THE DEVELOPMENT OF THE CONCEPT OF PROPERTY IN POLITICAL PHILOSOPHY: A STUDY OF THE BACKGROUND OF THE CONSTITUTION

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EXPOSITORS of the language of political debate and of political documents derive their most spectacular elucidations either from study of the history of ideas and ideals or from examination of material conditions and individual careers. To explain the course taken by such discussions or to understand the sense of pronouncements incidental to them may involve searching out philosophic and scientific principles supposed to underlie them, or it may involve analyzing private interests and ambitions which the words conceal and by reference to which they must be understood. Both modes of interpretation, indeed, are part of the technique of the debate itself. The language of the federal Constitution and the state constitutions, the numerous letters, papers, and debates that preceded their adoption have, naturally enough, suggested to commentators the phrases and doctrines in turn of every possible political philosopher—not merely Locke, Harrington, and Montesquieu, who were well known in pre-Revolutionary America, Sidney, Milton, Grotius, and Pufendorf, who are quoted from time to time, but also Suarez, Bellarmine, and the Jesuit philosophers of the sixteenth and seventeenth centuries, who might have been known to some of the participants in the debate, the numerous French or English philosophers of the seventeenth and eighteenth centuries whose influence, whether or not there be evidence of actual influence, might have reached America, and even Thomas Aquinas, Seneca, Cicero, Aristotle, and Plato.

¹ Read in part before the American Historical Association, Philadelphia, December 31, 1937.
Liberty, justice, security, benefit, well-being, the pursuit of happiness have been clarified, as they have also been confounded, by reference to such philosophic antecedents. But other terms, which occur along with the foregoing in eighteenth-century discussions, seem to have indicated more frequently a need for investigation of current conditions than for consultation of earlier philosophers: interest, faction, passion, and always prominent among them—sometimes the general term inclusive even of life and liberty, often the fundamental term instrumenting the highest ideals—property. Since economic words are prominent even in the philosophic terminology of the time, not only is it possible to claim for any philosopher that his doctrines are reflected in the language of the Constitution, but any item of information concerning social or economic conditions of the time may be presented as indicative of the forces that determined the content of the articles of the Constitution and therefore as relevant to interpretation of the language used.

Both modes of explanation encounter difficulties which are fundamentally the same and fundamentally philosophic in character. A single statement may occur in the same words in the writings of two philosophers; yet, in the differing contexts of principles and definitions of terms it may have different meanings. The discovery that philosophers have used the same words, the same phrases, the same expressions of ideals as are found in a political document is not a sound basis for the argument, even when an influence is probable, that the meanings are the same. The constant recourse of politicians to philosophic distinctions would seem to indicate that philosophic principles are influential in political statement and action, but the specific importance of the philosophic influence would be negligible if philosophers who thought themselves in opposition could be made to father the same political organization. On the other hand, if the multiplication of philosophers affords little insight into the meaning, and less into the motivation, of political debate, there is no possibility of explaining a statement by the
social and psychological forces that led to its formulation so long as the sense of the statement is in doubt. Psychoanalysis and sociology have, to be sure, prepared us to assume that consideration of psychological and social facts is more important than study of expressed intention in the interpretation of any statement, but it is still prudent to try to determine what a writer thought he meant before determining what he must have wanted to mean. The writings of statesmen are documents, philosophic in their way, developed according to methods of investigation and disputation which statesmen share, whatever their motives or learning, with philosophers. The shifts of meanings which occur in philosophic writings, though numerous, are not indiscernible, unanalyzable, or casual. Private interest or suppressed desire may motivate the change of meaning; but the change itself appears in the terms, old or new, that are used to define and develop the altered terms. The history of political philosophy can furnish not merely other instances of statements that recur in the discussions of the Constitution but also, and even more significantly, other instances of the variety of meanings, expressed in terms which from context to context are variable but which in their specific contexts are fixed.

The instability of words not controlled by scientific or dialectical means introduced into the discussions which preceded the adoption of the Constitution a sense of alteration and change which the men active in its consideration felt, although they seemed unable or unwilling to state the precise nature of the change or to indicate its causes. One of the objections most strongly urged in 1787–88 against the adoption of the new Constitution was the argument that it involved a repudiation of the political theory which underlay the Revolution, the Articles of Confederation, and the state constitutions framed in the early years of independence. "We do not now admit the validity of maxims which we once delighted in," Patrick Henry told the Virginia Convention in 1788. "We have since adopted maxims of a different, but more refined nature—new maxims, which
tend to the prostration of republicanism." His fellow-Virginian, Richard Henry Lee, wrote:

It will be considered, I believe, as a most extraordinary epoch in the history of mankind, that in a few years there should be so essential a change in the minds of men. 'Tis really astonishing that the same people, who have just emerged from a long and cruel war in defense of liberty, should now agree to fix an elective despotism upon themselves and their posterity.

The anti-Federalist governor of New York, George Clinton, urged the citizens of that state to compare their past opinions and sentiments with the present proposed establishment. He added:

... you will find, that if you adopt it, that it will lead you into a system which you heretofore reprobated as odious. Every American Whig, not long since, bore his emphatic testimony against a monarchical government, though limited, because of the dangerous inequality that it created among citizens as relative to their rights and property. ... .

With this objection in mind Hamilton, in the second of the Letters of Caesar, stigmatized such appeals to liberty as selfish and ambitious devices by which to work

on the passions and prejudices of the less discerning classes of citizens and yeomanry. It is the plan of men of this stamp to frighten the people with ideal bugbears, in order to mould them to their own purposes. The unceasing cry of these designing croakers is, My friends, your liberty is invaded! Have you thrown off the yoke of one tyrant to invest yourselves with that of another? Have you fought, bled and conquered for such a change? If you have—go—retire into silent obscurity, and kiss the rod that scourges you.

To be serious: These state empirics leave no species of deceit untried to convince the unthinking people that they have power to do—what? Why truly to do much mischief, and to occasion anarchy and

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2 The Debates in the Several State Conventions on the Adoption of the Federal Constitution, ed. Jonathan Elliot (Philadelphia, 1866), III, 137. See also Henry's closing speech, ibid., p. 652.


wild uproar. And for what reason do these political jugglers incite the peaceably disposed to such extravagant commotions? Because until the people really discover that they have power, by some outrageous act, they never can become of any importance. The misguided people never reflect during this frenzy, that the moment they become riotous, they renounce, from that moment, their independence, and commence vassals to their ambitious leaders, who instantly, and with a high hand, rob them of their consequence, and apply it to their present or future aggrandizement; nor will these tyrants over the people stick at sacrificing their good, if an advantageous compromise can be effected for themselves.\textsuperscript{5}

It is not difficult to find the mark of class interest and faction in Hamilton's argument, but many men saw a doctrinal change where he saw interest, and they could express that change in terms of right, liberty, and property lost in the encroachments sanctioned by the Constitution. We are not in a position today to serve as impartial judges of this preference for terms, or as a result to appreciate the differences which the preference expresses, for by virtue of our own terminology Hamilton's doctrines have the savor of a preferred realism. Many of the fundamental terms of eighteenth-century political thought have lost their central place in the vocabulary of later philosophy, and it may seem improper to treat natural right, liberty, natural law, equality, in any other fashion than as symbols of power, as, indeed, Hamilton and many other participants in the discussions viewed them, manipulated by men seeking their own advantage, but without proper content and application in practice.

Property, however, which appears in the company of those terms and is shared by both sides to the debate, has become even more prominent in later political discussions. It has retained, therefore, the semblance of a term of fixed significance and practical application, of peculiar importance consequently in determining the meaning of more nebulous terms. To translate the movement of thought that preceded and prepared for the adoption of the Constitution into terms based on solid economic

\textsuperscript{5} Ibid., p. 289.
considerations, even when the concern for property is hidden in the discussion of political principles, seems, therefore, a justifiable, if not the only, device by which to fix the basic intentions and differences in a wordy discussion. Yet, property is itself a term of no fewer meanings than the more idealistic and suspect terms that accompany it, for the meaning of property is fixed by the meanings of liberty and right no less surely than they are determined by the meaning of property. Neither the political discussion nor the significance of property in the discussion can be understood if the position opposed to the economic interpretation of Hamilton is taken to be meaningless or simply mistaken. A consideration of the many meanings which the term property had come to have in the eighteenth century and of the central place which it had come, in its various meanings, to occupy in political philosophy may have the double effect (1) of clarifying the positions taken in the discussion of the advantages and disadvantages of a federal Constitution and (2) of indicating one reason why the entire debate seems so constantly on the verge of translation into economic terms.

The fundamental terms that lie, frequently unexamined, behind the consideration of property and determine its definition, are terms descriptive of the nature of man and the nature of his group organizations. There is scarcely a political treatise from the time of the Greeks to the eighteenth century that does not explicitly raise the question whether man’s political powers and acts are determined by man’s nature or wait for determination upon the conventions which he institutes, and the question whether his social activities in various groups—in family, household, city, and state—are the same or different. The central importance of such questions to the authors of the fundamental document of a nation dedicated to the conviction that all men are born free and equal and that property may be classified among man’s inalienable rights suggests their relevance to the definition of property.

The variations in meaning and in doctrinal importance which
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the term property displays in the eighteenth century are expressed in the context of these questions and reflect the long history of their discussion. Thus Locke, having, in the first of the Two Treatises on Government, refuted Sir Robert Filmer's derivation of the natural powers of kings from Adam's private dominion and paternal jurisdiction, opens the second Treatise with a careful distinction of political power from other types of power.

To this purpose, I think it may not be amiss to set down what I take to be political power. That the power of a magistrate over a subject may be distinguished from that of a father over his children, a master over his servant, a husband over his wife, and a lord over his slave. . . . Political power, then, I take to be a right of making laws, with penalties of death, and consequently all less penalties for the regulating and preserving of property, and of employing the force of the community in the execution of such laws, and the defense of the commonwealth from foreign injury, and all this for the public good.6

Property is not instituted in the civil state, but exists in the state of nature and under the law of nature; according to that law all men are free and equal, and no one ought to harm another in his life, health, liberty, or possessions.7 But under property Locke includes life, liberty, and estate,8 and property is understood in that broad sense when he says that the chief end for which men unite into commonwealths is the preservation of their property.9 All the terms used by Clinton and Hamilton in their discussion of the Constitution—liberty, power, property, freedom—as well as many more that are equally familiar in the American discussions, occur in the preliminary remarks of Locke's Treatise. Yet, the fashion in which he combines those terms differs from their usage no less than from the usage of other philosophers, and the consequent definitions of the terms vary in the history of philosophy much as they do in the history of political debate. The problem with which Locke

6 Second Treatise on Government, chap. i, secs. 2–3.
7 Ibid., chap. ii, sec. 6.
8 Ibid., chap. vii, sec. 87. 9 Ibid., chap. ix, sec. 124.
opens his work, however, the identity or difference of the qualifications and powers of the magistrate, the father, the husband, the master, and the lord, may be taken as a fixed point in the formulations of political theory about which to trace the varying histories of the terms used in the discussion of property.

I

Aristotle's *Politics* begins with a treatment of the same problem as is found in the opening pages of Locke; and his solution of it, directed against Plato, is in many points comparable with Locke's solution, directed against Filmer. "Whosoever think," he says—and the statement to which his remarks refer can be found in Plato's *Statesman*—"that the statesman, the king, the householder, and the master are the same, speak poorly, for they think that each of these differ from the others not in kind, but only in the number of their subjects . . . . as if there were no difference between a large household and a small state." Aristotle therefore undertakes, in accordance with his statement of the method of political science, an examination of the elements of which the state is compounded: the state is composed of many villages; the village, of many households; the household, finally, of master and slave, husband and wife, father and child. On the basis of that literal differentiation of social groups

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11 *Statesman* 258E–259D.

12 *Politics* i. 1. 1252a7–13.
Aristotle is able to define property univocally and to place it in a context of similarly defined related terms; he is able by these means to delimit the application of the term; and finally he is able to associate the problems of property uniquely with one of the fundamental social groups, the household, and to exclude them from the problems of political philosophy.

This distinction of problems into various kinds, and the consequent exclusion of problems of a given kind from a science or a discipline based on other concerns and directed to other ends, is so characteristic of the approach which Aristotle exemplified, and it enters in so deceptive a fashion into the later discussions, that clear statement of it is essential to understanding the history of the problem itself or any later phase of the debate. The early version of such distinctions may be stated in terms of the Aristotelian doctrine of causes by saying that the material cause of the state, the subject matter with which the legislator is concerned, is man in his group associations; that the final cause of the state, the purpose with which the legislator should be concerned, is the end that the citizens be enabled to live, as well as possible, under the circumstances with which the legislator deals; to this end he sets up the formal cause, as effective a social organization as possible; there remain, therefore, the means which the legislator disposes of to effect his end, the efficient cause, and these are land and other wealth.

A possession (κτήμα), according to Aristotle, is an instrument for living; property (κτήσις) is a number of such instruments; riches (πλοῦτος) is a number of household and of political instruments. All these are “natural,” but with the invention of money an artificial standard of value is introduced; and wealth (χρηματα) is defined, though not in the Politics, as those things whose value is measured by money. Property, so conceived, is, in Aristotle’s carefully considered sense of “part,” a part of

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13 Ibid. 4. 1253b31-32.
14 Ibid. 8. 1256b36-37.
the household;¹⁶ it is not a part of the state,¹⁷ for though states require property, the parts of the state are determined by those functions which are indispensable to the end of the state, that is, the best life possible. Aristotle lists six such functions: they concern food, arts, arms, revenue, religion, and the determination of public interest and justice. Property has no place, not even in connection with food or revenue, in the list of such political functions; it may, to be sure, become prominent in particular forms of polity: riches (πλοδότος) is the ground on which the oligarchical party claims power in a state,¹⁸ and in the Rhetoric riches is set as the end of the oligarchical state.¹⁹

Politics is a science concerned with the actions of men, not with the making or exchange of things. The legislator’s interest in property may therefore be stated in terms of two possibilities. To pursue its end the state must have a sufficiency of property: if (1) the territory of the state is self-sufficing and if the state produces all that the citizens require, the problem of the legislator is to enact and enforce such laws as will lead the citizens who happen to inhabit his state “to live in leisure at once freely and temperately”;²⁰ if (2) the state is not self-sufficent, either by means of its own produce or by means of commerce, the problem is not one to be solved by political devices, and the solution of it, by whomever undertaken, involves considerations of commerce and business. The problem of the statesman is not that of the acquisition of wealth (that is the problem of the household, the trader, the merchant); it is not the problem of the right use of wealth (that is the problem of the moralist); rather, the problem of the statesman is so to organize social relations, in a situation in which there is a sufficiency of property, that all will have a minimum necessary for subsistence and a maximum possibility of living well. The character of property as an efficient cause appears more clearly in the

¹⁶ Politics i. 4. 1253b23. ¹⁷ Ibid. vii. 8. 1328a33—1328b15. ¹⁸ Ibid. iii. 8. 1280a1. ¹⁹ Rhetoric i. 8. 1366a5. ²⁰ Politics vii. 5. 1326b31—32; cf. ii. 6. 1265a32—33, and vii. 8. 1328b16—24.
negative instance: lack of sufficiency of any essential materials is the cause of the dissolution of the state or of war.

Though the problems connected with property are excluded from the scope of political philosophy, Aristotle discusses in some detail two of those problems; the arguments no less than the terms of his analyses are echoed through the later history of political philosophy in such fashion as to render plausible the supposition that the recurrence of the problems is not unrelated to the influence of the arguments. Both arguments are directed more or less explicitly against the position of Plato. Since Plato confused the nature of the household with the nature of the state, Aristotle is led to emphasize their distinction, and incidentally to discuss the problems of property as they arise in their appropriate place relative to the household. Secondly, as a result of that same confusion, Plato advocates, in order to bring about a unity in the state comparable with the unity in the family, a community of wives, children, and property; Aristotle is at pains to point out the impropriety of such unity in the organization of the state and the ineffectiveness of the means advanced to accomplish a political end.

The two problems are concerned, respectively, with the acquisition and with the use of property. The household is one of the elements of which the state is compounded, distinct from it in end, organization, and rule; but the elements of the state being natural, the compound, too, is natural. Property is part of the household, presupposed by it. The art of acquisition or of wealth (χρηματιστική) is not identical with household management; there are two such arts of acquisition, one natural and necessary, the other unnecessary, and only the first is a proper function of the household. Limits are set on the former, since the amount of property needed for the good life is not unlimited; but with the invention of money, as Aristotle pointed out and Locke later repeated, that limit is removed, and the householder may conceive it his function to increase his money without limit, intent on living only, not on living well, until all arts
and all powers are converted, contrary to nature, into means of getting wealth.\textsuperscript{21}

When Aristotle turns from acquisition to use, he finds that it is a function of the legislator, though property is private, to promote its common use.\textsuperscript{22} But to advocate a community of wives, children, and property, and to hold, as Socrates did, that the sign of perfect unity in the state would be that men set up no distinctions of private ownership,\textsuperscript{23} is to mistake the nature of political unity and the means by which it is achieved. In the specific question of the community of property, Aristotle finds it desirable to introduce still another distinction. If one distinguish between possession and use, the community of property might have any of three meanings: (1) private possession of land, but common use of produce; (2) common possession of land, but division of produce for private use; or (3) common possession of land and of produce alike. Of these, Aristotle argues, it is clearly better that property be private, use common.\textsuperscript{24}

The modern proponents of one version of this conception of political philosophy continue to state some form of the doctrine that the government should not engage in business. In itself it is a reasonable position, opposed to the equally reasonable position that the problems of the acquisition of property, the use of property, and the regulations that direct such use to its highest possible objectives cannot be treated as independent problems. If the two positions were in such simple opposition, the problem would seem to be one which could be discussed, and possibly solved, as one would discuss any similar problem, by assembling and examining relevant data. But if the terms shift their meanings between the two positions, the real problems are mixed with verbal problems; and if the two positions recur face to face unaltered save for accidental detail in each century over a period of twenty-three hundred years, it would seem that nothing in

\textsuperscript{21} Ibid. i. 8 and i. 9. 1256a1—1258a18. \textsuperscript{22} Ibid. ii. 5. 1263a37—40.

\textsuperscript{23} Ibid. 3. 1261b16 ff. Cf. Plato Republic v. 462C.

\textsuperscript{24} Politics ii. 5. 1262b36—1263a40.
the relevant facts or in the rub of practical political experience could separate one of the doctrines as true from the other as false. It is appropriate, therefore, to raise the question of the character of the arguments and the language in which the debate is expressed in the hope of removing what might be an equivocation or of uncovering an unvarying philosophic character recurrent under the almost infinite variety of doctrinal shifts.

None of the sharp distinctions which Aristotle introduces in the discussion of property appears in the works of Plato; nor do we find there the limitation of the scope of the term, the exclusion of the problems concerned with property from the number of specifically political problems, the separation of the problems of acquisition, possession, and use, or the literal definition of terms. As Aristotle has indicated in his criticism, Plato does not discuss property as part of the household, since he finds no relevant distinction between household, village, and state. Not only does he treat the state as analogous to other social organizations, but, in both the *Republic* and the *Laws*, the state is analogous even to the human organism. Indeed, the principle that that state is best ordered in which the greatest number use the expression “mine” and “not mine” of the same things in the same way is part of an attempt to introduce into the state the relationships and unity of the family. Property is therefore not given a literal and univocal definition, nor is it limited in scope. For Aristotle, property consists only of an abundance of instruments. For Plato, one may have property (κτήσις) in wealth, children, and kin; in women and children; in wealth and possessions (χρήματα καὶ κτήματα [goods and chattels]); even in goods; in evil; in noble and just moral traits; in knowl-

26 *Republic* v. 464E: διὰ χρημάτων ἡ παιδίων καὶ ἱσαργενῶν κτήσιν ἀνθρωποι στασιάζουσιν.
27 Ibid. 451C.
28 *Laws* v. 728E: ἡ τῶν χρημάτων καὶ κτημάτων κτήσις.
29 *Symposium* 205A: κτήσις . . . ἀγαθῶν οἱ ἐδαίμονες ἐδαίμονες.
30 *Gorgias* 478C.
31 *Laws* iv. 705B.
prudence; justice and temperance; virtue and happiness. There is, consequently, but one problem of property in Plato, treated again and again in the course of his dialogues in many dialectical modifications which carry the term "property" through the long list of its possible applications: the problem, which of the many goods men pursue are true goods, and which are only apparent goods, possibly useful if pursued in moderation as means to a true good, probably dangerous either in themselves or in the distraction which they cause from the pursuit of true possessions.

In the progress of that dialectic, however, moments can be distinguished which correspond broadly to the two questions that are separated sharply in the literal language of Aristotle. Thus, the art of acquisition (χρηματιστική) is treated in the dialectic of Plato, analogized in turn to each of the other arts. In the Republic, Thrasymachus' argument that the ruler will seek his own profit and advantage depends on the supposition that all other arts serve the end of the art of acquisition; in the course of the refutation of that argument, acquisition is compared to the other arts, and it broadens, as do all of Plato's terms, until it appears that a ruler practices the art of acquisition in such fashion that he receives his pay not only in the form of money but also in the form of honor or in the form of avoidance of the penalty he must suffer if he does not rule. The problem of excessive pursuit of wealth is resolved in the consideration that, if the pursuit is by an art, the practitioner of that art would not seek to have more (πλεονεκτεῖν) than knowledge indicates is proper and sufficient. When the state is formulated in greater detail later in the Republic, the art of acquisition takes a subordinate place: as there are appetitive, spirited, and rational parts in man, so, corresponding to them in function, there are

32 Euthydemus 288D.
33 Phaedo 65A.
34 Gorgias 508B.
35 Symposium 180B.
36 Republic i. 341C–342E, 345E–347A.
37 Ibid. 349C–350C.
money-makers, helpers, and counselors in the state.\textsuperscript{38} In final analysis the art of acquisition, although interlocutors in the dialogues frequently advance it as a possible means of co-ordinating and comparing the various arts, yields its place to knowledge or to dialectic, the true art of arts. The second problem, that of communal use of property, is no different from this first problem; for the acquisition of material goods and their care would not only, as we have seen, involve interests and activities inconsistent with the pursuits and habits proper to rulers but, for much the same reasons, would endanger the perfect unity of the ideal state.\textsuperscript{39}

The problem of property, thus, assumes a subordinate place in the political philosophy of Plato and Aristotle. Yet, as one reads Plato's dialogues, there is much in the movement and method of the argument that would suggest related passages in the political disputes of the eighteenth century, even if the philosophers who were quoted in those disputes did not cite Plato frequently and with admiration. Similarly the terms of Aristotle are, for the most part, the terms in which the later discussions were formulated; they are not used as Aristotle would have used them, but with modifications and adjustments that would be noticeable even if the philosophers of the time had not many of them written in direct contradiction of Aristotle’s \textit{Politics}.

Only a slight readjustment occurred in the fundamental terms of political philosophy through the centuries. In refuting Aristotle the writers of the Renaissance, like those who refute him earlier and later, found a ready instrument in the dialectic of Plato; but the zeal of the refutation fixed later discussion in language that was largely Aristotelian and on problems formulated as Aristotle had stated them. The dialectic of Plato, however, balanced property—as it did likewise opinion, pleasure and

\textsuperscript{38} \textit{Ibid.} iv. 440E–441A. Cf. \textit{Gorgias} 478B, in which the art of acquisition is analogized to medicine and justice, the first curing poverty, the second curing sickness, the third curing intemperance and injustice; and \textit{Sophist} 219C–D for comparison of other acquisitive arts to the art of money-making.

\textsuperscript{39} \textit{Republic} v. 464B–465C.
pain, the passions—against dialectic and reason; and property, other than property in the good and the true, assumes, consequently, a relatively unimportant place in a state governed, as in the Republic, by philosopher kings or, as in the Laws, by enlightened lawgivers. Knowledge is a fundamental term in the dialectic of Plato. With its increase, attachment to other goods than the true good diminishes; the passions are controlled and the state formed, so far as either is in fact accomplished, by knowledge. If, consequently, knowledge is removed from its important position in the dialectic, some substitute for it will assume its place, usually one of the passions or an attachment to some less lofty good. In a schematic formulation of the history of political philosophy, it is the Christian who succeeds the philosopher as king, and the man of property or the man of power who succeeds the Christian.

II

In Cicero both movements of the Platonic political analogy are pushed to the extreme: the political bonds must be universal to unite all rational animals in one community, and at the same time they must make the ties of political association as close as those of kinship. Man is like other animals in that he shares with all living creatures the desire to avoid what is harmful and to seek what is helpful, as well as the desire to reproduce and the subsequent need to care for offspring. But the fact that reason and speech are proper to man alone is explanation of the peculiar fashion in which men are associated with each other and joined in society. For from reason and speech originate several of man’s peculiarities: his especial love for his offspring; his association in companies and assemblies to provide for the comforts and needs of his family, wife, children, and himself; his concern with, and investigation of, the true; his sensitivity to order, propriety, and moderation in words and deeds.40 When, therefore, Cicero seeks the natural principles of

40 De officiis i. 4. 11-14.
human community and society (*naturae principia . . . . communitatis et societatis humanae*), he seeks them first in the society of the whole human race (*in universi generis humani societate*), and finds in reason and speech the bond which binds the human race together. Reason and speech, operating in teaching and learning, communicating, discussing, and judging, associate men and unite them in a kind of natural society. The community of all things which nature has produced for the common use of men is to be preserved under this most comprehensive bond which holds all in one society. Yet, men hold private possessions in accordance with the prescription of the laws and civil right. Everything which is not held as private property by law should be regarded in the light of the proverb which both Plato and Aristotle quote, “Among friends all things in common,” or, as Cicero interprets it, whatever can be given without loss should be bestowed even on a stranger. In addition to this broadest, infinite bond of the human race, there is the closer one of gens, nation, and language, and the still closer one of kinship.

Not only may one proceed from the “immense society of the human race” to the narrow confines of the family, but one may reverse the analysis and see in the family the beginning of the state or city (*civitas*). Since the desire for reproduction is common to all living creatures, the first society is that between husband and wife, the next between parents and children, the society of one household in which all things are common; and this common trait of all living things is the beginning of the city and the nursery of the republic. Thence arise the relations of brother and sister, of cousins and more distant familial connections. In addition to the tie of blood there is the nobler society of men of good manners united in friendship and the commu-

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41 Ibid. 16. 50.

42 Ibid. 17. 54: “Nam cum sit hoc natura commune animantium, ut habeant lubidinem procreandi, prima societas in ipso coniugio est, proxima in liberis, deinde una domus, communia omnia; id autem est principium urbis et quasi seminarium rei publicae.”
nity created by benefits given and received; but of all associa-
tions, none is dearer or closer than that of each man with the
republic. One native land embraces all our loves—of parents, of
children, of relatives, and of friends.43

The city for Cicero, then, has been assimilated to the family;
it has a natural basis in the instinct to reproduce which man
shares with brute animals, but an organization and order, ra-
tionally determined, by which man is distinguished from other
animals but which he shares with God. Having reason in com-
mon, men and gods also share “right reason” as well as law
and justice; and the whole universe must be conceived as one
common city of gods and men, in which the latter are grouped
with the former on the basis of blood relationship and descent.44

For the most part, Cicero’s discussion of the city is concerned
neither with the fundamental reason in the universe on which
it is patterned nor with the basic passions and desires from
which the city springs, but rather with the middle grounds, the
honesta and utilia, the final goods and things useful for procur-
ing them, to which it is directed. As a result, much of his politi-
cal philosophy is concerned with property, broadly considered.
After he remarks in the De re publica that he will not begin with
the elements in so well known a subject—that is, with the first
union of male and female, their progeny, and the beginning of
kinship—he defines the republic as the property of the people
(res populi), and a people, not as any assemblage of men brought
together in any sort of way, but as the assemblage of a multi-
tude associated in an agreement of right and a communion of
utility.45

43 Ibid. 17. 57: “Cari sunt parentes, cari liberi, propinquii, familiares, sed omnes
omnium caritates patria una complexa est, pro qua quis bonus dubitet mortem oppetere,
si ei sit profuturus?”

44 De legibus i. 7. 23: “Si vero isdem imperiis et potestatibus parent, multo iam magis;
parent autem huic caelesti descriptioni mentique divinae et praepotenti deo; ut iam
universus hic mundus sit una civitas communis deorum atque hominum existimanda. Et
quod in civitatibus ratione quadam, de qua dictetur idoneo loco, agnationibus familiarum
distinguuntur status, id in rerum natura tanto est magnificentius tantoque praecclarius,
ut homines deorum agnatione et gente teneantur.”

45 De re publica i. 24. 38—i. 25. 39: “Nec vero, inquit Africanus, ita disseram de re
There is no such thing as private property in nature; and within the scope of moral and political problems concerned with *honesta*, the virtues will, in the magnanimous man, hold acquisition within bounds. But what is morally right is also useful; and therefore the institution of cities, laws, and customs, with their equitable distribution of right and their certain discipline of living, may be described in terms of the resultant considerateness and diffidence (*mansuetudo animorum . . . et verecundia*), which in turn effect a life supplied with all that is needed through the exchange of commodities and conveniences. Within the scope of moral and political problems concerned with *utilia*, it falls among the duties of the administrator to take care that no private citizen suffer invasion of his property by act of the city, that no property tax be levied, that there be an abundance of the necessities of life, and that there be no suspicion of self-seeking or avarice in public administration and public service. But, although normally the right is expedient and the expedient is right, *honesta* and *utilia* are occasionally in conflict. Under such circumstances, for one man to take something from another man and for one man to profit by the loss of another is more contrary to nature than is death or poverty or pain or anything else that can affect either our body or our property. Such theft destroys social intercourse and human society. It is granted, without any conflict with nature, that everyone may prefer to secure for himself, rather than for another, what pertains to the use of life; but nature does not suffer that we increase our means, wealth, and resources by despoiling others. The principle that no man should be allowed,
for his own advantage, to injure another is not only established
in nature, in *jus gentium*, and in the laws of the people, which
maintain the public interests in individual states, but follows
from the very reason of nature, which is divine and human
law. Even in the extreme cases, which were to become the
classic instances of later political philosophy, Cicero maintained
that it was better to endure any loss to property, person, or
even to soul (provided such losses are not concerned with
justice) rather than rob another, for by the latter action the
society established by the gods is overturned. Even if a wise
man were starving to death, he would not be justified in taking
the bread from some useless member of society, for the wise
man’s life is not more useful to him than that temper of soul
which prevents him from wrongdoing another for his own ad-
vantage. Similarly, a good man would not rob a cruel tyrant
of clothing even to keep himself from freezing to death.

The dialectic and distinctions developed by Cicero for the
analysis in which historical Rome took the place of the perfect
city envisaged by Plato required but little alteration to be
adapted to the Christian community in which the faithful were
associated with Christ, at once Son of God who is Father of us
all, Lord, Master, King, and true God. The chief sign of the
change is that the celestial city is now distinguished from the
terrestrial city, and ultimate goods move to a kingdom which is
not of this world, while utilities are denominated as they lead
to those goods. Augustine operated that change while retaining
much of the language of Cicero. He was content to repeat Ci-
cero’s definition of *res publica* as *res populi*, together with the ac-
companying definition of the state as a multitude of men
brought together in a certain bond of concord. But, if the pa-
gans sought the precepts of concord in their temples, they found
their gods in discord, whereas in the churches of Christ the pre-

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50 *Ibid.* iii. 5. 21–23. It is worthy of note that this argument is enforced, in good
Platonic fashion, by analogy between the human body and society.

cepts of concord are derived not from human disputations but from divine authority.⁵²

Political problems are reduced to the fundamental terms of the problem of the relation of a dependent, temporal race of men to an eternal and omnipotent God; and, as in Cicero’s analysis, all loves (caritales) are encompassed by the native land (patria), for Augustine all attachments are possible only through, and as reflections of, the love (caritas) of God. If partial goods are sought in lieu of true goods, if uti is not subordinated to frui, cupidity will take the place of love. The problems of politics and those of the relation of God to man depend alike on the distinction between honesta and utilia. The tie which binds men together is that of love; the differences in human associations are differences in the objects of love, and those diversities reduce to differences of order. Temporal goods are goods in themselves, since everything which is, is good in so far as it is; but if they are not well ordered, they are not good for him who has them, and they are well ordered only if ordered to spiritual things. God “uses” all creatures as he will, but does not “enjoy” them; whereas creatures should “enjoy” only God.⁵³ In a striking analogy Augustine compares associations of men to the homogeneity that arises in a theater where spectators, pleased by the performance of an actor, love him and love those of their fellow-associates who share in their pleasure; so in the “society of the love of God,” one loves one’s neighbor and one’s self in loving God.⁵⁴

In terms of order the city may be analogized with the individual, with inanimate nature, the family, the society of the blessed; the end of each group is peace, and by order in each, that end is achieved.

⁵² Epistola 138 ad Marcellinum ii. 10–11; Patrologia Latina (henceforth cited as PL), XXXIII, 529.

⁵³ De doctrina christiana i. 22. 20 and i. 32. 35; PL, XXXIV, 26 and 32; Cf. De trinitate iii. 4. 9; PL, XLII, 873.

⁵⁴ De doctrina christiana i. 29. 30; PL, XXXIV, 30.
And so the peace of the body is ordered temperature of the parts. The peace of the irrational soul is ordered rest of appetites. The peace of the rational soul is ordered accord of cognition and action. The peace of body and soul is ordered life and health of the animate being. The peace of mortal man and God is ordered obedience in faith under the eternal law. The peace of men is ordered concord. The peace of the household is the ordered concord of commanding and obeying among those living together. The peace of the city is the ordered concord of commanding and obeying among citizens. The peace of the celestial city is the most ordered and concordant society of enjoying God and enjoying each other in God. The peace of all things is the tranquility of order. Order is the disposition of equal and unequal things attributing to each its place.\textsuperscript{55}

The use of temporal things is referred to the end of terrestrial peace in the terrestrial city, to the end of celestial peace in the eternal city. If we were irrational animals, we would seek nothing beyond an ordered temperature of parts of the body, a rest of appetites, and a conciliation of body and soul. The desire for these man shares with brute animals, but in addition he is subject to the peace of the rational soul and seeks to contemplate with the mind and to act in accordance with knowledge. Consequently, since he must wish to avoid being molested by pain, perturbed by desire, and dissolved by death, man should seek to know what is useful to those ends and to compose his life and manners in accordance with such knowledge. But such an inquiry exceeds human powers; it requires divine magistracy and the consequent ordered obedience in faith under eternal law. As master, God teaches two precepts, the love of God and the love of neighbor; these are one love in which three are to be found, for the man who loves God loves himself and his neighbor. To love one’s neighbor as one’s self is to take counsel for wife, children, servants, and other men so far as one is able.

Hence arises domestic peace, that is, the ordered concord of commanding and obeying among people living together. For they command who take counsel for, as man for wife, parents for children, lords [domini] for servants. But they obey for whom counsel is taken, as women obey husbands, children parents, and servants lords. But in the household [domus]

\textsuperscript{55}De civitate Dei xix. 13. 1; PL, XLI, 640.
of the just, living in accordance with faith and still sojourning away from that celestial city, they who command likewise serve them whom they seem to command. For they command, not by desire of ruling [dominari], but by duty of taking counsel, not by pride of reigning, but by mercy of providing.56

The household, however, is the beginning and the part of the city, and every beginning is referred to some end peculiar to it, and every part to the integration of some whole of which it is part. Consequently, domestic peace is referred to civic peace. The sharp distinction between the household of men who live according to faith and the household of men who do not, is not in the use of things necessary to this mortal life—they have that use in common—but in the end of that use and in the celestial or terrestrial peace to which is directed the city of which the household is part.57 Since the bond by which men are bound is love, and since they are guided in love by faith, household, city, people, and temple, all become one.

But the house of the Lord is also his city. For the house of God is the people of God, because the house of God is the temple of God. And what does the Apostle say? "For the temple of God is holy and such are ye."58 But all the faithful, which is the house of God, include not only those who now are, but also those who were before us and now sleep, and those who will be after us who have still to be born into human affairs until the end of time, innumerable faithful congregated into one, but numbered by the Lord; concerning them the Apostle says, "The Lord knoweth them that are his,"59 those grains which lie now among the chaff and which will be made into one mass when the threshing-floor will in the end have been thoroughly cleaned.60 Therefore, all the number of the holy faithful, changed from men that they may be made equal to the angels of God and joined to the angels, who are not now wandering but await us when we return from our peregrination, all together make one house of God and one city.61

56 De civitate Dei xix. 14; PL, XLI, 643.
57 De civitate Dei xix. 16–17; PL, XLI, 644–45.
58 I Cor. 3:17.
59 II Tim. 2:19.
60 Matt. 3:12.
61 Enarratio in Psalmum 126. 3; PL, XXXVII, 1668–69. It is worthy of remark that Augustine's letters, sermons, and particularly his commentaries on the Psalms contain
By faith, indeed, not only are men one household and one city: they are one soul, one man. "For the soul of all of us is one soul through one faith, and all of us whosoever believe in Christ are one man because of the unity of his body." Similar bonds, moreover, bind the human race as a whole: man and wife are the first natural society, and the human race is held by the chain of blood relationship.

This analysis of the relation of the city to its constituent parts and to its end determines the consideration that property shall receive. The problems of property center about the use of property; indeed, when property is used as it should be, possession, right, and use are all the same. It is permitted that a Christian possess private property, but it is better that he abstain from it so far as possible, for it is a temptation and a source of evil. In a strict sense, one cannot possess, since all things belong to Him who made them. Parallel to the distinction of ends possible to cities are the two rights by which property might be held. In the Scriptures we have divine right; in the laws of kings we have human right. It is by human right that one says: This is my villa, my house, my servant, for by divine right the earth

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some of the fullest and most striking statements of his doctrine of property. The passage quoted in the text is commentary on “Except the Lord build the house, they labor in vain who build it” (Ps. 126 [127]: 1).

62 Enarratio in Psalmum 103. 2; PL, XXXVII, 1336.

63 De bono conjugali i. 1; PL, XL, 373: "Quoniam unusquisque homo humili generis pars est, et sociale quiddam est humana natura, magnumque habet et naturale bonum, vim quoque amicitiae; ob hoc ex uno Deus voluit omnes homines condere, ut in sua societate non sola similitudine generis, sed etiam cognitionis vinculo tenerentur. Prima itaque naturalis humanae societatis copula vir et uxor est. Quos nec ipsos singulos condidit Deus, et tanquam alienigenas junxit: sed alteram creavit ex altero; signans etiam vim conjunctionis in latere, unde illa detracta, formata est (Gen. ii, 21, 22). Lateribus enim sibi junguntur, qui pariter ambulant, et pariter quo ambulant intuentur. Consequens est connexio societatis in filiis, qui unus honestus fructus est, non conjunctionis maris et feminae, sed concubitum. Pотerat enim esse in utroque sexu, etiam sine tali commixtione, alterius regentis, alterius obsequentis amicalis quaedam et germana conjunctione."

64 De moribus ecclesiae Catholicae i. 78; PL, XXXII, 1343: “Quid calumiamini, quod fideles jam Baptismate renovati, procreare filios, et agros ac domos pecuniamque ullam possidere non debeant? Permittit hoc Paulus.”
and the fulness thereof is the Lord’s, but God distributes human rights to the human race through kings and emperors. The Christian should serve and honor kings, but as Christian he will have not only the earth but also Him who made the heavens and the earth.65 By the same token, however, man does not have in his power even the things which are in his possession: the possession of God differs from the possession of man as the knowledge of God differs from the knowledge of man.66

Everything belongs to God, for God created everything. But among men property rights are established by civil law; and legitimate occupation, purchase, gift, inheritance, and exchange are established as just titles of possession in contradiction to theft and usurpation. Possession, right, and use are, on this level, distinct, for it is possible to use an unjust power justly and a just power unjustly. Rapine is not justified if the fruits of the rapine are used for charity, nor is the avaricious use of a paternal heritage exculpated by the rule of civil law that established the possessor as legitimate; the perversity of tyrannical faction is not praiseworthy if the tyrant treat his subjects with royal clemency, nor is the order of regal power blameworthy if the king rule with tyrannical cruelty; and to use a concubine for child-bearing is an even greater sin than to use a wife for incontinence.67 Yet, in a strict and proper sense, possession, right, and use are the same; and the best title to property is justice and goodness, although the very possession of those virtues renders property undesirable.

If, however, we consider prudently what has been written, “The faithful possesses the whole world of riches, the infidel not an obol,” do we not convict all those who enjoy things they have acquired legitimately and who do not know how to use them, of possessing the property of another? For that certainly is not the property of another which is possessed rightly, but that is possessed rightly which is possessed justly, and that is possessed justly which is possessed well. Therefore, all that which is badly

66 Enarratio in Psalmum 49. 18; PL, XXXVI, 576–77.
67 De bono conjugali 14. 16; PL, XL, 384–85.
possessed is the property of another, but he possesses badly who uses badly. You see, therefore, how many ought to give up the property of others, if even the few could be found to whom it might be given up; they, however, wherever they are, despise such things the more in precisely the degree that they would be able to possess them more justly. For no one has justice badly, and he who would not love it does not have it. But money both is had badly by those who are bad and is had better by the good in the degree that it is loved less. But between these [sc., justice and money] the iniquity of those who have badly is removed and certain laws, which are called civil, are constituted among the good and the bad, not that it result thence that they be made to use well, but rather that those who use badly be less troublesome, while the faithful and the pious, whose property all things are rightly and who are themselves made from the number of the bad or living so long among the bad are not themselves hindered but are kept busy by the bad, attain to that city where the inheritance is of eternity, where no one but the just has a place, no one but the wise has dominion, where whosoever will be there will possess the things which are truly his.68

It is permitted that the Christian possess private property; it is proper that he avoid such possession. He who would have a place in the Lord must enjoy common, not private things, for the things which we possess as individuals lead to lawsuits, enmities, discords, wars among men, tumults, dissensions against our selves, sins, iniquities, homicides. One should abstain from the possession of private things, or, if one cannot abstain from possession, then from the love of property.69 In that most glorious city which will be the end of peregrination there will be no citizens who enjoy their private possessions, for God will be all in all,70 and common things will be preferred to private possessions.71 There man will be the possession of God, and God the possession of man. "Thou art my hope, my portion in the land of the living."72 You will be my portion. You will be possession and you will possess; you will be the possession of God

69 Enarratio in Psalmum 131. 5–6; PL, XXXVII, 1718.
70 I Cor. 15:28.
71 Enarratio in Psalmum 105. 34; PL, XXXVII, 1415.
72 Ps. 141:6 (142:5).
and your possession will be God; you will be his possession that you may be loved by him; and he will be your possession that you may love him."³³

III

It would not be difficult to multiply citations in which dominion (or lordship) and property were used in this broad, analogizing fashion throughout the length of the Middle Ages: the influence of the Bible and of the Augustinian interpretation of the doctrine of possession were decisive in western Europe until the Politics of Aristotle was translated in the thirteenth century.

In writers influenced by Aristotle's doctrine and his use of terms the problems of property shrink in their scope and in their relevance to morals and politics. Thus, in the Summa theologiae of Thomas Aquinas, only a few short articles are devoted to the consideration of property, ancillary to the treatment of right (jus) or introductory to the treatment of theft. Even more significant than the restricted scope which the problem has in the general philosophy of Aquinas is the fashion in which literal meanings are assigned to the terms in treatment of the problem to differentiate their significances and to break the broad sweep of the Augustinian analogies into literally distinguished constituent parts. The problems, the manner of use of terms, and much of the doctrine is Aristotelian in character; the philosophy which is submitted to this analysis borrowed some of its terms from Cicero and the canon lawyers, and therefore the terms of Aristotle are supplemented and given altered content from the vocabularies of civil law and Stoic and Platonic philosophy. Natural law, jus gentium, positive law, right and reason, nature and utility, continue prominent among definitory terms.

According to the Augustinian philosophy, the family was analogized to all natural and human associations, and property embraced in its varying senses all conceivable things or acts.

³³ Enarratio in Psalmum 145. 11; PL, XXXVII, 1891.
Aquinas restates the problem by asking whether natural right is the same as *jus gentium*, and it becomes apparent that a distinction must be made according to which the relations within the family are distinguished from the relation of a man to property.

Natural right or justice [*jus sive justum naturale*] is that which of its own nature is adequated or commensurated to another. But this can come about in two ways: in one way according to its absolute consideration, as the masculine has according to its nature a commensuration to the feminine, such that masculine generates from feminine, and the parent has such a commensuration to the child that parent nourishes child. In another fashion something is naturally commensurated to another, not according to its absolute nature, but according to something which follows from that, as private property in possessions, for if this field were considered absolutely, it has nothing by which it would be the property of one man rather than of another, but if it were considered with respect to opportunity of cultivating and with respect to pacific use of the field, according to this it has a certain commensuration to being the property of one rather than of another man, as is clear from the Philosopher.74

The analogy of man's lordship over temporal things to God's lordship over all things is likewise a recurrent feature of the Augustinian explanation; Aquinas asks, instead, whether man has a natural possession (*naturalis possessio*) or natural lordship (*naturale dominium*) over external things. Again a distinction must be made. External things may be considered in two ways: with respect to their nature, which does not fall under human power but only under divine; and with respect to their use, and in this latter respect man has natural dominion over external things, because by reason and will he can use them for his own utility as if they were made for him.75 For Augustine the problems of acquisition were assimilated to those of use; Aquinas must distinguish two senses in which external things

74 *Summa theologica* IIA Iae, q. 57, a. 3, *ad Resp*. The reference to Aristotle does not indicate the presence of the argument in Aristotle but rather of the statements that common possessions will receive less care than private (*Politics* ii. 3. 1261b33 ff.) and that common property will lead more frequently to quarrels (*ibid*. 5. 1263a15 ff.).

75 *Summa theologica* IIA Iae, q. 66, a. 1, *ad Resp*. 
belong to man: first, with respect to power of procuring and dispensing, and in this sense it is permitted that men have private possessions; second, with respect to their use, and in this sense men should have external things in common, not privately.\textsuperscript{76}

In similar fashion it was customary to say that by natural right all things are common, but again a distinction must be made.

Something is said to be in accordance with natural right in two ways: in one way because nature inclines to it, as that injury should not be done to another; in another way because nature does not induce the contrary, so that we might say that for man to be naked is in accordance with natural right, because nature did not give him clothes, but art devised them. And in this manner "the common possession of all things and a single liberty" are said to be in accordance with natural right, because the distinctions of possessions and servitude are not induced by nature but by the reason of men for the utility of human life.\textsuperscript{77}

The community of things is therefore to be attributed to natural right, not because natural right dictates that all things must be possessed in common and nothing must be possessed as proper, but because, according to natural right, there is no distinction of possessions, but only according to human agreement which pertains to positive right (\textit{jus positivum}). Whence, private property in possessions is not contrary to natural right but is superadded to natural right by the invention of human reason.\textsuperscript{78}

Much the same account of the institution of private property may be given in the tradition of the analogical use of terms by substituting for the consideration of the different meanings of such terms as natural right and natural law the statement of the successive levels of perfection or the alternate statement of

\textsuperscript{76} Ibid. a. 2, \textit{ad Resp}.

\textsuperscript{77} Ibid. Ia IIae, q. 94, a. 3, \textit{ad 3}. The citation "communis omnium possessio et una libertas est de jure naturali," from Isidore of Seville (\textit{Etymologiae} v. c. 4), received wide currency in the medieval discussions of property by virtue of its prominent place in canon law; cf. Gratian \textit{Decretum} D. 1. c. 7.

\textsuperscript{78} Ibid. IIIa IIae, q. 66, a. 2, \textit{ad 1}. 
the successive stages of the state of innocence (in which all things were common by natural law) and the civil state, instituted by social compact (in which private property was set up by positive law and by the authority of the legislator). Thus, according to Duns Scotus, there were no distinct lordships (dominia) by natural or divine law in the state of innocence, but all things were common. After the fall of man that precept of the law of nature that all things should be had in common was revoked, for two reasons: because such community of property would be contrary to the peaceful intercourse of men, since greedy and evil men would occupy more than was necessary for them; and because it would be contrary to the necessary sustenance of men, since the stronger and the warlike would deprive the others of necessities. But when that precept of the law of nature is revoked, and as a consequence the license of appropriating and distinguishing common things is given up, the actual distinction of lordships is not by divine or natural law but by positive law. But, for a positive law to be just, prudence and authority are required in the legislator. Prudence alone is insufficient, since a law must bind (lex being derived from ligando); and a mere conclusion of a prudent man will not bind a community. Pre-eminence or authority (principatus vel auctoritas) is of two sorts, paternal and political; and political authority, in turn, is of two sorts, vested in one person or in the community. Paternal authority is just according to the law of nature; but political authority (which is over men who are not of one family), whether it reside in one person or in the community, can be just only from common consent and the election of the community.

And the first authority [sc., paternal authority] looks to natural consent, although it has to do with people who are not living together in civil organization, the second [sc., political authority] has to do with people living together although joined by no consanguinity or propinquity, namely, if some such people, bound by no family ties, seeing that they cannot be ruled well without some authority should come together to build or to inhabit some city, they could concordantly consent to commit that com-
The community either to one person or to the community. . . . The original distinction of lordships could be just by just positive law whether declared by father or by prince or by community justly reigning and ruling.\(^7\)

On only one point does Aquinas abandon the task of restating the Augustinian doctrine in Aristotelian terms and to that extent reconciling the doctrine of Augustine with that of Aristotle. Aquinas held that in times of necessity all things are common; and, therefore, to appropriate the possessions of others under such circumstances is not sin, or theft, or rapine;\(^8\) and, as if in sign of this departure, quotations from Aristotle and from Augustine appear, as they rarely do, among the authorities whose doctrines are to be refuted or reinterpreted.

The alterations that were being worked in the doctrine of property, however, can be seen most clearly in the context of two controversies which came to their climax in the first half of the fourteenth century, the disputes concerning evangelical poverty and concerning the relation of papal and imperial power with respect to temporal things. Both problems are stated by some of the disputants as extensions of the Augustinian analysis of property: the community of possessions practiced by an association of men pursuing a higher ideal indicates a contempt of property, and therefore poverty is preferable to common possessions; and with respect to the second problem, the bond of love which binds society together operates on groups varying in perfection according to the principle that the better should rule the worse, and therefore the spiritual should rule the material. Aquinas, for all his Aristotelian terminology, extends the latter principle to the solution of the problem of the use of property;\(^8\)

\(^7\) *Opus Oxoniense* iv, d. 15, q. 2 (ed. L. Wadding, *Opera omnia* [Paris, 1894], XV, 266–70).

\(^8\) *Summa theologica* IIa IIae, q. 66, a. 7, *ad Resp*.

\(^8\) It should be noted that, although Aristotle distinguishes between a natural ruler and subject (*Politics* i. 2. 1252a30) and holds that in all things which form a composite whole and which are made up of parts a distinction exists between the ruling and subject element (*ibid.* 5. 1254a28) and the superior rules the inferior (*ibid.* 1254b10, 13, 18), the principle is applied only to natural composites like body and soul or associations in which one member is naturally inferior, as man and animal, male and female, master and
and in his works\textsuperscript{82} defending the mendicant orders from attack he formulates arguments in defense of the poverty espoused by Dominicans and Franciscans which were to be repeated as authoritative by the later defenders of evangelical poverty for monks.

Aquinas argues that the virtuous lives of Plato and Socrates are sufficient indication that they could not have held the bestial doctrine of community of wives and children, but that, since they were accustomed to speak metaphorically, and since they wished to persuade men to that love of their fellow-citizens by means of which a state prospers, they set up in wives and children a community in mutual love, and, in possessions, a community in necessary communication. But union and love have grades in inferior beings, and therefore the Apostle compares\textsuperscript{83} the mystic body of the church to even the natural body, in which the different members are under different powers and virtues which are rooted in one principle of the soul. For it is necessary in any congregation, and most of all in a state, that there be “distinct grades among citizens with respect to households and families, with respect to arts and offices, yet all united in the bond of society.”\textsuperscript{84} Among the disciples of

slave. The principle applied to political organization is rather that that rule is better which is exercised over better subjects (ibid. 1254\textsuperscript{a}25; v. 12. 1315\textsuperscript{b}4). Where Plato is moved to conclude that that state would be best in which philosophers were kings, Aristotle argues that that form of government is best in which every man, whoever he is, can act best and live happily, and he is moved to contrast the life of the philosopher and that of the statesman (ibid. vii. 2. 1324\textsuperscript{a}23 ff.).

\textsuperscript{82} Contra impugnantes dei cultum et religionem, c. 6: “An religiosis liceat omnia sua relinquire, sibi nihil retinere in proprio, nec in communi”; and Contra pestiferam doctrinam retrahentium homines a religionis ingressu, c. 14: “Rationes contra perfectionem religiosorum non habentium possessiones in communi,” and c. 15: “Confutatio erroris praemissi.”

\textsuperscript{83} I Cor. 12:12–19. Cf. Col. 3:18–24 for a statement of the subordination of the relations of husband and wife, father and child, master and servant, to the inheritance of the Lord.

\textsuperscript{84} De regimine principum iv. 4. Paul is quoted again in this connection (Col. 3:14–15): “And above all these things put love, which is the bond of perfection, and let the peace of Christ rule in your hearts, to which also ye were called in one body.” It should be remarked that this portion of the De regimine principum is probably not from the hand of Thomas Aquinas but rather the work of Ptolemy of Lucca.
Christ and in the society of the perfect, there is in respect of riches a community of goods, since the perfect, like Socrates and Plato, are contemptuous of temporal goods; but in other states the common status requires the institution of private property to avoid quarrels and litigation.\textsuperscript{85} The perfect state is not one in which property is held in common but one in which there is no property. "It is manifest that it pertains to the apex of perfection, that some men hold no possessions, neither private nor common."\textsuperscript{86}

The import in these two controversies of the two modes of using terms, literal and analogical, can perhaps be seen best in the successive works of one of Aquinas' disciples, Aegidius Romanus (1247?–1316). Shortly before 1285 he wrote for his pupil, Philip, who was to be remembered as Philip the Fair, a treatise, \textit{De regimine principum}, which showed a strong influence of Aristotle and of the treatise of the same name by Aquinas. In it Aegidius follows the distinctions of Aristotle, discusses property in relation to the household, refutes Socrates and Plato, and concludes that in the ordinary state it is necessary that the citizens have private property,\textsuperscript{87} but that those perfect in the imitation of Christ will not have private property.\textsuperscript{88}

In the \textit{De ecclesiastica potestate}, written about 1301, he undertakes to prove that the papal power is prior in dignity and time to the imperial power, and in that attempt the usage and doctrine of Aristotle all but disappear while citations of Augustine and of the Augustinian tradition become dominant. \textit{Dominium} is analogized broadly to explain any order. The order of nature, of the parts of the human body, of men's relations to external things and to each other—each is explained by analogy to God's \textit{dominium} over all creation. We have all temporal things, all \textit{dominia}, and all powers from God. Aegidius argues, therefore,

\textsuperscript{85} \textit{De regimine principum} iv. 4.
\textsuperscript{86} \textit{Contra pestiferam doctrinam retrahentium homines a religionis ingressu}, c. 15.
\textsuperscript{87} \textit{De regimine principum} (Venice, 1498), lib. ii, pars 3, c. 6.
\textsuperscript{88} \textit{Ibid.}, lib. iii, pars 1, c. 9.
not only that it is proper for the church and for clerics in general to possess temporal things but also, after two chapters in which he considers the passages in the New and Old Testaments which seem to say that such is not the case, that all temporal things are placed under the lordship and power of the church and particularly of the supreme pontiff. This is not intended to deprive terrestrial and secular princes of their rights, but rather to conserve them, for under the dominion or lordship of the church the faithful rightly have particular dominion; but it does follow that infidels and even the faithful who are delinquent from the church do not rightly possess.

Aegidius explains legitimate private possession by compact: in the beginning there was no possession of this and of that according to right, but by pact and convention Adam and his descendants divided the lands of the world and set up private possessions which they transmitted by heritage; later, with the multiplication of men, the pacts and conventions were multiplied and extended so that the distribution of lands and fields was made not only by division and inheritance but by purchase, gift, transfer, and by other similar devices which fall under convention and consent of minds. In virtue of such contracts and dominion, men began to rule over the land and to become kings, and laws were set up which contained these agreements and others.

The peculiarities involved in the opposed techniques of the use of terms were sharply separated in the discussion of these two problems; both methods were used in both controversies: the defenders of the imperial power over temporal things against the papal pretensions followed with almost universal consistency the literal mode of definition exemplified in the Aristotelian tradition while the defenders of papal power tended to follow the analogical mode; the defenders of evangelical poverty could use either mode of discourse. John of Paris, in

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89 *De ecclesiastica potestate* ii. 2 and 3 (ed. R. Scholz [Weimar, 1929], pp. 39–48).


the *Tractatus de potestate regia et papali* (written about 1303), undertakes to defend the truth which lies midway between two errors, that of the Waldensians, who held that lordship in temporal things was improper to the successors of the Apostles, that is, to the pope and to the prelates of the church, and that of Herod, who, hearing that Christ was born king, thought he would be a terrestrial king, an error which took its modern form in the opponents of the Waldensians, who assert that the pope has, because he is in the place of Christ, lordship in the temporal goods of princes and barons and jurisdiction over them. The position which John takes is that it is not improper that prelates have lordship over temporal things, but not per se because of their status or because they are vicars of Christ and successors of the Apostles; rather, they may have such possessions by concession and permission of princes.\textsuperscript{93}

The distinction which John draws is not between the celestial and terrestrial cities but between the external goods of clerics and the external goods of laymen; he concludes that property is the result of the labor of individual men and that therefore it falls under the lordship of neither temporal nor ecclesiastical powers.

The external goods of laymen are not contributed to the community as are ecclesiastical goods, but are acquired by individual persons through their own art, labor, and industry. And individual persons, in their individual capacities, have in themselves right, power, and true lordship, and anyone can order, dispose, dispense, retain, alienate his property at pleasure without injury to another, since he is lord; and therefore such goods do not have an order or connection among themselves or to one common head which has the power to dispense and order or dispose of them, since everyone is the orderer at pleasure of his own property. And, therefore, neither prince nor pope has lordship or dispensation in such things; but, since it happens that the common peace is disturbed from time to time because of such goods, when someone usurps that which belongs to another, and since, likewise, men from time to time become too strongly attached to their possessions and do not share them as much as is expedi-

ent for the necessity and utility of their country, therefore there is set up by the people a prince who presides over such things as judge, distinguishing the just and the unjust, and as punisher of injuries, and as measure in receiving goods from individuals according to a just proportion for the common necessity or utility.94

The jurisdiction of ecclesiastical courts and that of secular courts with respect to property is determined by the two kinds of sin that are possible in temporal things. Questions involving sin of opposition or of error, as when it is held that usury is not a mortal sin or that we can, by any title whatsoever, lay claim to the property of another, or when there are doubts concerning the legitimacy or illegitimacy of such things according to God—all such questions are determined by divine law and fall under the jurisdiction of ecclesiastical courts. Questions involving sin of claims to ownership, by which the property of others is occupied as one's own or endangered, fall under civil law; jurisdiction concerning such questions pertains only to the secular judge, who judges according to human laws or civilly, "according to which laws appropriations of property and claims to ownership are made, lest the things necessary to human uses be neglected if things were common to all and to each, and lest, if things were common without differentiation, peace should not be preserved easily among men."95

In the second book (in which the question, What Rights Does the Emperor Have over Temporal Things, is considered) of the second treatise (De iuribus Romani Imperii) of the third part of the Dialogus, William of Ockham in like fashion finds the true interpretation of the relation of the emperor to temporal goods midway between two opposed erroneous opinions. According to some, the emperor is not lord of the things of the world, and Ockham states seven reasons in defense of this position; according to others, the emperor is lord of all temporal

94 Ibid., c. 7, p. 116.
95 Ibid., c. 14, p. 126. "Approbationes rerum," the reading of the text, is clearly an error for "appropriationes rerum."
things, and five reasons are given in support of this opinion. According to Ockham, the emperor is not the lord of all temporal things (nor, indeed, is the church), in the sense that he has the right or the power to do with them what he pleases; but he is in a certain sense the lord of all such things, in that he can use and apply them to common use, without interference by anyone, whenever it seems that public utility is to be preferred to private utility. The emperor himself is lord of different things in these two ways: for he is lord of those things which are his property to the exclusion of everyone else and in the second way he is lord of the property of others. Consequently, all things are neither common nor private. Dominium, like imperium, is from men, and through the mediumship of men from God; property is founded in human law.

In another connection Ockham protests against extending divine law to all natural law, and against confusing the various senses of natural law. Natural law may have any one of three meanings. (1) It may mean what is in conformity with natural reason, which is never wrong; Ockham gives as instances of this meaning: "Thou shalt not commit adultery," "Thou shalt not lie"; this is natural law in the sense of reason, unaffected by man's moral weaknesses or his conventions. (2) It may mean that which should be preserved by those who use only natural equity without custom or human regulation; it is natural precisely because it is set up in contrast to the state of nature with its immutable law of reason, for, if all men lived according to natural reason and natural law, there would be no need that natural law in this sense of natural equity be set up or preserved; this is natural law in the sense of those equitable readjustments made necessary by consideration of human needs and weaknesses, but unaffected by particular conventions. (3) It may mean that which follows from jus gentium and the deci-

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97 Ibid., cc. 23 and 24 (pp. 920–21).
sion of evident human reason, when the contrary is not established by consent of those whose interests are involved; this is hypothetical natural law as embodied in convention. According to natural law in the first sense, as natural reason, all things are not common to all men—nor are all men free—for natural law in this sense is immutable; and if things were common by natural reason, property would never have been instituted. According to natural law in the second sense, as natural equity, all things should have been common and all men free if men had lived according to reason after the Fall. In the third sense, as human law, possession of private property and the institution of servants is according to natural law, since it is possible that men make law that which is contrary to natural law in the second sense. Natural law, as human law, is concerned with power over property; for example, with the restitution of money on loan and the repulsion of violence with force.98 So far as the determinations of reason are concerned, and omitting such moral readjustments as are made necessary by the state of man after sin, there is no determination of possessions as common or proper; by natural reason only the indispensable conditions, without which society could not exist, are set up. So far as the determinations of reason and natural equity are concerned, if man is able to live in accordance with reason, all things are common. So far as the determinations of convention and human regulation are concerned, property claims are legally instituted. No civilly successful regulation can be contrary to natural law in the first sense. All nations share natural law in the second sense, since it is the natural rational status which nations share and in terms of which they institute contrary regulations for reasonable cause. Even in the third sense, natural law is common to nations, for it consists in what follows by evident reason from the establishment of a given institution.

Ockham was able, moreover, to use this literal tradition of distinctions in meanings of terms to work out a strong defense

98 Ibid., Part III, tr. II, lib. 3, c. 6 (pp. 932–33).
of the doctrine of evangelical poverty, elaborating in great de-
tail the separate and numerous sense of usus, usus facti, usus
jurus, nudus usus, usus fructus, jus utendi, dominium, propri-
etas,\textsuperscript{99} indicating the equivocations of his opponents in the inter-
pretation of biblical statements,\textsuperscript{100} and analyzing the many
senses of rex and dominus to determine their precise meanings
as applied to Christ.\textsuperscript{101} Dominium is used in different disciplines
equivocally and in many senses; it is used differently in moral
philosophy, in natural philosophy, in common speech, in legal
science. In moral philosophy dominium means the power by
which one may perform either of two contrary acts; it also
means the virtue by which one rules one’s passions by right
reason; it sometimes means violent and unlawfully appropri-
ated rule over others, and in this sense, a husband is sometimes
vulgarly said to have dominium over his wife, a master over a
servant, a companion over a companion; sometimes it means
the power of ruling something in a proper fashion. In natural
philosophy dominium means the power possessed by one thing
of corrupting another. In legal science it means a certain spe-
cial power of establishing claim to, of defending, holding, and
disposing of, some temporal thing. Dominium in this sense may
be distinguished into two kinds—divine, by which God has
dominium over all temporal goods, and human, which in turn
is of two kinds: in the state of innocence, which is by divine
and natural law, and the dominium which is the result of posi-
tive law and human institution. In this last acceptation of the
term, dominium is used in two senses, a broad and a strict
sense: broadly, it means the principal human power of estab-
lishing and defending in human lawsuit and judgment claim
to some temporal thing; in the strict sense, it is the principal
human power of establishing claim to a temporal thing in a
judgment and of using it in all ways which are not prohibited

\textsuperscript{99} Opus nonaginta dierum, c. 2 (ed. M. Goldast, in Monarchia, II, 996–1000).
\textsuperscript{100} Ibid., c. 14 (pp. 1050–51).
\textsuperscript{101} Ibid., c. 93 (pp. 1150–61).
by natural law. Even this strict sense may vary in degree, for *dominium* is greater over mobiles than over immobiles. Property, likewise, is used in different senses in logic and in legal science; in the latter it is the same as *dominium* in the last two senses of that term.

Ockham's manner of argument and conclusions are similar to those of Marsilius of Padua in both problems, although the lists of meanings are not the same. According to Marsilius, the possessions of the church, once the various senses of those words have been distinguished, are seen to be not spiritual but temporal, and they are subject to the legislator, to be taxed by him for the public good. Similarly, once it has been shown that *jus* has four meanings, *dominium* four meanings, *possessio* four, *proprietas* four, *commune* two, *dives* four, and *pauper* four, it is possible to consider the problem of evangelical poverty; and by means of the distinctions so made, Marsilius concludes that evangelical poverty is the supreme mode of poverty and is meritorious.

Defenders of evangelical poverty continued in the fourteenth century to follow the analogizing tradition as well as the tradition of literal usage: indeed, the doctrine is more easily adapted to the Platonic approach, since the argument for evangelical poverty must depend on the comparison of the goods of this world to those of the next. In the development of the argument for poverty, to be sure, it is usual to refute Plato's arguments for communism, and Aristotle's refutations are useful for the purpose. On the other hand, it is easy to turn the arguments of Plato for the community of goods to arguments for perfect poverty. Indeed, in the course of the history of the discussion they were, in at least one writer, to become once more arguments for community of possessions.

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103 *Ibid.*, c. 17, par. 18 (p. 302).

104 *Ibid.*, c. 12 (pp. 213–21).

105 *Ibid.*, c. 13, par. 23 (pp. 232–33).
In Richard FitzRalph’s discussion of the question, *dominium* is used analogically through all the meanings which Ockham tried to free of equivocation. There are three kinds of *dominium*—divine, angelic, and human; human *dominium* is either natural or political; political is of the family, of the city, or of the state.¹⁰⁶ Natural lordship is conditioned by grace and is common to all just persons; it cannot be refused when granted, or abdicated except through sin; it does not exclude others from use of what is held by it. Property, which is limited to a single person, is no part of natural lordship, nor is possession, since it may occur without lordship or exclusive use; property, possession, and use are, moreover, only accidental, though invariable, accompaniments of civil lordship, which is a consequence not of grace but of civil law. Positive or civil lordship is “mortal right acquired by a rational creature to possess civilly things subject to positive law and to use them conformably to reason”; strictly, however, no one is lord of anything unless he is just through justifying grace.¹⁰⁷

Richard’s disciple, John Wyclif, carries the meaning of *dominium* through a similar sweep according to differences of the subjects, the foundations, and the objects of lordship, to find its basis in charity or in grace.¹⁰⁸ Civil lordship presupposes natural lordship founded in grace just as civil law presupposes divine law as essentially exemplar cause. Man’s relation to man is determined by his relation to God; justice is the one basis for lordship, for no one has right or lordship over anything except through the pleasure of God, the great Lord.¹⁰⁹ But Wyclif pursues the argument to a defense of the community of possessions, which in its true sense is the only Catholic doctrine, but which Aristotle misunderstood when he criticized

¹⁰⁶ *De pauperie salvatoris*, I, c. 2 (ed. with the *De dominio divino* of John Wyclif, by R. L. Poole [London, 1890], pp. 279–81).

¹⁰⁷ *De pauperie salvatoris*, IV, cc. 1–3 (pp. 435–41).


¹⁰⁹ *De civilis dominio*, I, c. 1, pp. 1–8.
Socrates' statement, for he supposed a community of wives would follow from it. This, Wyclif is convinced, Socrates did not mean.  

IV

When the storm of opposition raised by the bulls of John XXII against evangelical poverty had subsided, *dominium* and property continued in their broad sense, relevant to the problems of all social groups, to be discussed in terms of divine, natural, and human law, and with respect to the problem of whether all things were common in the state of nature, private property being instituted by the compact of the civil state, or whether the state was established to safeguard a natural right to private property. As the pretensions of the papacy to temporal powers were reduced step by step, the principle of hierarchy by which the spiritual should rule the material, the better the worse, ceased gradually to be used as a device to determine lordship over property, and considerations of right and power began to take its place. The dialectic of political philosophy continued to operate primarily with a restricted group of terms—life, equality, and property—and the concern was to determine the natural basis or conventional support of each. By the sixteenth century the philosopher and the priest had largely disappeared as serious contestants for the place of the statesman, and the problems of politics were oriented to the consideration of the necessities of life and the powers that do or should control them.

The problems and terms were still a selection from the problems and terms of Aristotle, but they were discussed and used according to a dialectical method which goes back to Plato. The result is puzzling inasmuch as the discussion consists of the refutation of Platonic doctrines by Platonic means and the establishment of what look, at first glance, like Aristotelian

\[\text{Unde non credo Socratem sic sensisse, sed iustum sensum solum catholicum habuisse, quod cuilibet licet habere aliquem usum utilem de quibuscunque bonis fratis} \] (ibid., c. 14, p. 99).
distinctions. According to repeated arguments which theologians of the period turn against Anabaptists and philosophers against Plato, a community of possessions would destroy both individual welfare and the state; it would be contrary to natural and divine law.

Aristotle's method had consisted in assembling the natural elements which were brought together in the formation of the state in order to consider the kinds of state and the best conceivable state in terms of natural functions and natural ends. If the ends set for the state in such a theory are restricted, on the plea of aggression or tyranny or imminent civil war, in the avoidance of immediate danger or the solution of natural difficulties, one type of state with its problems and ends would be selected out of the many which would normally be considered in such an approach. Aristotle cites the example of legislators who seek to begin with "necessities" and find their chief problem in the regulation of property (οὐσία), since all revolutions turn on the question of property; or, as he specified elsewhere, inequality of property (κτήσεις) and of honor are the causes of revolution, respectively, among the many and among the best men.

Similarly if the lofty property of reason, knowledge, and the good is omitted from Plato's discussions, the dialectic flattens down to a level on which the needs and the passions of man are the chief matter of concern. Plato turns to such considerations in the "second-best" state, which he sets up in the Laws, and permits the Lawgiver, who states the regulations of that state, to boast from time to time of their effectiveness in providing leisure and control over the necessities of life, although he adds that that end is achieved in a fashion to insure that citizens will not become lovers of wealth or slaves of uncontrolled passions.113

111 Politics ii. 7. 1266*36. Cf. Plato Phaedo 66C: διὰ γὰρ τῆν τῶν χρημάτων κτήσεων πάντες οἱ πόλεμοι γίγνονται; cf. also Republic v. 464E, n. 26 above.
112 Politics ii. 7. 1266*38—1267*2. 113 Laws viii. 828D; cf. 832C ff. and 835D–E.
The same reorientation in the discussion of political philosophy by which the kinds of state as considered by Aristotle are limited to the kind most like the household, since most concerned with property, effects also a limitation in the broad scope of the term property, as used by Plato, to that kind of happiness, knowledge, and virtue which is most relevant to, and most directly effected by, property in its narrow sense of material possessions. The dialectic of the discussion is conducted by means of pairs of contrary terms, like natural and conventional, power and right, varying in their scope and significance from philosopher to philosopher in such a fashion that the discussion, considered apart from the history of the movements by which terms came to it, must seem an insubstantial logomachy, interrupted from time to time by unaccountable moments of illumination, and likewise unaccountably influential, for all its verbalism, on the movement of events.

In the complexities of these debates, considered against the background of that history, an order can be found in opposed opinions by seeking first the answer to the question whether private property is natural. In the period of transition, during the sixteenth century, while effective appeal might still be made in analysis to divine law, the determination of property is frequently by natural law, in which case it is held that the state cannot rightly expropriate the goods of men by immoderate taxation. The analogizing of the household to the state, of dominium to imperium, is in the present world erroneous; according to Melanchthon, such hypocrisies of Anabaptists and monks, advocating community or poverty, are in direct contradiction to the commandment of the Decalogue, “Thou shalt not steal.” In that commandment God sanctioned the order of possessions: each man holds what is his as a result of that order; and inheritances, just wages and fees, and the transfer of property by sale and gift are legitimate by divine and natural law. God therefore has ordained, and is pleased by, the dis-

114 Conciones explicantes integrum Evang. S. Matt., c. 5 (Corpus reformatorum, ed. C. G. Bretschneider [Halle, 1847], XIV, 617 ff.).
tinction of dominions and the property of things (*distinctionem
dominiorum et rerum proprietatem*). Property, therefore, is de-
defined as "lordship or dominion over a thing, acquired in just
ways, by which the lord and no other has the right to dispose
of the thing according to his judgment, except in so far as he
is prohibited by law or pact"; and lordship in turn is defined
as "right, that is, power, ordered according to divine or human
law, by which the lord and no other holds a thing as property,
and disposes of it according to his judgment, except in so far
as he is prohibited by law or pact." To suppose, as the juris-
consults did, that the common use of property is in accordance
with natural law is to confuse useful goods with other natural
things; before man's fall the common use of property was san-
tioned by natural law, but after original sin the division of
things is natural. The nature of man is such that he requires
the labors of others; and therefore, since no one man has all
things necessary for life, God wished the human race to be
bound together by many services: he sanctioned contract and
wishes things to be communicated from man to man by con-
tract without injury.

Calvin, for much the same reasons, held that the community
of property, which was associated in his mind with the errors
of the Anabaptists and the imprudences of the monks, would
totally destroy the state; the two extremes of state expropria-
tion and community of goods must both be avoided. In like
manner John Bodin is willing to grant that some things must

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115 Definitiones multarum apellationum, quorum in ecclesia usus est (Corpus reformato-
rum, XXI, 1093). Cf. Explicatio symboli Niceni, De septimo praecepto (Corpus reforma-
torum, XXIII, 424-26); and Enarratio symboli Niceni, De septimo praecepto (Corpus
reformatorum, XXIII, 327).

116 Ibid. Cf. Commentarii in aliquot Politicos libros Aristotelis, lib. ii (Corpus reforma-
torum, ed. C. Bretschneider and H. Bindsell [Halle, 1850], XVI, 430 ff.).

117 Commentarius in Acta Apostolorum, c. 3, 44, and c. 4, 32-34 (Corpus reformatorum,
LXXVI, 59-60, 94-96). In the discussion of these two passages (Acts 2:44 and 4:32-
37), which had been among the fundamental authorities of those who argued for a
community of goods as the true Christian doctrine, it is interesting to observe that Calvin
associates private property with the household in counterdistinction to the community
of goods to be found in Christian aid of the poor: "Nam ista communitas ad circum-
be common in a state, but Plato was mistaken in supposing that all things should be common to all. He did not realize that the republic would be destroyed by a community of goods and of all things, because nothing can be public where nothing is private. Such a state as Plato envisaged would be wholly repugnant to natural and divine laws, for by them not only are adultery and incest, as well as rape and theft, prohibited, but, according to divine law, it is not permitted to covet any of the things which belong to one's neighbor. Consequently, governmental sovereignty does not extend to private property, for by the precept of divine law no one may plunder that which is the property of another, and the prince is not permitted to change the bounds of that which was set by God in the determinations of eternal divine laws. The dictum, "All things belong to the prince," pertains to imperium and the ruled, exception being made in the case of each man of the property and possession of the things which belong to him. This is the sense of Seneca's statements: "To kings pertain the power of all things, to individuals property," and "The king possesses all things by imperium, individuals by lordship." The Platonic doctrine of the community of possessions would involve the destruction of the state because the state is constituted primarily to protect property, whereas there is no more fertile seed of discord than community in all things. Those who liken the family to the state in this respect or suppose all things were made common by the laws of nature are in error. Private property, the family, and the inequality of man, according to Bodin, are all natural; arbitrary taxation, no less than community of possessions, is contrary to divine and natural law.

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II8 De republica i. 2 ([Ursellis, 1601], pp. 17-18).
II9 Ibid. i. 8 (p. 163).
II0 Ibid. vi. 4 (p. 1097).
In the seventeenth century, on the other hand, the tendency was to find the grounds for property not in divine law but in nature or in the appeal to natural right. The distinction between these two warrants, that of natural basis and that of natural right, can be reduced to differences in the relation conceived to exist between state and household. If the state is conceived to be similar to the household, a basis for the organization of the state and for the selection of rulers is found in existing arrangements in regard to ownership and control of property. In such doctrines, property, used initially in a narrow sense, as lands and chattels, may be broadened in the development of the argument to include spiritual goods, and thus participation in government in the well-organized state is made dependent upon ownership of goodness and wisdom, as well as upon ownership of property. If the state is based on natural right, and is not conceived on the analogy of the household, the state either establishes property or safeguards rights in property. The organization of the state will not rest upon arrangements in regard to property. Property will be related to the rights and duties of citizens in either of two ways. Property may be conceived broadly, in which case property will be conceived as a natural right; and the rights and duties of citizens will be defined in terms of property. Infringement of property will lead to revolution and the dissolution of the state. Or property may, on the other hand, be conceived narrowly, in which case property will be instituted by the civil state and defined in terms of the rights and duties of members of the state or members of subordinate groups. In this case, property rights may be changed by the state, and their maintenance unchanged is not essential to the state.

Perhaps even more significant, however, than the usages and the doctrines which distinguished the writers of the period from each other is the agreement on a single problem which separates them as a group from the writers that preceded them, and which is the most striking mark of the modern period of the discus-
sion. Whereas Plato and Aristotle found two problems in property, the problem of acquisition and the problem of use, and whereas the discussion of the writers of the Middle Ages turned exclusively about the problem of the use and the end to which the employment of property was to be directed, the writers of this period orient the discussion, as Grotius recognized when he entitled the chapter in which he considered it, "De acquisitione originaria rerum, ubi de mari et fluminibus," to the problem of the acquisition of property. It would be difficult to find a more significant characteristic of political theory since the seventeenth century than the shift of dominant concern, begun in that century and continued ever since, from a concern with the use of property for the common good to a conception of property as the chief or only basis for participation in the state and a concern with the problem of determining the scope of private property or, in its more idealistic formulation, with the limitation of private property. Public interest and common good continue to figure in the discussion, but the goods contrasted in these terms with property are in turn conceived as private property.

The term natural law, fundamental to the discussion of political problems in most writers of the seventeenth century, was itself pressed into service for the doctrine that the preservation of property is the end of the state; and the continued use of the term natural law in the theories and political manifestoes of the next century is to be explained by the circumstance that philosophers like Locke discovered ways of formulating such a theory. The appeal to natural right, shorn of references to divine law, became a more consciously emphatic appeal to nature and to reason; but more important than that appeal is the change of meaning in the terms which expressed it, for the analysis now begins from the common right which men have in all things, and in respect of that common right all men are equal and lordship differs from other powers and rules. Typical

121 De jure belli ac pacis ii. 3.  122 Second Treatise on Government, chap. ix, sec. 124.
variants of the theory are expressed by Grotius, Locke, and Hobbes. They could agree that all men are by nature equal, that lordship differs from rule, and that men have a common right to all things.

Grotius treats first of that common right which God gave man over things and over certain acts, and then proceeds to property or dominium by individual right. In the beginning of the world property originated by division, but in more recent times the only natural and original mode of acquisition is by occupation. In defense of his doctrine of the origin of private property he refutes the argument of the jurisconsult Paulus according to which one has property in anything one makes. Occupation may lead to imperium or dominium, which are distinct although they are sometimes acquired by a single act: the former is over persons and territory, the latter may be held by one who is not a citizen of the state in which the land is located.123 Property in mobiles is one step farther removed: in a territory, the imperium of which is already occupied, the right of occupying mobile things may be preceded by civil law, for that right follows not from the precept but from the permission of natural right, and it is not necessary to human society. Property is understood by Grotius in the narrow and literal sense.

According to Locke likewise, God gave the earth to men in common and gave them also reason to make use of it to the best advantage of life and convenience.124 But, although earth and inferior creatures are common to all men, each man has a property in his own person to which he alone has right, and thereby has like property in the work of his hands, and finally he has property in whatever he has taken from the state in which nature left it and mixed with his work. The property of

123 De jure beli ac pacis ii. 3. 4. In support of this distinction Grotius cites the passage from Seneca quoted by Bodin (Ad reges potestas omnium pertinet, ad singulos proprietas), Dio of Prusa, Diodorus Siculus, and Demosthenes (the distinction between ἐγκηματα and κηματα).

men in what they make is not unrelated to the fact that they are the workmanship of one omnipotent and infinitely wise Maker, servants of one sovereign Master, and his property.

The state of Nature has a law of Nature to govern it, which obliges every one, and reason, which is that law, teaches all mankind who will but consult it, that being all equal and independent, no one ought to harm another in his life, health, liberty or possessions; for men being all the workmanship of one omnipotent and infinitely wise Maker; all servants of one sovereign Master, sent into the world by His order and about His business; they are his property, whose workmanship they are, made to last during His, not one another's pleasure.\textsuperscript{125}

The commonwealth was formed by compact to preserve property; but, according to Locke, property includes life, liberty, and estate.

Hobbes agrees with Locke that men are by nature equal\textsuperscript{126} and free and that by nature they have equal right to all things;\textsuperscript{127} but the distinction between ruler, father, and master is a distinction between kinds of \textit{dominium} or sovereignty, the first the result of institution, the second acquired by generation, the third acquired by conquest.\textsuperscript{128} According to Hobbes, there is no property or dominion in the state of nature;\textsuperscript{129} but it is instituted by the sovereign will for the public peace, and the laws of property are the civil laws of each commonwealth.\textsuperscript{130} For Hobbes, property means literally the distinction between "mine" and "thine"; the term does not include life and liberty, for no man can be bound to take his own life or to injure himself, whereas property belongs in every commonwealth to him who has the sovereign power. No man has absolute property in his goods such as to exclude the right of the sovereign. According to Locke, on the other hand, the supreme power cannot

\textsuperscript{125} \textit{Ibid.}, chap. ii, sec. 6.
\textsuperscript{126} \textit{Leviathan}, I, 13 (\textit{English Works}, ed. Sir William Molesworth, III, 111).
\textsuperscript{127} \textit{Ibid.}, p. 14 (III, 118).
\textsuperscript{128} \textit{Ibid.}, II, 20 (III, 185-86).
\textsuperscript{129} \textit{Ibid.}, I, 13 (III, 115).
\textsuperscript{130} \textit{Ibid.}, II, 18 (III, 165).
take away from any man any part of his property without his own consent.\(^3\)

It is not a difficult step from these varying definitions of property in terms of natural right to the definitions of property which find it the foundation of sovereignty. Harrington agrees with Hobbes that riches are power, but holds against him that there is no other kind of power. Consequently, if a man feed a whole people, they are his servants and under his empire. "Domestick Empire is founded upon Dominion. Dominion is Propriety real or personall, that is to say, in Lands, or in money and goods."\(^3\)\(^2\) The different types of empire are distinguished as one or few or many are landlords of a territory. True, the principles of government are in the goods of the mind, which Harrington groups under authority, as well as in the goods of fortune, which are power or empire; but in the just government empire is authority, and authority is empire. Harrington can gloss a citation from Ecclesiastes on the plight of the state in which the rich sit in low places, expanding the term to include the rich "either in vertue and wisdome, in the goods of the mind, or those of fortune upon that ballance which giveth them a sense of the Nationall interest."\(^3\)\(^3\)

This doctrine, Imperium fundatur in dominio, is combined offhand by Henry Neville with the doctrine of the law of nature without affecting the character of the doctrine.

So that it remains undiscovered yet, how the first Regulation of mankind began: And therefore I will take for granted that which all the Politicians conclude: Which is, That Necessity made the first Government. For every man by the first Law of Nature (which is common to us and brutes) had, like Beasts in a Pasture, right to every thing, and there being no Property, each Individual, if he were the stronger, might seize whatever any other had possessed himself of before, which made a State of perpetual War. To Remedy which, and the fear that nothing should be long enjoyed by any particular person (neither was any mans Life in safety) every man consented to be debar'd of that Universal Right to all

\(^3\)\(^1\) Second Treatise on Government, chap. xi, sec. 138.


\(^3\)\(^3\) Ibid., p. 20.
things, and confine himself to a quiet and secure enjoyment of such part as should be allotted him: Thence came in Ownership, or Property; to maintain which it was necessary to consent to Laws, and a Government to put them in Execution.\textsuperscript{134}

Political power is derived from possessions and the dependence of vassals and tenants,\textsuperscript{135} and the \textit{una corruptione politica} proceeds from alteration of property.\textsuperscript{136} The people of England have, by the fundamental laws, that is, by the Constitution of the government of England, entire freedom in their lives, properties, and persons; they can suffer in these only by laws already made or to be made by Parliament.\textsuperscript{137} The harmonious government of England, having been founded on property, could not be shaken so long as property remained where it was placed. But tenures have been changed in such fashion that the yeomanry no longer depends on the lords.

The consequence is, That the natural part of our Government, which is Power, is by the means of Property in the hands of the People, whilst the artificial part, or the Parchment, in which the Form of Government is written remains the same. Now Art is a very good servant and help to Nature, but very weak and inconsiderable, when she opposes her, and fights with her: it would be a very \textit{Impar congressus}, between Parchment and Power: This alone is the cause of all the disorder you heard of, and now see in \textit{England}.\textsuperscript{138}

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When statesmen took over the language of political philosophers in the eighteenth century, it contained the vestiges of the different usages which had run a continuous history from the time of Plato and Aristotle. Striking alterations had been worked in the doctrines attached to the terms of political philosophy; and in the course of discussion that led to those changes, almost every possible variation of emphasis had been explored, particularly in the identification of the perfect state of the Platonic analysis and in the specification of the char-

\textsuperscript{134} \textit{Plato redivivus} (2d ed.; London, 1681), pp. 29–30.

\textsuperscript{135} Ibid., p. 99.

\textsuperscript{136} Ibid., p. 66.

\textsuperscript{137} Ibid., p. 133.

\textsuperscript{138} Ibid., pp. 138–41.
acteristics of its citizens, and each had been brought down to some preferred application. But by the eighteenth century, philosophers had forgotten the devices by which Plato sought to put the perfect state into effective relation with human problems, and the dialectic had been flattened in such fashion that its loftiest terms had immediate and specific application. On the other hand, except for a few writers and for a short period, the influence of Aristotle was effective, not so much in constructing a system of political philosophy which conformed to his exacting requirements for science, but in furnishing arguments against Platonic conclusions and in establishing literal gradations by which to examine or to check the analogizing generalizations basic to such conclusions. Since it was characteristic of this approach to begin with what was given, with the natural potentialities of the concrete situation, the problems of political philosophy had come, in this approach, to take their beginning from problems of property. As unmistakable sign of the change, property, which Aristotle had defined as an instrument of action (the effect of which is discernible in men), not of production,\(^{139}\) had for centuries been conceived as an instrument for production (the effect of which is discernible in things).

The two thousand years since Plato and Aristotle had resulted in what were almost caricatures of the Platonic and Aristotelian doctrines: in general, if an argument began from rights and ideals to work down to present conditions, it showed the vestiges of the Platonic heritage; if it began with conditions to work upward to a consideration of possible organizations and ideals, it bore the only marks that remained of Aristotelianism.

In another sense the Platonic dialectic had won the day as a method and manner of thinking; the Aristotelian terms had survived to fix the subject matter. The fate of the distinction of family and state, which was taken as fundamental in our examination of the history of the term property, indicates the

\(^{139}\) Aristotle *Politics* i. 4. 1254a1–2.
final paradox of the workings of a Platonic dialectic on terms which are held to a restricted meaning in the interests of concreteness: when property is conceived in its literal sense, as physical objects, the state is merely an enlarged household (the Aristotelian literal meaning in the analogical context which Aristotle criticized); when property is conceived in its broad sense, as including all goods and rights, the state with its concern for property, must transcend, and therefore differ from, lesser organizations (the Platonic analogical meaning in the context of literal distinctions).

The opposed parties, sharing so strongly the desire to keep their discourse from mounting to the skies, approximated more closely to each other than they had in any previous period of the discussion; and the appeal to natural bases is made in a language which is often superficially the same as that of the appeal to natural right. But notwithstanding tendencies to merge, the differences imbedded in the language continued to have consequences that were not merely verbal. They can be detected in the language of writers of the Revolutionary period in America, and the sharp differences that emerged in the discussion of the Constitution are couched in language that falls on either side of the old opposition.

The language of Tom Paine may be taken as typifying and expanding the mode of usage of his Revolutionary contemporaries who wrote "the enjoying and defending of lives and the securing and possessing of property" as "natural, essential, and inalienable rights" into many of the state constitutions. Men are by nature equal in a broad political sense, to be distinguished from a domestic or familial sense.

Mankind being originally equals in the order of creation, the equality could only be destroyed by some subsequent circumstance; the distinctions of rich and poor, may in a great measure be accounted for, and that without having recourse to the harsh ill-sounding names of avarice and oppression. . . . . But there is another and greater distinction for which no truly natural or religious reason can be assigned, and that is the distinc-
tion of men into kings and subjects. Male and female are the distinctions of nature, good and bad, the distinctions of Heaven.140

The parts of the state are no longer families and villages, but individuals bound together by mutual dependence and reciprocal interest—the landholder, the farmer, the manufacturer, the merchant, the tradesman, and every other kind of worker, since each prospers by the aid it receives from the others and from the whole. Common interest regulates their affairs and forms their laws. Formal government is necessary only to supply what civilization and society cannot accomplish for the common interest and to produce common security; indeed, “instances are not wanting to show that every thing which government can usefully add thereto, has been performed by the common consent of society, without government.”141 Government has been confused with society, whereas they are not only different, but have different origins. Society is produced by our wants, and government by our wickedness.142

On the old system, government is an assumption of power for the aggrandizement of itself, and it supports itself by keeping up a system of war; on the new system, government is a delegation of power for the common benefit of society, and it promotes a system of peace as the true means of enriching a nation. The former encourages national prejudices; the latter promotes universal society as the means of universal commerce.143 The best government is that which governs least and requires lowest taxes; the ends of government may be stated in terms of property.

Government is nothing more than a national association; and the object of this association is the good of all, as well individually as collective-

140 Thomas Paine, Common Sense (The Political Writings of Thomas Paine [Boston, 1878], I, 24–25). Cf. Paine’s footnote to the title of Agrarian Justice, in which he criticizes the bishop of Landaff for saying that God made rich and poor; he made only male and female and gave them the earth for their inheritance. Cf. the discussion of “natural” enemies in The Crisis, No. VI (I, 162–63).

141 Rights of Man, II, 1 (II, 159).

142 Common Sense (I, 19).

143 Rights of Man, II, 3 (II, 165).
ly. Every man wishes to pursue his occupation, and to enjoy the fruits of his labors, and the produce of his property, in peace and safety, and with the least possible expense. When these things are accomplished, all the objects for which government ought to be established are answered.\textsuperscript{144}

The consequences of the American and French revolutions were a renovation of the natural order of things, a system of principles as universal as truth and the existence of man, and combining moral with political happiness and national prosperity.

I. Men are born, and always continue, free and equal, in respect to their rights. Civil distinctions, therefore, can be founded only on public utility.

II. The end of all political association is the preservation of the natural and imprescriptible rights of man, and these rights are liberty, property, security, and resistance of oppression.

III. The nation is essentially the source of all sovereignty; nor can any individual, or any body of men, be entitled to any authority which is not expressly derived from it.\textsuperscript{145}

Several characteristics of the analogizing technique are striking in Paine's discussion of the problems of government. Some bond is usually sought in that tradition by which to bind men together, usually attachment to some common ideal, the love of the Good or of God. In Paine that bond reaches the minimum form of mutual dependence and reciprocal interest. It had long been a device in that tradition to appeal to the state of nature as means to clarify the conditions of the present civil state. In Paine that appeal is sometimes to historical fact, as when he says, "To understand what the state of society ought to be, it is necessary to have some idea of the natural and primitive state of man; such as it is at this day among the Indians of North America."\textsuperscript{146} Sometimes it is a fancied instance, as when, in order to gain a clear and just idea of the design and end of government, he supposes a small number of persons settled in some sequestered part of the earth, unconnected with the rest, to explain the origin, design, and ends of government. But the conception of property runs in a strange

\textsuperscript{144} Ibid., 4 (II, 191). \textsuperscript{145} Ibid., I (II, 141-42). \textsuperscript{146} Agrarian Justice (II, 401).
transformation through all these vestiges of the analogizing method. For the difference between the state of innocence and the civil state in earlier writers has now become the difference between the state of moral virtue in which society would have sufficed to satisfy our wants, and our present degradation which makes government necessary. The design and end of government are freedom and security, and man in his lost innocence finds it necessary to surrender up a part of his property to furnish means for the protection of the rest. The familiar dialectic is at work, and property has been broadened in significance to include the satisfaction of any need; property is one of our rights, but all our rights are our property.

Personal rights, of which the right of voting for representatives is one, are a species of property of the most sacred kind; and he that would employ his pecuniary property, or presume upon the influence it gives him, to dispossess or rob another of his property of rights, uses that pecuniary property as he would use firearms, and merits to have it taken from him.

In Paine's doctrine the state is instituted to protect a pre-existent natural right to private property, and in this right all the rights of the citizen are telescoped. The other possible variant of the theory of natural rights, the variant in which property is defined narrowly and is subordinated to other rights and duties, finds expression in America somewhat later. Benjamin Franklin gives a strong statement of the doctrine that property right is instituted by the state; and, short of such property as is essential to the conservation of the individual and the propagation of the species, the state retains full control of property. If Paine's conception of property is broadly that of Locke, Franklin's conception is almost identical in this respect with that of Hobbes.

All Property, indeed, except the Savage's temporary Cabin, his Bow, his Matchcoat, and other little Acquisitions, absolutely necessary for his Subsistence, seems to me to be the Creature of public Convention. Hence

147 Common Sense (I, 19–21).
the Public has the Right of Regulating Descents, and all other Conveyances of Property, and even of limiting the Quantity and the Uses of it. All the Property that is necessary to a Man, for the Conservation of the Individual and the Propagation of the Species, is his natural Right, which none can justly deprive him of: But all Property superfluous to such purposes is the Property of the Publick, who, by their Laws, have created it, and who may therefore by other Laws dispose of it, whenever the Welfare of the Publick shall demand such Disposition. He that does not like civil Society on these Terms, let him retire and live among Savages. He can have no right to the benefits of Society, who will not pay his Club toward the support of it.\textsuperscript{149}

The quarrel of those who looked upon some form of the doctrines expressed by Tom Paine as the Revolutionary doctrines, was not, however, with another variant analysis in terms of natural rights. It was with a doctrine in which property is conceived first and primarily in a literal sense as related to the nature and passions of man, and further virtues are treated as consequences of the passions; possession of property may even be considered a sign of the probable possession of other virtues, and civil institutions are designed to be set up as checks on excesses proceeding from such passions. The proponents of the first position were wrong, however, in thinking that a sudden change had been worked at the Constitutional Convention. The doctrine they criticized was expressed during the course of the Revolutionary period, but it had so many points of similarity with the expression of the opposed view that it required the discussion of means of government to make clear the differences in the definitions of terms. Complaints concerning the operations of the state of Massachusetts under the constitution adopted in 1780, armed disturbances, and finally the criticism of M. Turgot, led John Adams in 1787 to invoke in the defense of the principles of government implied in that document, not natural rights, but the simple principles of nature.\textsuperscript{150}

\textsuperscript{149} Letter 1461 to Robert Morris, December 25, 1783 (The Writings of Benjamin Franklin, ed. Albert Henry Smyth, IX, 138).

\textsuperscript{150} A Defense of the Constitutions of Government of the United States of America against the Attack of M. Turgot in His Letter to Dr. Price, Dated the Twenty-second Day of March,
United States of America have exhibited perhaps the first example of governments erected on the simple principles of nature, according to Adams; and the achievement is compared, therefore, with the series of new inventions and constructions in the arts and the sciences. To show the absurdity of M. Turgot's notion that all authority should be collected in one center, the nation, and invested in an assembly of representatives, Adams examines in laborious detail the systems of modern and ancient governments and the doctrines of philosophers, writers on government, and historians, to reveal the consequences of Turgot's theory and the advantages of the opposed doctrine of balances. The argument turns upon the demonstration, in opposition to Turgot's doctrine of the equality of all citizens, of a difference in "natural and acquired qualities, in virtues, talents, and riches."

Two of these sources of difference Adams develops in some detail, the inequalities of wealth and of birth.

There is an inequality of wealth; some individuals, whether by descent from their ancestors, or from greater skill, industry, success in business, have estates both in lands and goods of great value; others have no property at all; and of all the rest of society, much the greater number are possessed of wealth, in all the variety of degrees between these extremes; it will easily be conceived that all the rich men will have many of the poor, in the various trades, manufactures, and other occupations in life, dependent upon them for their daily bread; many of smaller fortunes will be in their debt, and in many ways under obligation to them; others, in better circumstances, neither dependent nor in debt, men of letters, men of the learned professions, and others, from acquaintance, conversation, and civilities, will be connected with them and attached to them. Nay, farther, it will not be denied, that among the wisest people that live, there is a degree of admiration, abstracted from all dependence, obligation, expectation, or even acquaintance, which accompanies splendid wealth, insures some respect, and bestows some influence.


The examination of what kinds of beings men are turns attention necessarily to the passions which are all left by nature unlimited and are subject to unlimited increase, particularly the "three aristocratical passions"—the love of gold, the love of praise, and ambition. "Men should endeavor at a balance of affections and appetities, under the monarchy of reason and conscience, within, as well as a balance of power without."\(^{154}\)

If a nation commits its affairs to a single assembly, the passions and desires of that assembly will augment as fast as those of a king. The great writers of the past, as well as all history and experience, demonstrate that there is a natural aristocracy, formed partly by genius, partly by birth, partly by riches.\(^{155}\) Since no simple and perfect democracy has ever existed among men,\(^{156}\) it would be wise, in accordance with the principle of the division of powers, to separate the rich, the well born, and the able, who will inevitably acquire an influence among the people, from the representatives of the masses and submit them to a kind of ostracism in the senate.\(^{157}\)

It is for this reason that Adams repeatedly praises Harrington's principle that "empire follows the balance of property, whether lodged in one, a few, or many hands" as "a noble discovery, of which the honor solely belongs to him, as much as the circulation of the blood to Harvey, printing to Laurence Coster, or the invention of guns, compasses, or optic glasses to the several authors."\(^{158}\) The peculiarities of the government suited to America follow from the peculiarities of the distribution of wealth: since the land in America is divided in such fashion that nineteen-twentieths of the property is in the hands of the commons, it is proper that the commons should select the chief magistrate and the senators.\(^{159}\) Even more, Adams advocated devices to conform to Harrington's principle in order to insure the continuance of equality, liberty, and public virtue.

Harrington has shown that power always follows property. This I believe to be as infallible a maxim in politics, as that action and reaction are equal, is in mechanics. Nay, I believe we may advance one step farther, and affirm that the balance of power in a society, accompanies the balance of property in land. The only possible way, then, of preserving the balance of power on the side of equal liberty and public virtue, is to make the acquisition of land easy to every member of society; to make a division of land into small quantities, so that the multitude may be possessed of landed estates. If the multitude is possessed of the balance of real estate, the multitude will have the balance of power, and in that case the multitude will take care of the liberty, virtue, and interest of the multitude, in all acts of government. I believe these principles have been felt, if not understood, in the Massachusetts Bay, from the beginning. . . .

The Discourses on Davila, which returned to the task Adams had undertaken in the Defense to illustrate in somewhat more systematic fashion the teachings of history by deriving the nature of government from the passions of man, were apparently interrupted in their publication in 1790 because they expressed a doctrine which aroused no little opposition. Government was not a result of compact, but followed rather from the naturally social character of man.

Men, in their primitive conditions, however savage, were undoubtedly gregarious; and they continue to be social, not only in every stage of civili-

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160 Letter to James Sullivan, May 26, 1776 (Works, IX, 376–77). Contrast the device advocated by Adams with the plan, similar in effect, but based on opposed principles, which Paine proposed: "It is a position not to be controverted, that the earth, in its natural, uncultivated state, was, and ever would have continued to be, the common property of the human race. In that state every man would have been born to property. He would have been a joint life proprietor with the rest in the property of the soil, and in all its natural productions vegetable and animal.

"But the earth in its natural state, as before said, is capable of supporting but a small number of inhabitants compared with what it is capable of doing in a cultivated state. And as it is impossible to separate the improvement made by cultivation, from the earth itself, upon which that improvement is made, the idea of landed property arose from that inseparable connexion; but it is nevertheless true, that it is the value of the improvement only, and not the earth itself, that is individual property."

The landed monopoly dispossessed more than half the inhabitants of the earth of their natural inheritance, without providing for them an indemnification for that loss. Paine proposed the creation of a national fund out of which every person will be paid on maturity "the sum of fifteen pounds sterling, as compensation in part, for the loss of his or her natural inheritance, by the introduction of the system of landed property" (Agrarian Justice [Political Writings; II, 402–4]).
zation, but in every possible situation in which they can be placed. As nature intended them for society, she has furnished them with passions, appetites, and propensities, as well as a variety of faculties, calculated both for their individual enjoyment, and to render them useful to each other in their social connections. There is none among them more essential or remarkable, than the passion for distinction.\textsuperscript{161}

The passions are the great spring of social activity, and it is the function of the state to regulate, not to eradicate, them;\textsuperscript{162} the wisdom of nations has observed the universal consideration paid to wealth.\textsuperscript{163} Experience, philosophy, and learning are all powerless to check the passions.

The controversy between the rich and the poor, the laborious and the idle, the learned and the ignorant, distinctions as old as the creation, and as extensive as the globe, distinctions which no art or policy, no degree of virtue or philosophy can every wholly destroy, will continue, and rivalries will spring out of them. These parties will be represented in the legislature, and must be balanced, or one will oppress the other. There will never probably be found any other mode of establishing such an equilibrium, than by constituting the representation of each an independent branch of the legislature, and an independent executive authority, such as that in our government, to be a third branch and a mediator or an arbitrator between them. Property must be secured, or liberty cannot exist.\textsuperscript{164}

Nature, which has established a chain of being and a universal order in the universe, descending from archangels to microscopic animalcules, has ordained that no two objects shall be perfectly alike and no two creatures perfectly equal. Although men all are subject by nature to equal laws of morality, and in society to equal laws for their government, yet no two men are perfectly equal in person, property, understanding, activity, and virtue, or ever can be made so by any power less than that which created them.\textsuperscript{165} So natural is this process that Adams

\begin{itemize}
\item \textsuperscript{161} Discourses on Davila ii (Works, VI, 232).
\item \textsuperscript{162} Ibid. v (pp. 245–46).
\item \textsuperscript{163} Ibid. xii (p. 270).
\item \textsuperscript{164} Ibid. xiii (p. 280).
\item \textsuperscript{165} Ibid. xv (p. 286; cf. pp. 395–97).
\end{itemize}
has no difficulty enumerating the four noble families which have already arisen in Boston.  

To judge by Adams' hesitation to continue the exposition of his doctrine, as well as by the persistence with which he returned to its defense late in life, many of his contemporaries must have shared something of the opposition which is expressed by John Taylor in the criticism he directed against Adams in the context of a full development of the opposed philosophic position. "Mr. Adams's political system, deduces government from a natural fate; the policy of the United States deduces it from moral liberty." According to Taylor, government is subject to moral law, as physical being is subject to physical law; persons are not principles, and a distinction is necessary, consequently, between good and evil moral principles as well as between natural faculties. Without such a distinction Taylor considers Adams' doctrine that "nature will create an aristocracy, and that policy ought to create a king, or a single, independent executive power, and a house of popular representatives, to balance it," as a continuation of the position of Filmer. The principles enunciated by the state constitutions, on the other hand, are directed precisely against the opinions that monarchy is divine and nobility natural. Taylor finds that the constitutions consider a nation as made of individuals, whereas in Adams' system a nation must be made of orders; the equality which the constitutions envisage is not one of stature, strength, or understanding, but an equality of rights and duties. To Taylor's mind, his difference from Adams centers on the importance which he gives to moral ends and the public good which is ignored by Adams. "Our policy divides power, and unites the nation in one interest; Mr. Adams's divides a nation into several interests, and unites power."

166 Letter to Samuel Adams, October 18, 1790 (Works, VI, 417).


169 Ibid., sec. VI, p. 428.
Such differences in the course of discussion come to center about the question of property, and Taylor and Adams are able to exchange compliments in view of the dangers which the doctrine of each seems to present to property. Taylor is concerned to avoid the two extremes advocated by those who would abolish private property by mobs and by those who would defraud it by laws to create an aristocracy. To accomplish that he returns, as did Paine, to a version of Locke's labor theory of property.

To understand the question, we ought previously to settle a satisfactory idea of property. Here it is probable that a disagreement will occur, between the disciples of corporation, monopoly and orders, and myself. It is acknowledged, that I do not include under the idea of property, any artificial establishment, which subsists by taking away property: such as hierarchical, kingly, noble, official and corporate possessions, incomes and privileges; and that I consider those possessions as property, which are fairly gained by talents and industry, or are capable of subsisting, without taking property from others by law.

Adams, in his reply, finds the distinctions of property a natural basis for the natural distinctions he discerns in the state, and summons against Taylor the refutations which have been directed through the ages against the Platonic communism.

You must recur, Mr. Taylor, to Plato's republic and the French republic, destroy all marriages, introduce a perfect community of women, render it impossible to know, or suspect, or conjecture one's own father or mother, son or daughter, brother or sister, uncle or aunt, before you can annihilate the distinctions of birth. . . . Property, wealth, riches, although you allow them to be a cause of aristocracy in your tenth page, yet you will not permit this cause to be "ascribed to nature." But why not? If, as I have heard, "the shortest road to men's hearts is down their throats," this is surely a natural route. Hunger and thirst are natural wants, and the supplies of them are natural. Nature has settled the point, that wood and stones shall not invigorate and enliven them like wine.

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172 Letters to John Taylor, sec. xxvi (Works, VI, 505).
In this controversy the writers of *The Federalist* would take their place by the side of Adams: their approach and attitude is comparable in most details with that which Adams expresses with increasing impatience through the course of his political career. Hamilton, in the first paper, estimates the torrent of passions that will be let loose in the discussion, and judges accurately the terms in which the opposed parties will state the opposition. The “enlightened zeal for the energy and efficiency of government” of the Federalists will be “stigmatized as the offspring of a temper fond of despotic power and hostile to the principles of liberty,” and the defenders of the Constitution in turn anticipate difficulties from “an overscrupulous jealousy of danger to the rights of the people.” Somewhat later Madison finds the chief concern of government, as well as the greatest danger to the republican form of government, in faction. A faction he defines as a number of citizens “united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community.” He brushes aside two ways of removing faction: the first, by destroying the liberty which is essential to its existence, since the remedy is worse than the disease; the second, by giving every citizen the same opinions, the same passions, the same interests, since the solution is as impractical as the first would be unwise.

As long as the reason of man continues fallible, and he is at liberty to exercise it, different opinions will be formed. As long as the connection subsists between his reason and his self-love, his opinions and his passions will have a reciprocal influence on each other; and the former will be objects to which the latter will attach themselves. The diversity in the faculties of men, from which the rights of property originate, is not less an insuperable obstacle to a uniformity of interests. The protection of these faculties is the first object of government. From the protection of different and unequal faculties of acquiring property, the possession of different degrees and kinds of property immediately results; and from the influence

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of these on the sentiments and views of the respective proprietors, ensues a division of the society into different interests and parties.\textsuperscript{174}

The latent causes of faction are therefore to be discovered in the nature of man.

But the most common and durable source of factions has been the various and unequal distribution of property. Those who hold and those who are without property have ever formed distinct interests in society. Those who are creditors, and those who are debtors, fall under a like discrimination. A landed interest, a manufacturing interest, a mercantile interest, a moneyed interest, with many lesser interests, grow up of necessity in civilized nations, and divide them into different classes, actuated by different sentiments and views. The regulation of these various and interfering interests forms the principal task of modern legislation, and involves the spirit of party and faction in the necessary and ordinary operations of the government.\textsuperscript{175}

The end to which the inquiry of the Federalists is directed is “to secure the public good and private rights against the danger of such a faction, and at the same time to preserve the spirit and form of popular government”; and that end can be obtained by one of two means: either the existence of the same passion or interest in a majority must be prevented or the majority, having such coexistent passion or interest, must be rendered, by their number and local situation, unable to concert and carry into effect schemes of oppression.\textsuperscript{176}

Interpreted in view of these considerations, fundamental to the discussions of the Constitution, the opposition assumes a familiar guise. The disapprobation which Taylor expressed con-\textsuperscript{174} \textit{Ibid.}, p. 70. Cf. \textit{The Federalist}, No. XLIX (XII, 37): “The passions, therefore, not the reason, of the public would sit in judgment. But it is the reason, alone, of the public, that ought to control and regulate the government. The passions ought to be controlled and regulated by the government.”

\textsuperscript{175} \textit{The Federalist}, No. X (XI, 71). Cf. Hamilton’s enumeration among “all the orders of man” of the assiduous merchant, the laborious husbandman, the active mechanic and the industrious manufacturer (\textit{The Federalist}, No. XII [XI, 89]).

\textsuperscript{176} \textit{The Federalist}, No. X (XI, 73). Cf. \textit{Federalist}, No. XLVIII (XII, 25), for the danger from passion and prerogative in the legislative branch of government and in democracy. Like Neville, the writers of \textit{The Federalist} have no confidence in mere constitutional devices, “parchment barriers against the encroaching spirit of power.” Like Adams, they are suspicious of pure democracy: it is unable to cure the mischiefs of faction. \textit{Ibid.}, No. X (XI, 74).
cerning the principles of Adams echoes and continues the doctrine of Paine and his contemporaries. Paine, to be sure, conceived property broadly, to include life and security, while Taylor limits property to the land and the produce of labor; but Taylor’s strictures against Adams take their force and justification from his addition to considerations of property of an appeal to moral rights, neglected, he contends, by Adams in his exclusive concern with property. Paine’s conception of property is therefore related to Taylor’s much as the conception of the art of acquisition in its broad sense in Book i of Plato’s Republic (or as the conception of property in general in Plato) is related to the conception of that art in Book iv, when the dialectical process has restricted the term to a narrower and subordinate use.

The authors of The Federalist, on the other hand, for all their concern with property in its strict sense and for all their concern to begin with the nature of man and the distinctions of nature, are engaged in a similar dialectic. Their treatment of, and construction on, the passions of man relative to association in a state follow the general plan to control the passions which Plato considers in the Laws, although they place rather less emphasis on the virtues according to which Plato designs his control of the passions. The difference between the simple form of government which Paine, Turgot, and Taylor advocate and the balance of powers of Adams, Hamilton, and Madison represents, therefore, a manner of translation of the difference between conceptions suited to a perfect state of newly won liberty and independence (which the Federalists profess to be willing to accept if the reason of man were not fallible and if he were not, therefore, incapable of attaining a perfect state) and conceptions guided by the desire to curb the effects of passions in a second-best state, where reason is recognized to be all but ineffective. Federalists and anti-Federalists, therefore, can both invoke, without difficulty or sophistry, the word and intention of the state governments in support of their position.

In the light of the shifting, deceptive opposition, moreover,
the apparent tendency of both sides to approximate to more literal definitions becomes clearer. Locke was anxious to establish a distinction between magistrate, father, master, husband, and lord—not, however, to discover among the relations implied by those terms natural parts from which to construct the state, but, rather like Adams and most of Adams' compatriots, to avoid the dangerous inference that the power of the magistrate is hereditary in a family; for the rest they are ready to analogize nation and family in terms of likenesses and differences of power. In the dialectical tradition it is not important to find "parts" in the state; the dialectic results, rather, in kinds or classes usually arranged in hierarchical groups. Property, passion, and interest established classes in great number for the men who discussed the Constitution—indeed, one of the reasons for Taylor's suspicion of Adams' analysis lay in the arbitrarily small number of orders for which Adams' system provided—and at least in the eyes of the opponents of the Constitution, the classes were hierarchically differentiated by the defenders of that document. Yet there was nothing fundamentally inconsistent between the two doctrines, and the dialectic of the opposition between an analysis based on the passions of man and one based on the rights of man was determined primarily by the question of the location of man in the scale of perfection of virtue and effectiveness of reason.

When, therefore, the controversy subsided and attempts were made to express the theory of the government which had been defended and established in the earlier discussions, the theory returned frankly to the analogizing tradition: the nation is like the family and is concerned primarily with problems of the acquisition of wealth. Thus, when Thomas Cooper, Jeffersonian Democrat and friend of Priestley, who had come to America in 1793 and who had spent six months in prison in 1800 for libeling John Adams, published in 1826 one of the first courses of lectures on political economy to be offered in American colleges, he announces that the new science of political economy

177 An Inquiry, p. 408.
is "much the same in all its principles, with Domestic Economy." Political economy treats of the sources and acquisition of wealth, of its prudent distribution, of its consumption, and of its accumulation. Much difficulty had arisen in the theory of political economy, as much unhappiness had resulted in its practice, from the deplorable error of supposing that national morality is a different thing from individual morality and dependent on different principles, and that the maxims of political economy have nothing in common with private economy. Wealth and riches become synonymous terms.

Political Economy then, treats of the sources, the production, the distribution, the accumulation and the consumption of national wealth: the effect of those institutions on society which are immediately connected with the increase or diminution of national wealth: and the effects produced on society itself by its increase or diminution. The end and object of this branch of knowledge, is to shew in what manner and by what means, the physical gratification of human wants can be most equitably, conveniently, certainly, and effectually distributed among all the classes of society.

The history of the consideration of property gives some indication of the part played by that concept in the formulation and organization of government intended in the Constitution of the United States, even apart from the specific guaranties to life, liberty, and property introduced into the Bill of Rights. That history, moreover, revealing, as it does, a constant interplay of terms and the recurrence in each century of the long discussion of the same devices of definition ranged one against the other, may be read not merely to set forth the curious variety of past doctrines, which were once held dependent only on the unaccountable perversity of man, adopting in turn all possible themes, but to learn the methodological traits of the modes of definition and intellectual usage which are so frequently mingled indistinguishably with the political and economic aspects of the problems with which the pronouncements are concerned.

179 Ibid., p. 19.
180 Ibid., p. 27.
The history of the later interpretation of the Constitution is difficult to understand apart from the peculiarities of the doctrinal analysis which went into the formulation of the Constitution; and, as is so frequently the case in the history of doctrines, men follow, without being aware of the impulsion, the compelling force of ideas and analyses contained in the form in which the problem is presented to them. Although the defenders of the Constitution faced the attack of men who used property broadly to include life and liberty, it is not unnatural that the interpretation of the Fifth and Fourteenth amendments should work toward a broadening of the term which brought it again to include liberty. The language and intention of both the Federalists and the anti-Federalists (with rare exceptions, like that of John Taylor) turned to the problem of the acquisition and protection of private property; when social legislation, directed to the common good and to public interest, was tested a century later against such a criterion, it was not unnatural that the concern for the common good be translated into the terms of one of the number of conflicting interests.

With increasing frequency in recent years, considerations of property have entered the decisions of the Supreme Court relative to the propriety of regulations which would seem to envisage the common use of property; and the document which was drafted to balance faction against faction has effectively turned all formulations of social legislation into terms of private interest and faction, while public interest has reappeared in the unfamiliar guise of police power. In judicial decisions in which such legislation is found to deprive employer of property and laborer of liberty without due process of law, the interpretation of the Revolutionary fathers is reinstated with consequences which were implicit in their words though neither they nor their opponents appear to have realized them, and freedom of a kind is again included, by definition, under property.