Book II

THE TRANSITION

CHAPTER I

THE LAND AND SOCIETY

THE annual value of unimproved land, or ground-rents, has long been recognized as personal property. These values, moreover, may represent capital recently invested, and in many instances appear in the form of corporate wealth, which, through institutions of trust, exerts a wide influence throughout the industrial life of a population. The absorption of such property by the State suggests two questions: one, with reference to the right of society to take such a step, and another, with reference to its economic consequences. The questions here occur, whether the absorption of land values does not require illegitimate confiscation of private property; whether society should compensate owners affected; and whether the financial difficulties in such a change would not outweigh the anticipated advantages. In other words, whether a system of transposition may be conceived which does not present too great danger in its effect upon the industrial and financial life of a society.

The following passage from Blackstone[1] may be cited with reference to the right of society over the land it occupies. "There is nothing which so generally strikes the imagination, and engages the affections of mankind, as the right of property; or that sole and despotic dominion which one man claims and exercises over the external things of the world, in total exclusion of the right of any other individual in the universe. And yet there are very few that will give themselves the trouble to consider the original and foundation of this right. Pleased as we are with the possession, we seem afraid to look back to the means by which it was acquired, as if fearful of some defect in our title; or at best we rest satisfied with the decision of the laws in our favour, without examining

[1] Blackstone's *Commentaries on the Laws of England*, Bk. II., ch. i., p. 1.

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the reason or authority upon which these laws have been built. We think it enough that our title is derived by the grant of the former proprietor, by descent from our ancestors, or by the last will and testament of the dying owner; not caring to reflect that (accurately and strictly speaking) there is no foundation, in nature or in natural law, why a set of words upon parchment should convey the dominion of land: why the son should have a right to exclude his fellow-creatures from a determinate spot of ground, because his father had done so before him: or why the occupier of a particular field or of a jewel, when lying on his death-bed, and no longer able to maintain possession, should be entitled to tell the rest of the world which of them should enjoy it after him. These inquiries, it must be owned, would be useless and even troublesome in common life. It is well if the mass of mankind will obey the laws when made, without scrutinizing too nicely into the reason for making them. But when law is to be considered not only as a matter of practice, but also as a rational science, it cannot be improper or useless to examine more deeply the rudiments and grounds of these positive constitutions of society.

"In the beginning of the world, we are informed by holy writ, the all-bountiful Creator gave to man 'dominion over all the earth, and over the fish of the sea, and over the fowl of the air, and over every living thing that moveth upon the earth.' This is the only true and solid foundation of man's dominion over external things, whatever airy metaphysical notions may have been started by fanciful writers upon this subject. The earth, therefore, and all things therein, are the general property of all mankind, exclusive of other beings, from the immediate gift of the Creator."

Thus, in seeking the ultimate foundations upon which property rights in land repose, the position is met, stated in Blackstone's words, that the earth is the "general property of all mankind." It seems necessary, therefore, to accept the administrative decisions of society as the interpretation of these rights, from which there is, apparently, no appeal.

Without going into elaborate discussion of Roman law in connexion with land, it may be said that modern European systems of land tenure are derived from Rome through the feudal systems, which involved the holding of land upon condition of certain payments to the Crown, or to society. These payments often, in fact nearly always, took the form of military service. Blackstone[1] may again be cited: "The other ancient

[1] Ibid. Bk. I., ch. viii., pp. 309-310.

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levies were in the nature of the modern land-tax: for we may trace up the original of that charge as high as to the introduction of our military tenures: when every tenant of a knight's fee was bound, if called upon, to attend the king in his army for forty days in every year. But this personal attendance growing troublesome in many respects, the tenants found means of compounding it, by first sending others in their stead, and in process of time by making a pecuniary satisfaction to the crown in lieu of it. This pecuniary satisfaction at last comes to be levied by assessments, at so much for every knight's fee, under the name of scutages; which appear to have been levied for the first time in the fifth year of Henry the Second, on account of his expedition to Toulouse, and were then, I apprehend, mere arbitrary compositions, as the King and the subject could agree. . . . Of the same nature with scutages upon knight's fees were the assessments of hydage upon all other lands, and of talliage upon cities and burghs. But they all gradually fell into disuse upon the introduction of subsidies, about the time of King Richard II. and King Henry IV. . . . By a variety of statutes under Edward I. and his grandson, it was provided that the King shall not take any aids or tasks, any talliage or tax, but by the common assent of the great men and Commons in Parliament."

But one result could be expected from these changing conditions: a slow but no less certain shifting of original public burdens from the land to the people. The feudal system, which as Blackstone[1] says, Sir Henry Spelman does not scruple to call the "law of nations in our western world," required the systematic allotment of lands in return for service rendered to the community. "These allotments were called *feoda*, feuds, fiefs, or fees; which last appellation in the northern language signifies a conditional stipend or reward. Rewards or stipends they evidently were," says Blackstone, "and the condition annexed to them was, that the possessor should do service faithfully, both at home and in the wars, to him by whom they were given; for which purpose he took the *juramentum fidelitatis*, or oath of fealty: and in case of the breach of this condition and oath, by not performing the stipulated service, or by deserting the lord in battle, the lands were again to revert to him who granted them."

The feudal system, in its original form, thus derived a large portion of the national resources from the land; and this portion, with changing conditions, has been much diminished, until out of relation to the orig-

[1] Ibid. Bk. II., ch. iv., pp. 43, 45.

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inal obligations. Says Cobden,[1] in this connexion: "For a period of one hundred and fifty years after the conquest, the whole of the revenue of the country was derived from the land. During the next hundred and fifty years it yielded nineteen twentieths of the revenue — for the next century down to the reign of Richard III, it was nine tenths. During the next seventy years to the time of Mary it fell to about three fourths. From this time to the end of the Commonwealth, land appeared to have yielded one half the revenue. Down to the reign of Anne, it was one fourth. In the reign of George I it was one fifth. In George the Second's reign, it was one sixth. For the first thirty years of George the Third's reign, the land yielded one seventh of the revenue. From 1793 to 1816 (during the period of the property tax) land contributed one ninth. From that time to the present, one twenty-fifth only of the revenue had been derived directly from land. Thus the land, which anciently paid the whole of taxation, paid now only a fraction or one twenty-fifth, notwithstanding the immense increase that had taken place in the value of the rentals. The people had fared better under the despotic monarchs than when the powers of the state had fallen into the hands of a landed oligarchy, who had first exempted themselves from taxation, and next claimed compensation for themselves by a corn law for their heavy and peculiar burdens."

Again, between land and other forms of property, there exists a fundamental difference; a difference which suggests that "equity and right reason" demand administrative distinctions between land and other wealth. Says Judge Arthur O'Conner[2] K. C., with reference to this distinction:

"Now, between land and every other form of property there is an obvious, abiding, and essential difference. Every other form of property is transitory, wasting and destructible, the temporary production of human industry, obtained by labour out of the material which the land supplies; but the land is not of human production: and as no man made it so, no man can destroy it; 'no man, however feloniously inclined, can run away with an acre of it.' Man's very body is built up of its substance; he is taken from it, and will return to it; while he lives, he must live and labour on its surface. Equity and right reason would appear to suggest that the product of human industry should be the absolute property of the person or persons that created it, whether the

[1] *Speech in the House of Commons*, Monday evening, March 14th, 1842.
[2] *Final Report of the Royal Commission on Local Taxation*, p. 179.

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creation be of food, or habitation, or instrument, or any other thing. But with land it is different. Equity and right reason here suggest that, as access to the face of the globe is for mankind a necessary condition of existence, and yet land is incapable of creation by human industry, the same rule of absolute and exclusive ownership cannot apply. On the point the law of England is in accord with common sense; and according to that law, land is not the subject of absolute property. 'No man is, in law, the absolute owner of lands. He can only hold an estate in them,' and that estate he holds under the Crown as representative of the community.

"It is then in accordance at once with reason, equity, and the law, to say that England belongs to the English; that the land of England, with all that is beneath its surface, and all that it produces by the unassisted force of nature belongs to the people of England. Whatever may at any time be the authorised occupation of its surface, or any part of it, however turned to account — well or ill, or not at all — however its resources, in whatever hands, may be developed or neglected, it is true to say collectively that the land of England belongs to the people of England."

The following conclusions are thus suggested:

1. The ownership of land is finally vested in the society which occupies it.
2. The administrative decisions of society, through its authorized representatives, are the only interpretation of this right of ownership.
3. The right of society to assess contributions upon the land under its jurisdiction is not only complete, but the foundation of present system of land tenure.

It seems unessential to extend inquiry farther. European systems are derived through the feudal system from a common origin in Rome. Eastern systems seem more or less analogous to earlier European methods.

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