

## CHAPTER XX

### THE LEGAL LIMITATION OF FORTUNES

IF the taxation and other measures of reform suggested in Section I were fully applied to our land system; if coöperative enterprise were extended to its utmost practicable limits for the correction of capitalism; and if the wide extension of educational opportunities, and the elimination of the surplus gains of monopolies restricted the profits of the business man to an amount strictly commensurate with his ability and risks—if all these results were accomplished the number of men who could become millionaires through their own efforts would be so small that their success would arouse popular applause rather than popular envy. Their claim to whatever wealth they might accumulate would be generally looked upon as entirely valid and reasonable. Their pecuniary eminence would be pronounced quite as deserved as the literary eminence of a Lowell, the scientific eminence of a Pasteur, or the political eminence of a Lincoln. In such conditions there could be no disconcerting discussion of the menace of great fortunes.

In the meantime, these reforms are not realized, nor are they likely to be even approximately established within the present generation. For some time to come it will be possible for the exceptionally able, the exceptionally cunning and the exceptionally lucky to accumulate great riches through clever and fortuitous utilization of special advantages, natural and otherwise. Moreover, a great proportion of the large fortunes already in existence will persist, and will be transmitted to heirs who will in many cases

cause them to increase. Can nothing be done to reduce these great accumulations? If so, is such a proceeding socially and morally desirable?

*The Method of Direct Limitation*

The law might directly limit the amount of property to be held by any individual. If the limit were placed fairly high, say at one hundred thousand dollars, it could scarcely be regarded as an infringement on the right of property. In the case of a family numbering ten members, this would mean one million dollars. All the essential objects of private ownership could be abundantly met out of a sum of one hundred thousand dollars for each person. Moreover, a restriction of this sort need not prevent a man from bestowing unlimited amounts upon charitable, religious, educational, or other benevolent causes. It would, indeed, hinder some persons from satisfying certain unessential wants, such as the desire to enjoy gross or refined luxuries, great financial power, and the control of immense industrial enterprises; but none of these objects is necessary for any individual's genuine welfare. In the interest of the social good such private and unimportant ends may properly be rendered impossible of realization.

Such a restriction would no more constitute a direct attack upon private ownership than limitations upon the use and kinds of property. At present a man may not do what he pleases with his gun, his horse, or his automobile, nor may he invest his money in the business of carrying the mails. The limitation of fortunes is just what the word expresses, a *limitation* of the right of property. It is not a denial nor *destruction* of that right. As a limitation of the amount to be held by an individual, it does not differ in principle from a limitation of the kinds of goods that may become the subject of private ownership. There is nothing in the nature of things nor in the purpose of property to indicate that the right of ownership is unlimited in quantity any more than it is in quality. The

final end and justification of individual rights of property is human welfare; that is, the welfare of all individuals severally and collectively. Now it is quite within the bounds of physical possibility that the limitation under discussion might be conducive to the welfare of human beings both as individuals and as constituting society.

Nevertheless the dangers and obstacles confronting any legal restriction of fortunes are so real as to render the proposal socially inexpedient. It would easily lend itself to grave abuse. Once the community had habituated itself to a direct limitation of any sort, the temptation to lower it in the interest of better distribution and simpler living would become exceedingly powerful. Eventually the right of property might take such an attenuated and uncertain form in the public mind as to discourage labor and initiative, and thus seriously to endanger human welfare. In the second place, the manifold evasions to which the measure would lend itself would make it of very doubtful efficacy. To be sure, neither of these objections is absolutely conclusive, but taken together they are sufficiently weighty to dictate that such a proposal should not be entertained so long as other and less dangerous methods are available to meet the problem of excessive fortunes.

Four of the nine members of the Federal Commission on Industrial Relations have suggested that the amount of property capable of being received by the heirs of any person be limited to one million dollars.<sup>1</sup> If we assume that by heirs the Commission meant the natural persons to whom property might come by bequest or succession, this limitation would permit a family of ten persons to inherit one hundred thousand dollars each, and a family of five persons to obtain two hundred thousand dollars apiece. Would such a restriction be a violation of the right of private ownership? The answer depends upon the effects of the measure on human welfare. The rights of bequest and succession are integral elements of the right of owner-

<sup>1</sup> Final Report, p. 32.

ship; hence they are based upon human needs, and designed for the promotion of human life and development. A person needs private property not only to provide for his personal wants and those of his family during his lifetime, but also to safeguard the welfare of his dependents and to assist other worthy purposes, after he has passed away. Owing to the uncertainty of death, the latter objects cannot be adequately realized without the institutions of bequest and succession.

All the necessary and rational ends of bequest and succession could be attained in a society in which no man's heirs could inherit more than one million dollars. Under such an arrangement very few of the children of millionaires would be prevented from getting at least one hundred thousand dollars. That much would be amply sufficient for the essential and reasonable needs of any human being. Indeed, we may go further, and lay down the proposition that the overwhelming majority of persons can lead a more virtuous and reasonable life on the basis of a fortune of one hundred thousand dollars than when burdened with any larger amount. The persons who have the desire and the ability to use a greater sum than this in a rational way are so few that a limitation law need not take them into account. Corporate persons, such as hospitals, churches, schools, and other helpful institutions, should not, as a rule, be restricted as to the amount that they might inherit; for many of them could make a good use of more than the amount that suffices for a natural person.

So much for the welfare and rights of the beneficiaries of inheritance. The owners of estates would not be injured in their rights of property by the limitation that we are here considering. In the first place, the number of persons practically affected by the limitation would be extremely small. Only an insignificant fraction of property owners ever transmit or expect to be wealthy enough to transmit to their families more than one million dollars. Of these few a considerable proportion would not be

deterred by the million dollar limitation from putting forth their best and greatest efforts in a productive way. They would continue to work either from force of habit and love of their accustomed tasks, or from a desire to make large gifts to their heirs during life, or because they wished to assist some benevolent enterprise. The infinitesimally small number whose energies would be diminished by the limitation could be treated as a socially negligible element. The community would be better off without them.

The limitation of inheritance would, indeed, be liable to abuse. Circumstances would undoubtedly arise in which the community would be strongly tempted to make the maximum inheritable amount so low as to discourage the desire of acquisition, and to deprive heirs of reasonable protection. While the bad effects of such a limitation would not be as great as those following a similar abuse with regard to possessions, they are sufficiently grave and sufficiently probable to suggest that the legal restriction of bequest and succession should not be considered except as a last resort, and when the transmission of great fortunes had become a great and certain public evil.

It seems reasonable to conclude, then, that neither the limitation of possessions nor the limitation of inheritance is necessarily a direct violation of the right of property, but that the possible and even probable evil consequences of both are so grave as to make these measures of very doubtful benefit. Whether the dangers in question are sufficiently great to render the adoption of either proposal morally wrong, is a question that cannot be answered with any degree of confidence. What seems to be fairly certain is that in our present conditions legislation of this sort would be an unnecessary and unwise experiment.

#### *Limitation Through Progressive Taxation*

Is it legitimate and feasible to reduce great fortunes indirectly, through taxation? There is certainly no objection to the method on moral or social principles. As we

have seen in chapter viii, taxes are not levied exclusively for the purpose of raising revenue. Some kinds of them are designed to promote social rather than fiscal ends. Now, to prevent and diminish dangerous accumulations of wealth is a social end which is at least as important as most of the objects sought in license taxes. The propriety of attempting to attain this end by taxation is to be determined entirely by reference to its probable effectiveness.

The method of taxation available is a progressive tax on incomes, inheritances and excess profits. By a progressive tax is meant one whose rate advances in some definite proportion to the increases in the amount taxed. For example, a bequest of \$100,000 might pay one per cent; \$200,000, two per cent; \$300,000, three per cent, and so forth. The reasonableness of the principle of progression in taxation has been well stated by Professor Seligman: "All individual wants vary in intensity, from the absolutely necessary wants of mere subsistence to the less pressing wants which can be satisfied by pure luxuries. Taxes, in so far as they rob us of the means of satisfying our wants, impose a sacrifice upon us. But the sacrifice involved in giving up a portion of what enables us to satisfy our necessary wants is very different from the sacrifice involved in giving up what is necessary to satisfy our less urgent wants. If two men have incomes of one thousand dollars and one hundred thousand dollars respectively, we impose upon them not equal but very unequal sacrifices if we take away from each the same proportion, say ten per cent. For the one thousand dollar individual now has only nine hundred dollars, and must deprive himself and his family of necessities of life; the one hundred thousand dollar individual has ninety thousand dollars, and if he retrenches at all, which is very doubtful, he will give up only great luxuries, which do not satisfy any pressing wants. The sacrifice imposed on the two individuals is not equal. We are laying on the one thousand dollar man a far heavier sacrifice than on the one



hundred thousand dollar man. In order to impose equal sacrifices we must tax the richer man not only absolutely, but relatively, more than the poor man. The taxes must be not proportional, but progressive; the rate must be lower in the one case than in the other.”<sup>1</sup>

The principle of equality of sacrifices which underlies the progressive theory does not justify the leveling and communistic inferences that have sometimes been brought against it. Equality of sacrifice does not mean equality of satisfied, or unsatisfied, wants after the tax has been collected. If Brown pays a tax of one per cent on his income of two thousand dollars, it does not follow that Jones with an income of ten thousand dollars should pay a sufficiently high rate to leave him with only the net amount remaining to Brown; namely, \$1,980. Equality of sacrifice means proportional equality of burden, not equality of net resources after the tax has been deducted. The object of the progressive rate is to make relatively equal the sacrifices *caused by the tax itself*, not to equalize burdens or unsatisfied wants.

Another objection to progressive taxation is that it readily lends itself to confiscation of the largest incomes. All that is necessary to produce this result is to increase the rate with sufficient rapidity. This could be accomplished either by large steps in the rate itself or by small steps in the income increases which formed the basis of the advances in the rate. If the present Federal surtax of one per cent on incomes above \$10,000 should thereafter increase geometrically with every increase of income specified in the schedules, it would be 256 per cent on incomes above \$20,000! Should the rate increase arithmetically with every additional \$1,000 of income it would reach 100 per cent on incomes above \$60,000!

To this objection there are two valid answers. Even if the rate should ultimately reach one hundred per cent it

<sup>1</sup> “Progressive Taxation,” pp. 210, 211; cf. Vermeersch, “*Quaestiones de Justitia*,” pp. 94-126.

need not, and on progressive principles it should not, effect confiscation of an entire income. The progressive theory is satisfied when the successive rates of the tax apply to successive increments of income, instead of to the entire income. For example, the rate might begin at one per cent on incomes of one thousand dollars, and increase by one per cent with every additional thousand, and yet leave a very large part of the income in the hands of the receiver. Each one thousand dollars would be taxed at a different rate, the first at one per cent, the fiftieth at fifty per cent, and the last at one hundred per cent. If the hundred per cent rate were applied to the whole of the higher incomes, it would be a direct violation of the principle of equality of sacrifice. In the second place, the progressive theory forbids rather than requires the rate to go as high as one hundred per cent. While the sacrifices imposed by a given rate are greater in the case of small than of large properties, they become approximately equal as between all properties above a certain high level. After this level is reached, additional increments of wealth will all be expended either for extreme luxuries, or converted into new investments. Consequently they will supply wants of approximately equal intensity. For example, the wants dependent upon a surplus of \$25,000 in excess of an income of \$100,000, and the wants dependent upon a surplus of \$75,000 above the same level do not differ materially in strength. To diminish these surpluses by the same per cent, say, ten, would impose equal burdens.

In the years immediately following the Great War, progressive Federal taxes in the United States attained very high levels. On incomes, the maximum normal tax was twelve per cent and the maximum surtax, sixty-five per cent. Incomes above \$1,000,000 paid seventy-seven per cent of the amount by which they exceeded that figure. In 1919 the *average* rate on the *whole* of such incomes was 64.87 per cent. The highest rate in a Federal inheritance tax was fifty per cent, applying to the amounts by



which estates exceeded \$5,000,000. In 1922 the average rate collected on the *whole* of such estates was 19.49 per cent. In the short period when a progressive tax was levied on the excess profits of business concerns, those profits which represented the highest rate of return on an investment paid a tax of eighty per cent.

Although these three classes of progressive taxes were very heavy, those on incomes being the highest known to history, no competent authority seriously questioned them on the score of justice. The excess profits tax has been abolished, which is a pity, because it is one of the fairest and least burdensome ways of collecting revenue. It does not touch moderate profits, and the rates increase with increases in the per cent of profit. The highest normal rate in our Federal income tax is now only five per cent, while the highest surtax is but twenty per cent, applying to incomes above \$100,000. The Federal inheritance tax has been reduced to a maximum of twenty-five per cent. Obviously the existing income and inheritance rates could be raised considerably without violating either economic or ethical principles of taxation.

Great fortunes cannot be prudently prevented or reduced by the method of direct limitation. These ends can, however, be attained, so far as may be necessary, through progressive taxes upon incomes, inheritances and excess profits.