

Chapter 1

Landownership— Its Philosophical and Political Aspects

There is probably no more controversial question in history than that relating to primitive landownership. For more than two centuries philosophers, historians, sociologists, and anthropologists, as well as others, have conducted research in this subject and each, in the absence of direct or contemporary evidence, has, as a rule, expressed different views or has come to diverse conclusions. Some have held that private ownership of land was a usurpation; that land originally was held in common ownership; that it belonged to the clan or the tribe; that, unlike other forms of property, it was held for the benefit of all and not for a few; that its use was controlled by the ruling authority, whether sovereign, chief, or patriarch; and it was only through some form of usurpation that it was privately engrossed and, in this way, the community or society became separated into landowners, slaves and serfs, or tenants.¹ Thus Sir Henry Maine, the renowned British historian and anthropologist, holds:

We have the strongest reason for thinking that property once belonged not to individuals nor even to isolated families, but to

¹When we speak of ownership of land *in common*, we do not imply common occupation of land. From the very beginning of human society, it was undoubtedly the practice of individuals or families to occupy exclusively a tract of land on which they settled and which they used for pasturage or cultivation. But this does not mean that the land was considered their private property or that there was a right of absolute or fee ownership. It can be assumed, as historical studies reveal, that the title to the land, as property, was in the community as a whole, though its occupancy and use were by individuals or groups.

larger societies composed on the patriarchal model. . . . It is more than likely that joint ownership and not separate ownership is the really archaic institution.²

This view is supported by E. B. Tylor,³ another British authority, along with L. H. Morgan⁴ and, in approximately the same form, by Herbert Spencer and Lord Avebury, by the Belgian economist, Emile de Laveleye,⁵ and the German historian, G. L. von Maurer,⁶ as well as other writers of lesser note.

The thesis of these exponents of primitive society, however, has not met with general approval—but in most cases the criticism is based on skepticism rather than outright opposition. Thus the French scholar, Fustel de Coulanges, in his classic work, *The Origin of Property in Land*, takes to task the theories put forth by several of the proponents of the communal land of primitive society, but he does not refute the thesis—he merely points out errors in the historical evidence and even admits that in very early times among certain peoples communal land-ownership existed. Thus Fustel de Coulanges writes:

I do not wish to combat the theory. What I want to do is only to examine the authorities on which it is based. I intend simply to take all these authorities, as they are presented to us by the authors of the system, and to verify them. The object of this cold and tedious procedure is not that of proving whether the theory is true or false; it is only to discover whether the authorities that have been quoted can be fairly regarded as appropriate.⁷

Another skeptic of the nature of primitive landownership is the German economic historian, Max Weber, who, in his *General Economic History*, edited by Hellman and Palyr, New York, 1927, stated that “nothing definite can be said in general terms about the economic life of primitive man,” and he supports the idea that, as far as German

²*Ancient Law*, 4th American ed., p. 251.

³*Anthropology*, p. 419.

⁴*Ancient Society*, pp. 527–28, 541–42.

⁵*Primitive Property*.

⁶*Einleitung in die Geschichte der Mark-Hof-Dorf-und Stadtverfassung*.

⁷*The Origin of Property in Land*, p. 3.

economic organization is concerned, it was probable that it had its basis in private property in land and not agrarian communism. And so the controversy in "conjectural history" continues!

Landownership among Primitive Peoples

In the arguments pro and con regarding primitive landownership, recent writers are resorting largely to anthropological studies of uncivilized tribes and peoples living under current primitive cultures. Here again we get a diversity of facts and opinions. But as pointed out by Professor George Raymond Geiger, "There is one type of generalization that the anthropologist permits himself to make in handling primitive property, and that is a distinction between property in land and property in movable chattels—a distinction that seems most impressive. This generalization tends to point out that private property in movables is much more clearly defined than property in land. Whereas with land there is ordinarily the emphasis upon joint ownership, the personal titles to chattels, on the contrary, are rather strictly individualized, and a collective treatment of land may go hand in hand with the private ownership of goods and implements. . . . This does not mean that a decisive and single system of collective land tenure is set up as against the private control of movables; it is simply that there seems to be a *general* difference in emphasis in the disposition of these two forms of primitive property."⁸

What Professor Geiger refers to is the restrictions regarding the holding, use, and transmission (i.e., transfer) of land, existing among primitive peoples, which has persisted among more highly civilized cultures, as contrasted with the indifference applied to the right of possession of movables. This may be the evolutionary basis of the feudal system, which has been so widely prevalent throughout the world and which, both in its political and economic aspects, has had a significant impact on the development of modern civilization.

The fact that land, even among primitive and aboriginal peoples, had a different property status than movables is clear evidence that land, whether privately held or collectively owned and used, is a category of realty that is distinctive in its political, economic, and social

⁸*The Theory of the Land Question*, p. 115.

importance. Land has been universally proclaimed as essential to existence, as air and water, but, unlike most other forms of property, it is not reproducible and is not created by human effort. It has a definite and immutable status, which by nature makes it a monopoly. Its transfer of ownership cannot be made by passing possession, but must be attested by some formal means. Even among the most aboriginal tribes where private holding or ownership exists, land transfer or allotment is conducted by ceremonial procedures. And in this process it is manifest that the interest of the community as a whole is involved. Thus land laws have developed from the earliest times, and it is clear from the character of these laws that land, as a species of property, is not only distinctive but has specialized social, political, and economic significance.⁹

It is on this philosophical background that the land question is of such paramount importance in human progress. The problem of land-ownership and control; the systems of land tenure, past and present; the exploitation of slaves and serfs; the revolts of peasants and other political upheavals; the poverty of peoples; the hierarchy of classes; and many other inequalities and disturbances, past and present, have their roots in the land question.

In earlier times the question was largely political, though it shaped the economic life of the people. Today it is both an economic and a political, as well as a moral, question—a question of economic justice. In the words of Francis Nielson: "It is essential in our inquiry, therefore, that we couple the tracing of the economic basis of early communities with a clear understanding of what we mean by this term justice, and it is necessary for us to inquire whether the early laws of land settlement were just."¹⁰

Perhaps it might be well here, as a support of this statement, to quote Charles Letourneau, the French anthropologist. In the preface of his book, *Property, Its Origin and Development*, he states:

⁹See *In Quest of Justice*, by Francis Neilson, The Robert Schalkenbach Foundation, New York, 1944, pp. 6-7.

¹⁰As an illustration, see the recent British Government publication, *Land Tenure in Basutoland*, by V. Sheddick.

In all civilised societies which have preceded our own, the absolute supremacy of the unrestrained and selfish right of private property has been the forerunner of decadence, the main cause of ruin. A more enlightened humanity, having . . . succeeded in creating sociological science, may . . . avoid the rock whereon Athens and Rome were shipwrecked. . . . It will perceive that, for the sake of the common safety, it is urgent to idealise the right of property; not . . . by slavishly copying institutions which their own imperfections have destroyed, but by replacing the license of the selfish right of property by an organisation which, whilst it is altruistic, is also reasonable, scientific, upholding without annihilating the individual, leaving his freedom and his initiative unfettered.¹¹

It was this concept of justice that was well illustrated in traditions and laws of the ancient Hebrews, among whom land was regarded as a heritage of God, and whoever was forced to part with his holding had the right of its redemption, and in every fifty years—the year of Jubilee—land acquired by purchase or otherwise was to be returned to the original holders.

And there was an admonition against land engrossment! In the words of the prophet: “Woe unto them that join house to house, that lay field to field until there be no place.” The story of Ahab, King of Samaria, who desired to extend his landholdings, and thus “lay field to field,” by seeking to acquire the vineyard of Naboth by offering him a better vineyard or “the worth of it in money,” and the refusal of Naboth to give up “the inheritance of my fathers,” is typical of the tradition that existed regarding landholding under an assumed theocracy. Concerning this tradition, Dean Milman, in his classic work, *The History of the Jews*, says:

The great principle of this law was the inalienability of estates. Houses in walled towns might be sold in perpetuity, if unredeemed within the year; land only for a limited period. At the Jubilee, every estate reverted, without repurchase, to the original proprietor. Even during this period it might be redeemed, should the proprietor become rich enough, at the value which the estate would produce during the years unelapsed before the Jubilee. This remarkable Agrarian law secured the political equality of

¹¹Pp. xi–xii.

the people, and anticipated all the mischiefs so fatal to the early republics of Greece and Italy, the appropriation of the whole territory of the state by a rich and powerful landed oligarchy, with the consequent convulsions of the community from the deadly struggle between the patrician and plebeian orders. In the Hebrew state, the improvident individual might reduce himself and his family to penury or servitude, but he could not perpetuate a race of slaves or paupers. Every fifty years God, the King and Lord of the soil, as it were, resumed the whole territory, and granted it back in the same portions to the descendants of the original possessors. . . . Thus the body of the people were an independent yeomanry, residing on their hereditary farms, the boundaries of which remained forever of the same extent; for the removal of a neighbour's landmark was among the crimes against which the law uttered its severest malediction: an invasion of family property, that of Naboth's vineyard, is selected as the worst crime of a most tyrannical king; and in the decline of the state, the prophets denounce, with their sternest energy, this violation of the very basis of the commonwealth.¹²

The early Christian church fathers were imbued with the ancient Hebrew traditions, and their concept of justice as related to landownership followed along the same lines. Thus St. Cyrian declared:

No man may come into our commune who sayeth that the land may be sold. God's footstool is not property!

And, similarly, St. Chrysostom:

God gave the same earth to be cultivated by all. Since, therefore, His bounty is common, how comes it that you have so many fields and your neighbor not even a clod of earth?

Another early church father proclaimed: "The soil was given to the rich and poor in common. The pagans hold earth as property. They do blaspheme God."¹³

¹²Quoted from Francis Neilson, *The Eleventh Commandment*, p. 25. For an exposition of the ancient Hebrew conceptions of landownership, see Frederick Verinder, *My Neighbour's Landmark*.

¹³Francis Neilson, *op. cit.*, p. 90.

Land Tenure among the American Aborigines

Despite the interest of scholars in the culture of the North American Indian, little attention has been given to the systems of land tenure that prevailed among the various Indian tribes. It is generally assumed, however, that the pre-Columbian inhabitants of the eastern coastal regions, who practiced agriculture, as well as those migratory tribes of the prairie region, held their lands in common. Yet, as stated by Philip Alexander Bruce in his *Economic History of Virginia*, "There is some doubt as to the character of the tenure; each tribe possessed an absolute title to the division of country in which it was immediately seated, subject only to the general proprietorship of the king, to whom an annual tribute was paid in the form of a certain proportion of maize, beasts, fish, fowl, hides, fur, copper, and beads, but the relation of each family to the different plats of cultivated ground is not so clearly defined."

John Smith, the Virginia colonizer, "declared that each household knew its own fields and gardens, while [Robert] Beverley [the Virginia historian] asserted that no special property in land was claimed by individual Indians, but was held in common by the members of a whole tribe. . . . The statement of Smith seems to be confirmed by the relation which the Indian householder bore to other forms of property; thus he could devise his wigwam to his widow, and after her death to his favorite child. Again, a theft of maize was regarded as so heinous an act that it was punished with death, an evidence that separate ownership in this grain was strictly recognized when it had been gathered. Furthermore, there is no record that after the annual harvest the crops were divided among the householders of the town. Being held for all practical purposes in separate tenure, the ground must have been cleared very largely by individual energy without special regard to the common interests, . . ."¹⁴

Among the Six Nations of the Iroquois Indians it is generally assumed that the land was held and cultivated in common, since each clan of the tribe occupied a common dwelling. The celebrated "long houses," as these dwellings were called, were eighty or one hundred feet long by twenty or thirty feet broad. Each of these long houses sheltered

¹⁴Philip Alexander Bruce, *Economic History of Virginia in the Seventeenth Century*, Vol. I, pp. 149-50.

from ten to twenty families. It is thus contended that this communism in the use of dwellings entailed a communism in other forms of property. However, there is some evidence that there were among the Iroquois separate fields, cleared and sowed and harvested by individual families.¹⁵

Like the Indians of the eastern seaboard, some of the midwestern tribes, such as the Omahas, were also subdivided into clans or social units, sharing the game and fish killed by the members of the group. "Each of these large families possessed a certain portion of tillable land and cultivated it, but without having any right to alienate it. The families of the same tribe, however, might exchange with one another. As for the unoccupied land, each could cultivate this or that portion at his convenience."¹⁶

Among the Pueblo Indians of New Mexico and Arizona, agriculture was the chief source of sustenance, and since they, like the Iroquois Indians, lived in common dwellings, it seems logical to assume that at the time of the Spanish Conquest they held and cultivated their lands in common. That this may not be the system in all cases among these Indian groups today is undoubtedly due to the contact with Europeans, which has altered to some degree their social organization and their views of property rights.

Primitive Mexican Land Tenure

The inhabitants of Mexico and Central America are reputed to have had a more advanced civilization than that of most tribes of North American Indians. Moreover, they were, in the main, sedentary and depended largely on agriculture for sustenance. Their system of land tenure is accordingly of a more developed and complex nature and is of historical interest as illustrating the theory and character of primitive land use and ownership. Considerable data on this topic have been uncovered by historians, among whom, aside from the early Spanish writ-

¹⁵See Letourneau, *op. cit.*, pp. 46-47.

¹⁶*Ibid.*, p. 47. Letourneau bases this statement on a study by O. Dorsey, "Omaha Sociology," published in the *Report of the Smithsonian Institution*, 1886.

ers, are William Prescott and Herbert Howe Bancroft. Both of these authorities indicate that, notwithstanding the existence of a feudal hierarchy, land, though cultivated in part individually, was not held in individual absolute ownership. Concerning this, Charles Letourneau, basing his statements largely on Prescott and Bancroft, writes:

The survival of the ancient communal system . . . was more marked in the management and ownership of the folklands. These lands, called Calpulli, were measured and registered in such a way as clearly to determine the rights of clans and even those of the wards and streets of towns. The Mexican register was a painted picture, whereon was figured each domain with its boundaries, every description of land being indicated by a separate color. . . . Plebeian tenures were perpetual, inalienable possessions in mortmain, and, what is especially noteworthy, were never owned by individual title. They were common estates, the usufruct of which was distributed according to fixed rules. Without ever owning the soil itself, every member of the community had a right to the usufruct of a portion of the communal domain, proportionate to his personal importance. This part he could not sell, but was allowed to let for a few years; for the community were specially desirous that no field should remain uncultivated. Thus, when the holder of an allotment let his ground lie fallow for two years running, he received a notice from the chief of his "Calpulli" admonishing him of his carelessness. If he took no heed, the following year his lot was taken from him and adjudged to a more diligent tenant. . . . If the tenant died childless, . . . his share was declared vacant and conferred upon another member of the community. To sum up, in these plebeian tenures the community took uncontested advantage of its superior rights, and it had in nowise bent its neck beneath the yoke of private property.¹⁷

¹⁷*Ibid.*, pp. 130-31. It is interesting to note that the aboriginal collective land system of Mexico was only partially disturbed by the Spanish conquerors. According to the United Nations publication, *Progress in Land Reform*, p. 38: "Land [in Mexico] held in *ejido* tenure is the property of a town or village either for collective use or distribution among the inhabitants for cultivation in small plots, to which each individual has a right of occupancy and use so long as he keeps the land under cultivation. In colonial times villages had received grants of land of this kind, but during the Nineteenth Century had lost their landholdings to the owners of large estates. The restitution or grant of *ejido* land has thus involved the splitting up of the large *latifundia* and the return of the land to village ownership."

Summary

It may be gathered from the preceding pages that, throughout the course of history, land as a species of property has played a distinctive and important role in human progress. In general, it may be said that in the evolution of civilizations landownership changed from a collective concept, wherein absolute title to the soil was held by no individual or group (but was regarded as a necessity available for general use of society or the community), to a legal status, whereby individuals or groups, through political or economic power, were able to hold, use, transfer, and transmit its use and tenure for their own benefit or aggression, without any necessary regard for public welfare. This evolution, almost universal in the history of mankind, may be regarded as one of the principal sources of political upheavals and agrarian discontent, accompanied by political corruption and economic ruin, which have marked the course of great nations and empires both past and present. It is for this reason that the study of the land question assumes a paramount importance in solving the ever-recurring problems of human welfare. That the land problem has been only less serious in the United States than in most other countries of the world is due not only to the fact that our nation is still comparatively young but also to the fact that until more recent years it was blessed with an abundance of practically uninhabited land area. The disposition of this area has been unusually rapid and erratic. The country, however, is now thoroughly populated. "Free land" is at an end. Large areas are engrossed in private ownership. The history of this process, including an understanding of the "regard" for land and the evolution of the institution of landownership and use in the United States, therefore, is worthy of study, if for no other reason than that it forms a basis for future trends and may give indications of the need for a new quest for economic justice. The history of the cultures of the world indicates that land has been used under many different types of control and under restrictions as to landownership and use. How did it happen that private ownership of land in fee came to be the typical land institution of the New World? Let us see!