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Contemporary Problems in Property in the Light of the Economic Thought of St. Thomas Aquinas

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The question of property has broadened in the last decades of the twentieth century through the introduction of customary title concerns and environmental awareness. These forces have pushed the debate on property beyond the earlier debate between western private ownership and socialist common ownership through the state. This paper develops the economic thought of St. Thomas Aquinas to develop a framework for understanding the variety of property institutions found in the world's various contemporary cultures in terms of the dignity of the human person. St. Thomas's dual theory of property, private ownership with common use is shown to provide a path, not between, but above the western polarities of Left and Right. In this way it is not so much a third way, but rather a separate dimension of understanding resting on a different understanding of the human person, a different anthropology. As well as property, this perspective offers the opportunity to restructure the question of the relationship between economic behaviour and ethics to show that economics must exist within an ethical umbrella.

Much of the process of globalisation has been driven by the demands of international commerce and it has stimulated discussion regarding economic fundamentals on a far wider scale than has been common over the last century or so in the West. One of these fundamentals is the institution of property. Western debate over property has been largely taken up with the argument between socialism and capitalism, to the point that many contemporary thinkers consider that all economic positions must lie, either on one of these poles, or in some mid-point compromise between the two.

The problem of property is that it is necessary for human life but its ownership tends to compete with human effort for a share in the fruits of production. Modernity tends towards a perception of the human person as a self-interested individual. Most economic thinking takes this particular theory of the human person and further restricts it to the material realm. Property, as the source for raw materials and the space for human activities, participates in

human productive effort and takes a share of the wealth produced. Property, in the sense of land, is fundamentally distinct from human effort, raising the problem of the appropriate distribution of the benefits deriving from the act of production that is one of the core issues in economic policy. The question of distributive justice largely pivots on the existence of nature of property rights.

Rights to property in land are problematic. One naturally has a right to one's own effort, as this is an embodiment of one's self, the fruit of devoting one's time and talents to the effort of production. If life is proper to the human person, then the embodiment of part of that life, in the form of time and effort devoted to productive activity, is also proper to the person, it is a property of the person naturally. Productive effort requires attention to productive work, rather than other more desirable activities, such as leisure. For these reasons, property in the fruits of one's own effort has never been seriously challenged.

Property in land is not naturally proper to any person. The only property of humans regarding land is that they all need it in order to live. St. Thomas recognised this property of humans regarding land when he remarked that land property was naturally common. He also observed that while it was not improper for one person to take as private part of what was initially common, it would be sinful if that person caused harm to another by not permitting the latter adequate *use* of what had become private property (S.Th. II-II Q66, art.2).¹

Here we appear to have a contradiction, private property negated by the admonition to allow others to use it as though it were part of the common estate. Perhaps St. Thomas intended property to be essentially common but with the appearance of private ownership, as perhaps the socialists would prefer, but this is clearly rejected in St. Thomas's explanation of the need and appropriateness of private ownership. In his view, the fallen nature of humanity makes the positive institution of private ownership a necessity, at least in this world. People do not care for material things when they are not personally responsible for them, neither do they use them with optimum effectiveness. St. Thomas's conclusion was that property should be genuinely private in ownership, but always common in use.

Today's liberal capitalists are pleased with the defence of private property, but less impressed with the caveat protecting common use. Historically, capitalism is intimately linked to a change in property from the

¹ *"In like manner a rich man does not act unlawfully if he anticipates someone in taking possession of something which at first was common property, and gives other a share: but he sins if he excludes others indiscriminately from using it."* (S.Th., Pt II-II Q66 art.2, 1471)

conditional property of St. Thomas, to the absolute private property of the sixteenth century. Medieval feudalism can be seen as an instance of St. Thomas's dual theory of property. Lords owned land privately, but with obligations to their king and to their people. The Medieval serf had use rights to the property of his lord, as was best evident in the institution of the commons. Through the wealth that flowed from the land, the lord was obliged to provide various services for his people, most conspicuously defence, but also public infrastructure and domestic law and order. Where land belonged to the Church, while it proximately may have been the possession of an abbot, it also provided the means to support what today would be called welfare services, including education, health care and care of the poor. At the top of the feudal hierarchy was the king who held formal title to all the land in his realm, but whose obligations to his people were manifold. Modern critics of feudalism note the instances of abuse by those in power, but tend to overlook the more general fact of the success of the system. Cobbett (1824 rpt 1988) noted that when the system was dismantled in England under Henry VIII it resulted in the near closure of the great universities of Cambridge and Oxford due to the lack of educated young men that otherwise would have come from the monastery schools. Rogers (1884/1949) observed that wages fell sharply in the century following the demise of the feudal system, linking the English enclosures with unemployment and impoverishment of the working people.

The Church has continued to uphold the dual nature of property in its social teaching. *Rerum Novarum* by Pope Leo XIII was explicit about the importance of private property, but only when bound by the obligation of common use and Rupert Ederer (1995) has summarised how the principle forms one of the recurring themes through all the social encyclicals. Like other aspects of Catholic moral thought, the dual approach to property has not been without its critics within the Church. Today there exist groups who would prefer to see the Church more vocal on the obligations of common use attached to property, some verging on socialism. There are also influential factions, often well funded, who are trying to prompt the Church to turn aside from its medieval preoccupation with common use aspects of property. For these, the institution of the market is believed to be sufficient to ensure control of personal excess.

Absolute private property is associated with those countries, such as England and the USA, that have experienced the greatest levels of economic development, and it is the property system that dominates global commerce. Historically, it is also the system that has resulted in the greatest internal polarisation of wealth. Unemployment was unknown in England in 1500, but a century later that country was forced to initiate public unemployment relief.

The major economic change was the institution of property. The misery of working people in England continued to deteriorate into the nineteenth century and was only contained by the organisation of labour and threat of socialism. The USA followed a different trajectory, but one also governed by property. The existence of a frontier in that country, access to free land for all, prevented the inhuman wage levels of England. The American frontier has now closed, and the mechanics of absolute private property are currently polarising the population. Recent trends suggest that working conditions are deteriorating and the reality of poverty, especially as understood in relative terms across the community, is expanding.

Within Western countries, the notion of absolute private property has probably passed its zenith. The Eighteenth century could have Lord Blackstone (1769/1979) describe property as a *despotic* institution that afforded the owner unlimited rights to land, but the political organisation of ordinary people that Pope Leo XIII validated, broader ownership of land, and the threat of socialism has since curbed the excesses that such a despotic right would otherwise lead to. There have been several statutory initiatives that have had the effect of insuring minimum elements of common use. Land tax has the effect of making available to the community some of the rental value of land. In the second half of the twentieth century, many countries passed planning statutes that explicitly limited the rights of private property owners. In some cases, attempts have been made to collect for the community the profits that flow from development, turning planning control into a positive tool for ensuring a degree of common use. In a more subtle way, the development of the welfare state implicitly provided a degree of common use from private property. This is because economic theory holds that all tax ultimately comes out of land rents, and public welfare is one indirect way in which some land rent finds its way in the hands of those in need in the society. Environmental activists are also placing limits on property. Legislation limiting exploitation and contamination has the effect of offering future persons equality of use with present owners.

The claim that absolute private ownership provides opportunities to everyone is theoretically problematic and ignores history (Sen 1981). Absolute private property tends to concentrate. This is because once a person's income exceeds that person's consumption, especially on a lifelong basis, excess income tends to be invested in additional property that magnifies the surplus income. This cycle of wealth appropriation accelerates but it is not available to those who consume all their income. The appropriation of property in this cycle must be from persons who would otherwise have used all of its income for consumption, which means their incomes will fall. An offshoot of this cycle is diminishing overall consumption that generates other economic problems. In

commercial societies this has been evident in England and post-war Japan. In societies where property wealth has been used as the foundation for political power, such as imperial China, pre-modern Japan, India and most empires, political power has tended to cycle through concentration, decadence and collapse (Campbell 1881) (Teggart 1969) (Sansom 1962). The American experiment is too young to provide reliable conclusions.

A separate challenge to the dominant doctrine of absolute property comes from customary people. Globally they display a curious uniformity regarding property, in all cases they reject personal profit-taking from property (Ezibalike 1994, Hall 1958). This is often expressed in their preference for communal property, but also when their property systems involve what may appear to be private ownership. People of the Murray Islands have private customary title to land, as do many other peoples, such as the Tongans, Nigerians, and Cook Islanders (Ezibalike 1994). Despite their private property, they do not profit from their land in the Western sense; especially they cannot sell their land or pass it on to others in the tribe for a profit. The land is always the property of the people (tribe) and reverts to the people, or the next generation, once the particular owner has no more use for it.

Some Asian countries still operate on tenure systems that resonate more with customary approaches than western. Rural areas in most south-east Asian countries have resisted freehold land systems, at least till very recently and much of rural India is very aware that God made the land, making it improper for private persons to benefit from it exclusively.

Some customary peoples practice land tenure systems that have little personal ownership at all. In these, the tribe owns the land and works it communally. Examples of this type of property system include most Australian aboriginal peoples, many North American peoples as well as several African tribes. These may appear to have no place for private ownership, however this would be a considerable oversimplification. Typically these are not beyond permitting private rights when the need arises. The Kakadu National Park in the Northern Territory of Australia is formally owned by its customary owners, however these both accept the responsibility to make the area open to non-aboriginal visitors and have allowed private development of tourist facilities on their land. In this way private ownership of the land is permitted within their culture while retaining the common use that follows from the rental from the land under the private developments. There are similar arrangements for mining purposes. There appear to be similar situations in North America and

other places where customary title land is leased for western commercial purposes.

The point here is that tenure systems that appear exclusively communal often have the capacity for private ownership. Some observers advising African or South Pacific peoples note that countries that preserve customary land tenure systems tend to be amongst the less developed. DeSoto (2000) is currently representative of this genre. Specific studies have tended to focus on specific difficulties, such as immature national valuation systems or poor contract arrangements to conclude that the best solution is the immediate adoption of western absolute private property. Where this advice has been taken the results have not been consistent with the advocates' promises. (McGreggor 1989) outlined the history of Hawaii where in 1848 freehold was adopted but by 1862 75% of the land was owned by foreigners who have effectively ruled the Island ever since. Conversely, about 8% of the land was retained as customary land, though it is mainly leased to western tenants who have developed it along western lines. Today the rent from this property supports the education needs of native Hawaiians. One can only imagine how much better the Hawaiian people would have been had they resisted freehold but offered instead long term leases to western developers. These instances show that common use can flow from situations where formal title remains with the community, while secure exclusive occupation is granted to individuals.

In St. Thomas's terms, exclusive occupation constitutes private ownership, while the formal title does more to ensure common enjoyment of the benefits of the land, than effect what would be normally be understood as ownership. The essential qualities of private ownership are exclusive occupation, rights to decide on use and an income from property proportioned to effort applied. Conversely, common use has more to do with a reasonable degree of universal solidarity in the enjoyment of latent benefits of the land and the prevention of disenfranchisement.

With this complication in terms resolved, present anthropological evidence suggests that private ownership and common use lies at the heart of customary tenure systems, making St. Thomas's approach the most numerically common property system in the world today. Although it is not associated with the greatest levels of economic activity, that does not mean that a transformation into the absolute property system would bring these benefits to the current owners. The example of Hawaii shows this to be unlikely. There is emerging evidence from the former eastern bloc countries that the effective privatisation of property there has done little better for the ordinary person.

The failure of socialist systems of property is not so much an argument against this general rejection of absolute private property, as evidence that there is something more required than a combination of private ownership and common use. Productive property in the eastern bloc could be described in terms that parallel instances of customary tenure. Formal ownership resided in the collective while facilities were locally managed. Beyond this apparent similarity, little else is common. State socialism is more than feudal, in that it takes control and reward to the highest central levels, much the same as mature capitalism, hence thwarting the subsidiarity that is implicit in analogous customary tenure arrangements. By specifying wages rather than rents, initiative is destroyed. Marx saw material satisfaction as the whole end of the human person and concluded that economic relations within an environment of conflict defined human society. Customary people reject these premises; the tribe, or human society, is the primary focus of action, implying an ethic of solidarity. Customary people are also more willing to recognise the spiritual dimension to society and property, a perspective alien to socialist thought at every level.

Capitalism finds initiative easy to foster because it offers the carrot of personal enjoyment of benefits from excellent performance. The shortcoming of capitalism is that maintaining that level of excellence is difficult in a transparent environment since innovation will be copied where possible. Success in capitalism largely relies on a combination of innovation and secrecy, or at least control. The capitalist uses the market as the sponge from which the maximum profit can be squeezed using an innovative commodity, or property arrangement, while neglecting to recognise that the market is ultimately composed of other human beings. In this way capitalist success is exclusively individualistic and necessarily opposed to solidarity. Absolute private property resonates with this view of relationship. Ricardo's rental theory can be used to show that land behaves as a monopoly even when owned by numerous individuals and its combined effect is to pressure wage levels down to normal cost levels, that is, subsistence.

St. Thomas's property theory must embody something more than positive institutional arrangements in order to be truly human. The medieval lord who embodied St. Thomas's theory was understood to be a Christian. To be Christian is to live the gospel and at the social level that is to freely will the good of the other in relationship, to will solidarity. (Rourke 1997) has shown that neoconservative economic theory sidesteps the necessity for conscious willing of the common good and in doing so departs from genuine Thomistic moral tradition. Others have developed this theme with respect to more recent theological positions to the same conclusion (Schlinder 1996). The native

tribesman is steeped in an ethic to pursue the good of the tribe and to treat others as one would treat family. Customary property tenure grows out of this ethic of solidarity that has grown entirely from practice completely separate from the gospel. To grow personally wealthy at the expense of a brother tribesman, or the children of a fellow tribesman, or one's own children is unthinkable. This is exactly what St. Thomas advocates when he admonishes the rich man not to use his property to cause the poor man harm.

In addition to customary peoples, (Zimmerman 1947) demonstrated exhaustively how all major cultures rose to their greatness using property institutions that harmonise with St. Thomas's dual theory. Zimmerman noticed that cultures pass through three phases that can be identified in terms of their approaches to family and property. In the first phase, what he called the trustee family, the living family sees itself as a trustee of the family treasure, that includes property. Property is passed down, not used for trade, and the produce flowing from its use is the common right of all family members. The common use extends from the immediate family to the clan, tribe or nation in these peoples and the larger organisational units are modelled on the institution of the family. Zimmerman named the second phase the domestic family where families understood themselves in immediate terms of those members currently alive. In this phase property could be traded for the gain of the family. The final stage was identified by what Zimmerman labelled the atomistic family where the family existed out of biological necessity alone and property was held individually and profits taken from its commercial use wherever available.

Zimmerman's analysis showed that every great civilisation grew when property was used as a tool for willing solidarity and decayed when property, and the family, decayed into radical individualism. When combined with customary cultures, this suggests that absolute private property is a sociological aberration; one that is linked with cultural demise. This suggests that St. Thomas's theory of property is empirically linked to human cultural flourishing, the perfection of human nature on earth. The fact that this goal of humanity is so elusive, and its attainment is frequently eclipsed by the excesses of human frailty should come as no surprise to the Christian who is aware of the reality of original sin. It only through grace that humans can rise above the temptation to use property as a weapon against others.

The Enlightenment thought from which grew the modern justifications of absolute private property, and indirectly socialist communist property, is premised on the liberation of the individual. It posits a humanism based on the common practice of humans and as such necessarily turns away from what

human are capable of becoming in favour of excusing and managing what humans prefer to do, especially in the absence of any transcendent reality.

If Zimmerman's analysis is correct, western culture is well on the way towards its own demise. His atomistic family is what is today called the nuclear family and the threshold between trustee and domestic families occurred half a millennia ago when property went from conditional to absolute. In the case of Rome, he puts the critical change in property and family at about 150BC, or about six centuries before the apparent collapse of the culture. That culture was replaced largely by a collage of tribal peoples who fortunately were Christianised before their cultural energies were spent on inter-tribal conflict. The contribution of Christianity is that it takes the social notion of the family that typically emerges as tribalism and provides a path for its universal application across the entire of humanity. In this way it takes the insights of human nature that are imperfectly evidenced in the cultures of customary peoples and offers the opportunity for its perfection through the inclusion of every other human person as deserving dignity and respect through solidarity.

The conclusion, that the truly human actor must consciously manage property to avoid exploiting his neighbour, means that the institution of property is a moral institution (since moral action is free willing of the good for the perfection of everyone affected). This is important for understanding other aspects of the economic problem. Three interrelated economic institutions are covered by St. Thomas, property, just price, and usury.

Just price has been excused by many recent scholars as either a complex moral justification of market price (Blaug 1991), or a primitive position that developed into free market pricing (Chafuen 1986), though both positions prove problematic. St. Thomas did advocate the determination of the marketplace to solve the practical problem of quantifying the just price of a thing, but this is not to say that he advocated market pricing as we know it today. Under perfect market competition market price may equal the just price in some cases, however few economists would be bold enough to suggest that any actual marketplace is perfect. Market imperfection may be measured by the amount of economic rent in the price. Economic rent is the gap between the price and the normal cost of production. Perfectly competitive markets have price levels equal to the normal costs of production and the excess above this level is economic rent, a measure of market imperfection. Since pure land property has no cost of production, its sale price must be all economic rent. Economic rent is also the more general case of usury, so that property price is linked to usury and just price. Modern economists are reluctant to pursue the problem of usury,

despite Pope Leo XIII describing rapacious usury as a major problem of the modern world.

Property sale price has been shown, both theoretically and experimentally, to proceed from property rents (Small and Oluwoye 1999; Small 2002). In the case of land, this means that land price will be derived from land rents, not costs of supply or simple market forces. It has already been shown that the administration of property and the provision for common use is a moral issue. This means that rent and land price are moral outcomes proceeding from the free willed decision of the person in control of property. Leaving land pricing to market forces ignores the fact that market forces in practice have more to do with power relations than economic determinates. The demand function is theoretically the result of utilitarian calculus, but this is not found in practice (Working 1927; Small 2000). Likewise, supply as the outcome of the marginalist pricing decisions of firms is both theoretically and empirically destitute (Jones 1976; Wicksteed 1914). In practice, the person who has the greater power in the relationship, commonly the vendor, and almost always the person with the greater economic resources, has the power to move price for personal advantage. Ignored in market thought is the fact that that person has the freedom *not* to use the commercial situation to exploit the other.

People seldom sell things commercially for less than the market dictates, even if to do so would still return a reasonable, though not excessive income. This is especially the case in land, even though holding land requires little effort or cost in most cases, despite often returning high capital gains. This is because, as Adam Smith noted, “...*every improvement in the circumstances of the society tends either directly or indirectly to raise the real rent of land, to increase the real wealth of the landlord...*” (Smith 1778/1910). It is hard to see the market returning a just price in land transactions when land rents naturally tend to absorb all the improvements gleaned through the effort and ingenuity of the whole society. To the extent that all produced commodities contain components of labour and land, the land component will complicate the otherwise unhindered ability of the market to return a just price, even under conditions of perfect efficiency. Evidence of this theoretical conclusion abounds in the general tendency of land property to increase in value above the general rate of price change in growing communities (Ball and Wood 1995).

The solution to the riddle of St. Thomas being able to rely on the marketplace to produce just prices in his time, but not in ours is that the market participants in his time were governed by their faith and culture and not simply by market forces. Current trends in theology are emphasising the importance of freely choosing God and His ways, in the marketplace this translates into freely

choosing not to exploit the profit potential of the market, but setting prices that are sufficient for one's needs. This is also why socialist state control is inhuman to the extent that it too denies the human actor freedom to choose virtue. Customary peoples recognise this necessity of human action in their understanding of the tribe and the individual's relation to it. They are acculturated into solidarity and demonstrate that it is not a Christian, but a human, principle.

St. Thomas was not outlining the practical principles of medieval economics, but human economics. The fact that he, like other Christian thinkers, was able to give it its most complete explanation within Christian theology is not to say that it was a narrowly Christian principle, but rather that these humanist principles are most completely understood within the framework of Christianity. This is why his contemporary, St. Bonaventure, was able to reach the same economic principles without the Aristotelian method by grounding his thought on the crucifix and what it implies (Langholm 1992). Our current Holy Father has powerfully reminded the world that Christ came to show humanity how to be human and St. Bonaventure used that insight to show that it leads to the same moral conclusions as approaches based on Aristotle. St. Thomas and St. Bonaventure show a synthesis of thought that brings together the secular, the empirical and the transcendent. They demonstrate that to be truly human with respect to property is an exercise in freedom, but like the free choice of Christ in accepting the cross and the fiat of Mary, it is an active and sacrificial use of that freedom that brings human perfection even when the matter is as mundane as setting the rent.

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