage, we see that membership in the conjugal union is an indispensable means to reasonable life and self-development in the majority of persons. The only conceivable substitutes are free love and celibacy. Of these the first is inadequate for any person, and the second is adequate only for a minority. Marriage is, therefore, *directly* and *per se* necessary for the majority of individuals; for the majority it is an *individual* necessity. If the State were to abolish marriage it would deprive the majority of an indispensable means of right and reasonable life. Consequently the majority have a *direct* natural right to the legal power of marrying.

In the case of the minority who do not need to marry, who can live as well or better as celibates, the legal opportunity of marriage is evidently not directly necessary. But it is necessary indirectly, inasmuch as the *power of choice* between marriage and celibacy is an individual necessity. No argument is required to show that the State could not decide this matter consistently with individual welfare or social peace. Whence it follows that even the minority who do not wish or do not need to marry, have a natural

right to embrace or reject the conjugal condition. In their case the right to marry is indirect, but inviolable.[1]

Private ownership of land belongs in a third class of natural rights. Inasmuch as it is not an intrinsic good, but merely a means to human welfare, it differs from life and resembles marriage. On the other hand, it is unlike marriage in that it is not *directly* necessary for any individual whatever.[2] The alternative to marriage, namely, celibacy, would not even under the best social administration enable the majority to lead right and reasonable lives. The alternative to private landownership (and to private ownership of capital as well), namely, some form of employment as wage receiver, salary receiver, or fee receiver enables the individual to attain all the vital ends of private ownership: food, clothing, shelter, security of livelihood and residence, and the means of mental, moral, and spiritual development. None of these vital ends or needs is essentially dependent upon private ownership of land; for millions of persons satisfy them every day without becoming landowners. Nor are they exceptions, as those who can get along without marriage are exceptions. The persons who live reasonable lives without owning land are average persons. What they do any other person could do if placed in the same circumstances. Therefore, private landownership is not directly necessary for any individual.

Private Landownership Indirectly Necessary

In our present industrial civilization, however, private landownership is *indirectly* necessary for the welfare of the individual. It is said to be indirectly necessary because it is necessary as a *social institution,* rather than as something immediately connected with individual needs as such. It is not, indeed, so necessary that society would promptly

[1] The marriage rights of criminals, degenerates, and other socially dangerous persons, are passed over here as not pertinent to the present discussion. For the same reason nothing is said of the perfectly valid social argument in favor of the individual right of marriage.

[2] Cf. Vermeersch, "Quaestiones de Justitia," no. 204.

go to pieces under any other form of land tenure. As we have seen in the last chapter, it is necessary in the sense that it is capable of promoting the welfare of the average person, of the majority of persons, to a much greater degree than State ownership. It is necessary for the same reason and in the same way as a civil police force. As the State is obliged to maintain a police force, so it is obliged to maintain a system of private landownership. As the citizen has a right to police protection, so he has a right to the social and economic advantages which are connected with the system of private ownership of land. These rights are natural, derived from the needs of the individual in society, not dependent upon the good pleasure of the city or the State. They are individual rights to the presence and benefits of these social institutions.

But man's rights in the matter of land tenure are more extensive than his rights with regard to a police force. They are not restricted to the presence and functioning of a social institution. Every citizen has a natural right to police protection, but no citizen has a natural right to become a policeman. The welfare of the citizen is sufficiently looked after when the members of the police are selected by the authorities of the city. On the contrary, his welfare would not be adequately safeguarded if the State were to decide who might and who might not become landowners. In the first place, the ideal condition is that in which *all* persons can easily become actual owners. In the second place, the mere legal opportunity of becoming owners is a considerable stimulus to the energy and ambition of all persons, even of those who are never able to convert it into an economic opportunity. Therefore, only a very powerful reason of social utility would justify the State in excluding any person or any class from the legal power to own land. No such reason exists; and there are many reasons why the State should not attempt anything of the sort. As a consequence of these facts, every person, whether an actual owner or not, has a natural right to ac-

quire property in land. This right is evidently a necessary condition of a fair and efficient system of private ownership, which is in turn a necessary condition of individual welfare. The right of private landownership is, therefore, an indirect right; but it is quite as valid and quite as certain as any other natural right.

Now this right is certainly valid as against complete Socialism, which includes State management and use, as well as State ownership. Is it valid against the Single Tax system, or against such modified forms of Socialism as would allow the individual to rent and use the land as an independent cultivator with security of tenure? Would the introduction of some such scheme in a country in which only a small minority of the population were actual owners, constitute a violation of individual rights? While we cannot with any feeling of certainty return an affirmative answer to these questions, we can confidently affirm that reform within the lines of private ownership would in the long run be more effective, and, therefore, that the right of private ownership is *probably* valid even against these modified forms of common ownership.[1]

The Doctrine of the Fathers and Theologians

Some of the Church Fathers, particularly Augustine, Ambrose, Basil, Chrysostom, and Jerome, denounced riches and the rich so severely that they have been accused of denying the right of private ownership. The facts, however, are that none of the passages upon which this accusa-

[1] The argument in the text is obviously empirical, drawn from consequences. There is, however, a putatively intrinsic or metaphysical argument which is sometimes urged against the justice of the Single Tax system. It runs thus: since the fruits of a thing belong to the owner of the thing, "res fructificat domino," rent, which is the economically imputed fruit of land, necessarily and as a matter of natural right should go to the owner of the land. As will be shown later, the formula at the basis of this contention is not a metaphysical principle at all, but a conclusion from experience. Like every other formula or principle of property rights, it must find its ultimate basis in human welfare.

tion is based proves it to be true, and that in numerous other passages all of these writers explicitly affirm that private ownership is lawful.[1] Speaking generally, we may say that they taught the moral goodness of private ownership without insisting upon its necessity. Hence they cannot be cited as authorities for the doctrine that the individual has a natural right to own land.

Some of the great theologians of mediæval and post-mediæval times denied this right, inasmuch as they denied that the institution of private ownership was imposed or commanded by the natural law. Among them are Scotus,[2] Molina,[3] Lessius,[4] Saurez,[5] Vasquez,[6] and Billuart.[7] Since private ownership is not absolutely necessary to human welfare in all forms of society, it cannot, in their view, be regarded as strictly prescribed by the natural law, nor be instituted without the positive action of civil authority, or the consent of the community. Nevertheless they all admit that it is much better than common ownership in contemporary societies. The difference between their position and that of de Lugo, for example, seems to be twofold: First, they put stronger emphasis upon the doctrines that the earth belongs to all men in common, that in the absence of original sin ownership would likewise have been common, and that this arrangement is therefore in a fundamental sense normal, agreeing with nature and the natural law; and, second, they put a lower estimate upon the superiority of private ownership even in contemporary conditions. In a word, they denied that private ownership was so much better than any alternative system as to confer upon the individual a natural right in

[1] Cf. Vermeersch, op. cit., no. 210; Ryan, "Alleged Socialism of the Church Fathers."

[2] "In IV Sent.," d. 15, q. 2, n. 5; and "Reportata parisiensia," d. 15, q. 4, n. 7-12.

[3] "De Justitia et Jure," tr. 2, d. 18 and 20.

[4] "De Justitia et Jure," c. 5, n. 3.

[5] "De Legibus," l. 2, c. 14, n. 13 and 16.

[6] "In Summa," 1ma 2ae, d. 157, n. 17.

[7] "De Justitia et Jure," d. 4, a. 1.

the strict sense; that is, a right which laid upon the State the correlative obligation of maintaining the institution of private landownership.

On the other hand, many of the ablest theologians of the same period declared that private ownership was enjoined by the natural law and right reason, and consequently that it was among the individual's natural rights. According to St. Thomas Aquinas, private property is "necessary for human life," and is one of those social institutions which are prescribed by the *jus gentium;* and the content of the *jus gentium* is not determined by positive law, but by the dictates of "natural reason," by "natural reason itself." [1] These statements seem to convey the doctrine of natural right as clearly as could be expected in the absence of an explicit declaration. Cardinal de Lugo sets forth the same teaching somewhat more compactly, but in substantially the same terms: "Speaking generally, a division of goods and of ownership-titles proceeds from the law of nature, for natural reason dictates such division as necessary in the present circumstances of fallen nature and dense population." [2] This view is to-day universally accepted among Catholic writers.

The Teaching of Pope Leo XIII

The official teaching of the Church on the subject is found in the Encyclical, "On the Condition of Labor," by Pope Leo XIII. In this document we are told that the proposals of the Socialists are "manifestly against justice"; that the right of private property in land is "granted to man by nature"; that it is derived "from nature, not from man, and the State has the right to control its use in the interest of the public good alone, but by no means to abolish it altogether." These statements the Pope deduces from a consideration of man's needs. Private property in land is necessary to satisfy the wants, present and future, of the

[1] "Summa Theologica," 2a 2ae, q. 57, a. 2 and 3.
[2] "De Justitia et Jure," d. 6, s. 1, n. 6.

individual and his family. Were the State to attempt the task of making this provision, it would exceed its proper sphere, and produce manifold domestic and social confusion.

While Pope Leo defines the natural right of private ownership as incompatible with complete Socialism, that is, collective use as well as collective ownership, his statements cannot fairly or certainly be interpreted as condemning the Single Tax system, or any other arrangement which would leave to the individual managerial use and secure possession of his holding, together with the power to transmit and transfer it, and full ownership of improvements. These are the only elements of ownership which the Holy Father defends, and which he insists upon as necessary. The one element of private ownership which the Single Tax system would exclude, namely, the power to take rent from and profit by the changes in land values, finds no place among the advantages of private ownership enumerated in the Encyclical.

There is, indeed, one passage of the Encyclical in which Pope Leo seems to allude to the Single Tax or to some similar proposal. He expresses his amazement at those persons who "assert that it is right for private persons to have the use of the soil and its various fruits, but that it is unjust for any one to possess outright either the land on which he has built, or the estate which he has brought under cultivation. But those who deny these rights do not perceive that they are defrauding man of what his own labor has produced. For the soil which is tilled and cultivated with toil and skill utterly changes its conditions: it was wild before, now it is fruitful; was barren, but now brings forth in abundance. That which has thus altered and improved the land becomes so truly a part of itself as to be in great measure indistinguishable and inseparable from it. Is it just that the fruit of a man's own labor should be possessed and enjoyed by any one else? As effects follow their cause, so is it just and right that the result of labor

should belong to those who have bestowed their labor."

In this passage we find two principal statements: first, that those persons are in error who declare full private ownership of land to be unjust; and, second, that it is wrong to deprive a man of the improvements which he makes in the soil. Now the first of these propositions does not touch the Single Tax system as such; it only condemns the assertion of Henry George that private ownership is essentially unjust. It is directed against one of the arguments for the system, not against the system itself. More specifically, it is a refutation of an argument against private landownership, rather than a positive attack upon any other system. It could be accepted by any Single Taxer who does not agree with Henry George that the present system is essentially unjust. The second proposition does not apply to the Single Tax system at all; for the latter would concede to the individual holder the full ownership and benefit of improvements; and it could easily be so administered as to protect him against injury in any case in which improvement values were not exactly and clearly distinguishable from land values. Any doubt which arose could be resolved in favor of the owner.

While Henry George opposed the doctrines of the Encyclical in his "Open Letter to Pope Leo XIII," all his arguments are directed against the proposition that private ownership is right and just. The "Letter" is an attack upon private ownership rather than a defense of the Single Tax. Apparently its author did not find that Pope Leo condemned any positive or essential element of the Single Tax as a proposed system of land tenure.

If the rejoinder be made that Pope Leo could have had no other group of persons in mind than the Single Taxers when he wrote the paragraph quoted above, our answer must be that he did not definitely identify them, either by naming them, as he named the Socialists, or by any other sufficiently explicit designation. Applying to this para-

graph the customary and recognized rules of interpretation, we are obliged to conclude that it does not contain an explicit condemnation of the Single Tax system.

To put the substance of this chapter in two sentences: Private landownership is a natural right because in present conditions the institution is necessary for individual and social welfare. The right is certainly valid as against complete Socialism, and probably valid as against any such radical modification of the present system as that contemplated by the thoroughgoing Single Taxers.