

Private Property: From 1907 to 1941

WE RECALL THE 1907 COMMENCEMENT exercises at Columbia University. Governor Charles Evans Hughes, recipient of an honorary degree, explained to the graduates his recent veto of a bill to reduce railroad fares. He said that the action of the New York Legislature amounted to confiscation of private property.

Yes, we of that era were taught that there was something noble, almost sacred, in private property. We got the idea that the dignity of the individual was identified with the indisputable possession of the fruits of his labor. It is true that no distinction was made in economics, law or social thinking between property in things and property in privileges. But, since the impossibility of acquiring some sort of property had not yet become accepted as the American way of living, the distinction was of little moment to hopeful young men. The chances of getting ahead and having something were still not insignificant; therefore, we applauded Mr. Hughes.

Thirty-four years later Charles Evans Hughes resigned from the Supreme Court of the United States. In the course of those years he was called upon to make many decisions on cases involving the concept of private property. It would be interesting to know whether in making those decisions he ever recalled the lecture he gave to the young graduates in 1907. For since that time the principle of inviolability has been punctured by a new economy—a way of living in which the possibility of the acquisition of property through skill and industry grows less and less. And with that change in our economy came a political point of view which was completely foreign to us of 1907; namely, that regulation and confiscation of private property is a proper function of the State.

The duty of Mr. Hughes as a jurist was to interpret legislation, not to make it. As a wise man, however, he could not have failed to reflect on the gradual encroachment of the law on fields once zealously deemed the province of the individual. Indeed, he himself took part in this trend when as governor he sponsored the regulation of morals in his anti-racetrack crusade. He saw the enactment of the income tax amendment, the most devastating anti-private property instrument (save the title deed to land) in American history. He witnessed in the administration of the first Roosevelt the beginnings of the bureaucratic system which in the administration of the second Roosevelt has almost destroyed the principle of private initiative which the commencement speaker espoused in 1907.

As he watched the changes in our law—and in the mores of which the law is the codification—he may have contemplated the economic vicissitudes of his fellow countrymen. In 1907 there was a depression. Hard times again visited the country in 1913, though war orders made that visit shorter than usual. Again in 1921 the spectre of mass unemployment was upon us, but departed soon. Then came the 1929 crash, which, as it continued and continued and continued (until the expedient of war was resorted to) must have saddened the heart of the once great defender of private property. The



permanently unemployed must be permanently devoid of property. Idle capital must rust and disappear, and the owners must find means of livelihood rather than scope for enterprise.

During the ten years of his tenure as Chief Justice, Mr. Hughes must have pondered on the revision of the Constitution, in which he was compelled to participate, and the causes thereof. Laws were enacted which completely negated the "due process" clause which he upheld in 1907. The general welfare clause was interpreted to mean the power of the State to regulate business. The authority of government agencies to interfere in affairs which for over a century had been held purely private was buttressed by decision after decision. Precedent, the guide of lawyers, meant nothing. In administering the oath of allegiance the Chief Justice might have asked himself: "To which Constitution am I asking this man to pledge allegiance, the present one or the one I used to revere?"

And if Mr. Hughes has any leaning toward economics, perhaps he might have hit upon a causal relationship between the continuing poverty and the break-up of the legal manifesto on which the political structure of his country is supposed to rest. Perhaps he could see—we hope he did, for his peace of mind—that the State's invasion of private property was due to the failure of economists

to distinguish between property which is inherently private and that which is inherently public.

For the law can do no more than record what the people know. If their teachers make no distinction between property and privilege the people, unless they hit upon this fundamental in spite of their teachers, will not know enough to ask their lawmakers to legalize the distinction. Poverty is powerless to reason. When privilege has sapped property, and human misery ensues, the destructive grab-philosophy gathers momentum. Politicians, as in-

telligent as the people, will give what the populace demands: loot.

So, Mr. Justice Hughes, hail and farewell! You did a good job. You could do not better because your countrymen knew no better. They changed your Constitution to satisfy their appetites. And they will continue to change and to change in the hope of finding a formula that will guarantee them a living. But, they will not find it until they learn to distinguish between property in the things which they make and property in the things which God has given them.