Property as a Condition of Liberty

I. Introduction

Property belongs to someone. A human person can be the owner, or just as well, a collective such as a tribe, corporation, or state. In addition to ownership, property also signifies a set of socially acknowledged relationships pertaining to the use of things we own. Whether material or intellectual, property serves a manifold of individual and common purposes in a community. It is an invariant in human experience. As one scholar put it, "images of a property-less world of 'natural man' are a mirage." These initial observations indicate the complexity of the notion of property. It is a term that expresses an invariant disposition in human affairs to establish commonly acknowledged or defined interrelationships that obtain between persons and things in given communities relative to the production and enjoyment of wealth.

For the purposes of this discussion, I shall consider property and ownership as specifically human phenomena. Nature, however, provides the background to our understanding of property. In the animal world the phenomena of territoriality, possession, and occupation are universal. Animals carve out a place for themselves, limiting their vulnerabilities and securing opportunities for nutrition and reproduction. Many also provide for themselves with the building of webs, nests, lodges, or warrens. It is interesting to note how the English word "to possess," the Latin "possidere," and the German "besitzen" derive from the same Indo-European root *misad* or *mizdo*, which means to nest or to sit. The concept of nesting is suggestive, for it unites the idea of "holding one's place" with that of "nourishing the life of one's kind." Another linguistic point to observe is the connection in English between "to occupy" meaning to hold a certain place and "occupation" meaning an activity that generate one's livelihood. Nature and language show a primitive connection between holding one's place or territory and providing for one's self and one's kind. The specifically human notions of ownership and property that are the focus objects of this inquiry no doubt rise from more primitive, elementary notions of place and the embodied life of animals. I am reminded of Mary Midgely's opening sentence in her *Man*
and Beast: “We are not just rather like animals; we are animals.” And she continues: “Our difference from other species may be striking, but comparisons with them have always been, and must be, crucial for our view of ourselves.”2 As the argument of this paper continues, attention will turn to the more rational or spiritual dimensions of the specifically human institutions of ownership and property. The personalist concerns of our inquiry, however, are not intended to deny those commonalities man shares with the beasts.3 Its interest, however, is in the meanings as they have entered into the rational, spiritual sphere of human existence.

I hope to show how notions of personal freedom and responsibility lie at the origin of the concept of property. I wish to explore these notions at the conceptual point where ownership and property enter into our ordinary experience, where the idea of property is bound up in laws and customs of civil associations that regulate the ownership and use of material things. What takes on the form of “property” by virtue of legal status, however, is something more primitive or foundational, namely, an external thing identified as “one’s own.” The attribute of ownership is foundational to that of property. The idea of “one’s own,” for its part, rests upon or, better, emerges from the even prior notions of responsible agency and productive activity. These notions, in turn, originate in even more foundational notions of personal being and a meaningful cosmos.

In developing the argument of the paper, I freely elaborate ideas introduced by Jacques Maritain in a rudimentary theory of property which he appended to his book, Freedom in the Modern World.4 Maritain himself recapitulates certain fundamentals drawn from Thomas Aquinas.5 In Maritain’s overarching intellectual vision, the idea of personal freedom looms large. As he understands it, man

3 For instance, attention to the necessities of animal possession and territoriality would bring out the attribute of particularity evident in the “belonging” of things and regions that is part of animal life. Such particularity is itself grounded in the more essential particularity of the categories of body and place. If these notions of embodied particularity which are universal features of the natural world become incorporated into the specifically human experience of property, it is because of man’s ability to lift them into the sphere of human persons. It is the burden of this paper to draw out those personalist dimensions of property.
II. Intended for All

"Man-in-the-world" sets the horizon for our consideration of property. Not only do we find ourselves in the world, we adapt ourselves to its necessities and contingencies. And the world for its part proves to some degree pliable. Human life in the world appears as a special, even exaggerated and narrow instance of the broader fact of nature's hospitality to vegetative and sentient life. What mankind adds into the mechanisms of adaptation is self-conscious and self-determining creative reason. Men and women take responsibility for their measure out of world-making. The notion of property developed in this paper grows out of this expansive background notion of the world as intended for human life. The original intention does not discriminate among human persons. The potentialities of the world's resources to be developed for the ends and purposes of mankind are potential to any individual of the human species: grain grown on fertile earth nourishes any hungry person, and a house in the city will shelter any man, woman, or child from the elements. Considerations of "property" have to do with rational and social determinations mediating these prordial potentialities or intentionalities of the world to the concrete ways that men and women actually pursue their needs and interests.

The Aristotelian-Thomistic philosophical tradition refers to these ideas as the universal destination or vocation of the material world to human well-being. Maritain introduces it as the first of what he calls "fundamental principles in the metaphysic of human life and action." He holds that material things have inscribed into them from the beginning a purposiveness to serve the needs and interests of all mankind. "[E]very person by reason of his membership in the human species ought in one way or the other to derive advantage from the dedication of material things to the good of the human race." The point here is that despite whatever considerable justification there might be in asserting proprietary rights in the ownership and use of external things, one's individual dominion is conditioned in two ways. First of all, it is relativized by the final causality of external things themselves, that is, by the fact that in the divine act of creation material things are destined to the service of the needs and interests of every person in the human community. As creator of all, God possesses the things of the world principally or absolutely, whereas man's possession is secondary or relative in that it is received as a feature of the divinely ordered, purposed universe. Secondly, the dominion that man might enjoy over the material things of the world is a share in God's own exercise of providential care for the created world. Insofar as man himself is made in God's own image and likeness, his development and use of material things is meant to advance the good of God's original intention. Along with the transmission of power or dominion over external things comes a due measure or share of providential responsibility. This notion of responsibility informs Aquinas's insistence that, with respect to the use of external things, "man ought not to possess external things as his own, but as common, so that he is ready to communicate them to others in their need." In the mastery over exterior things, the world and its resources, men and women express their personal nature as individuals who take responsibility for their own well-being and that of others who fall within his sphere of responsibility. The limits and the content of that responsibility are not at all easy to see.

In sum, men and women exploit the earth's resources to meet their needs within a larger purposive or teleological pattern of creation. The striking point to the principle is its assertion of a "rightful destination" or ordination of the good of material things to any human person in general and to no one in particular. Such purposes, "inscribed in the nature of things" are brought to term through human work and action. What subsequently emerge as ownership relationships and even later as property relationships will assume their identities over and against the manifold of the world's teleological potentialities and the various ways mankind's world-making takes up its responsibilities before the world's intentions.

III. Work Generates Ownership

The second stage of the argument builds upon a fact and a claim. The fact is that work is required if the world's material resources are to meet mankind's needs and interests. The claim is that it is work that generates ownership. In making the claim, ownership needs to be understood as more than the simple possession of thing or the mere occupying of a territory. Also, the meaning of

11 Spaemann, p. 216.
12 Maritain, p. 193.
13 Maritain, p. 194.
15 Thomas Aquinas: "non debet homo habere res exteriores ut proprias, sed ut communem: ut scilicet de facili aliquis eas communicet in necessitates aliorum" (ST 2-2, 66, 2).
16 Maritain, p. 194.
work must be extended beyond the idea of purposive rearrangement of material resources in the service of life's interests. Drawing on Aquinas again, Maritain proposes the following rationale: because there is a (universally distributed) right to the use of the world's material goods, men and women, as individuals or collaborating as a collective, must therefore have the power to procure, manage, and administer external things. Wheat needs to be milled, grapes fermented, and timber planed. And these goods need to find their way into the human economy. Were men to lack the capability to interfere, change, elaborate, and distribute the external material things, then the world of artifice that feeds, shelters, heals, entertains, and schools as would simply not exist. One sees how such specifically human activities lift things out of the status of "the purely natural state." What needs to be seen more clearly is how ownership, that is, the assertion of the distinction between "mine and thine" among material things, proceeds from the seizing and transformation of material reality for use.

We have already noted that human artifice readsies matter for the ends and purposes of human life and fits it into the web of the human economy. But what is it that requires the introduction of the language of appropriation - of possession, ownership, "one's own"? How does "mine/ours" - precisely as opposed to "yours/their" - come to belong to material things? What accounts for ownership? The first step is to take a closer look at the meaning of "ownership." The second step is to understand how it flows from productive agency.

Meaning of "one's own." The idea of "one's own" represents an affirmation of an immediate connection between unmediated individual self-reference and some particular external thing (as in the assertion that "this garden is mine"), and it simultaneously sets that me-mine dyad alongside the exclusion of another's unmediated self-reference to the same individual thing (as in the assertion that "this same garden is not yours"). With such a move, the prior, foundational relation of "common to all," relative to any human person, recedes into the background. A new relation is installed in the foreground: one individual person (or one determinate group of persons) asserts an exclusive tie to a portion of the material things of the world. Two personal relationships now qualify external things: at the foundation lies "... for all" (in accordance with the principle of common destination) over which is now layered "... for me" ("one's own," by virtue of appropriation).

The term "one's own," is grammatically interesting. The word "own" operates semantically as an intensifier. In the fuller expression "one's own," it intensifies the subjective genitive case of "one's." The expression is not a simple redundancy: it emphatically highlights the genitive linkage of thing (possessed) to person (possessor). Absent the self-conscious, mutually opposed relation between two persons relative to the same external object, there would be no concept of ownership. It is the act of appropriation that inserts me-mine into our discourse and actions. And, it thereby displays the interpersonal context and the asymmetrical point of view of the first-person "me" or "I" relative to external, commonly accessible things. The principle of appropriation only makes sense within the context of a mutual recognition of two persons, one's self and another's self, together with the first person's assertion of an immediate tie of me to what-is-mine and the corresponding disassociation of you (or him/her/them) from the same individual thing. Ownership takes on its meaning within such an interpersonal structure.

The specifically interpersonal character of appropriation can be brought out in the following reflections. One defends one's possessions against the predations of animals and the ruin of bad weather. Their violations of my appropriations, however, stay on the non-personal, natural level. The loss one suffers through their agency is not theft. In such cases, one loses what is "one's own" by its falling back into the status of what is natural. Raccoons and tornadoes do not recognize the claims of "mine and thine." By contrast, theft and vandalism occur wholly within an acknowledged interpersonal context. They do not just take away or ruin the external things; they attack the interpersonal reality of ownership. Civil associations are, in part, structured in the shared acknowledgement and maintenance of "mine and thine" among persons and things. Victims of theft and vandalism do not just suffer loss; they are violated. The unmistakable sense of violation or personal assault makes sense in the light of the personal, and indeed, interpersonal, foundations of ownership and property.

Another interesting feature of ownership is the fact that, once established, it can be transferred. One and the same item which now belongs, say, to Martha can be transferred to Quinn. The person (owner) in the "me-mine" relationship is substitutable, while the external thing (what is owned) remains constant. Societies invent different modes of transfer, as for example, buying, inheriting, and receiving as a gift. Any instance of transfer of ownership to a new owner involves a prior ownership, and cultures and societies devise various ways of remembering or recording title to ownership. Reflection on the process of ow-
nership transfer presumes that the attribute “one’s own” has been established in the first instance.

It is hard to imagine what meaning “one’s own” could have in a solipsist’s world. There would be no basis for exclusion (mine, not yours), no possibility of violation since all loss would proceed from natural causes and no interpersonal bonds would be ruptured, and no possibility for transfer of ownership to another person.

Finally, I should emphasize that the term “ownership” is used here with artificial restraints. In ordinary usage ownership carries with it notions of dominion and proprietary rights. One’s property and what is one’s own are commonly understood synonymously. At this stage in our inquiry, however, “one’s own” is to be taken in a more elemental sense to which have not been added the notions of use and dominion, which are proper to the fuller idea of property.

Meaning of “work”. Against the background of the understanding of ownership as a mutually recognized interpersonal relationship, we consider the meaning of work and how it lies at the origin of appropriation. The sort of activity that we are calling work is one of several broad ways that the operation of reason enters into the fabric of human affairs. Within the broad Aristotelian-Thomistic classification of specifically human activities, we distinguish production (art/poesis), action (ethics and politics/praxis), and contemplation (theoretical science and philosophy/theoria). Reason operates every bit as much in the fabrication of a bridge and in the performance of a just deed, as in the reflective wisdom of the sages. Our current philosophical discussion of property, for example, would represent an exercise of contemplative reason. By contrast, the use of property for the satisfaction of needs and interests of oneself, one’s family, and the community at large would be action that carries us into the sphere of ethics and politics as governed by the virtues of justice and benevolence. Thought also goes into the transformation of the resources of the world into material goods, and as well into their procurement, administration, and management. In terms of its effect, productive activity communicates form to matter in ways that would not happen, or at least not dependably so, by the determinisms of natural necessity or the happenstances of chance. The formative energy in artifice derives from the independent judgment and imaginative vision which guide the laborer, worker, craftsman, or artist in the efforts he or she expends in the elaboration of the material resources found ready at hand. Judgment and vision themselves have their origins in the power of reason that belongs to the spiritual substance of the human person. Art or productive activity, therefore, is one of the distinctive ways that reason manifests itself in human affairs.

20 We have used the different terms, “art,” “work,” and “production,” as synonyms. The differences of nuance are as follows. Art is an intellectual habitus, the acquired quality of mind, the perfected reason that artists or workers activate in producing and servicing their products. Work is behavior; it is personal effort guided by art. Production refers to activity of making or servicing somewhat more abstractly than “work.” Production expresses the activity from the vantage point of the product made, whereas “work” expresses it more from the personal vantage point of the working agent, the worker. In actual usage, these finer distinctions are often ignored.
service of human needs and interests. It is easy to see in the fact of a house, a power line, or a harness the handiwork of some human agent. The mind leaps from artifact to artificer. What is not so easy to see is how this inference entails ownership. What claim to ownership is staked out by the imputation of responsible agency? In the act of production there occurs a transfer of identity from maker to made-thing: work brings about an identity between the person of the maker and the property of his artifact.\(^{21}\) New things come from poesis. The communication of form from the maker’s mind to the matter-at-hand in the act of production establishes the fundamental basis for the maker’s claim that “this object is mine.” The figuring power of mind, which is an eminently personal operation, initiates the new entity both as what it is and as ordered to the good its serves not only does it initiate it, but the made-thing’s continuance typically requires some sympathetic appropriation of the original intention of the maker as the artifact works its way into the fixings of the human world.

In this elemental understanding, work acquires a remarkable dignity. The claim might even strike one as a romantic exaggeration, given the extent that the familiar usage of the word bears connotations of drudgery, wage-earning, and proletarian meanness. Using the word in this more elemental context, however, one sees a certain splendor of reason emanating from the souls of men and women actively re-figuring the material world about them. Their actualizations of reason are free operations of human subjects. Poesis flows from personal freedom along two lines. First of all, the novelty of human artifacts manifests the human agent’s independence from the necessities of nature and the compulsions of instinct. Secondly, work’s productivity is undertaken within the context of the universal vocation of the material world to the good of all mankind, and pursued as an exercise in the providential care for the well-being of one’s immediate and extended community. In both cases, productive reason extends itself into the fabric of the human community. As we noted in the introduction, to have one’s nature but not be determined by it and to experience one’s self in the recognition of others are intrinsic features of what it means to be a person.

The notions of creativity and freedom expressed in the elemental experience of work are therefore eminently personal. In this elemental sense of work, the maker can say, “This is mine; I have made it,” for the made thing is born of his envisioning of the good to be served and the form to be fashioned. The maker’s assertion of ownership recognizes a communication of personal identity from maker to made-thing.

\(^{21}\) Maritain says that “it is of the very essence of this activity to imprint on matter the mark of rational being” (ibid., p. 198).

### IV. Use of Exterior Goods

At this point in our account of the genesis of the concept of property we have viewed the superimposition of the attribute “one’s own” against the background of the more primordial notion the universal destination of material goods. The notions of “being one’s own” and “intended for all” represent conflicting vectors. One and the same thing bears the marks, as it were, of both the particularity of personal ownership and the universal intentionality of serving anybody. It is the force of their opposition that gives rise to the two topics that remain in our account of the conceptual foundations of property. First, we must distinguish the right of use of external things from the right of their ownership. Secondly, we need to bring out the inherent legal character of the idea of property.

With respect to the use of external material goods, Maritain draws from Aquinas a principle to the effect that “in respect of use man ought to possess external things not as his own but as common.”\(^{22}\) If taken literally, this principle might seem to suggest, for instance, that when I pick a cayenne pepper from my kitchen garden, I harvest what is my own and not my neighbor’s. But when I use that pepper to flavor a sauce, and thereby feed some need or interest, then I actualize a good that is there for me not by individual right of ownership but by virtue of common use. I stand in, as it were, for anyone who could benefit from the cayenne pepper. My individual act of use particularizes an achievement of a material good that is in and of itself equally destined to any other as to any one. Maritain here speaks about a “law” in the ethics of property: even when the item is expressly intended as “my own,” the fruit of my work, when it is entertained from the point of view of its use as a good, then its use becomes a moral act, “and as such must somehow regard the good of all – in the first place my own good of course, but my good as a member of a community.”\(^{23}\)

There is nothing idiosyncratic about Maritain and Aquinas’s point. It is commonly, even if only implicitly, recognized in customs and laws throughout the world. In the fuller development of social and political reality of property, the grounds of ownership are considered insufficient to establish unqualified grounds for the use of what one owns. The right of eminent domain, for instance, is a prevalent example of the broader category of legal governmental takings. In this case, civil authorities annul the rightful ownership claim of a private individual and re-appropriate the property for the purposes of the public.

\(^{22}\) Maritain, p. 205. Thomas Aquinas, Comm. in Polit. Aristotelis, lib. 2, lect. 4: “Unde manifestum est quod multo melius est quod sint propriae possessiones secundum dominium, sed quod sint communes aliquomodo quantum ad usum.” See also ST 2-2, 32, 5, ad 2; 2-2, 66, 2.

\(^{23}\) Maritain, p. 205.
interest. More interesting are laws that do not annul claims of ownership or re-
appropriate property but give use of legally held property to non-owners. In ei-
ther case, the limitations on ownership respond to situations in the life of a
community with the idea that the advancement of the greater good of the com-
community trumps the rights of private ownership of individual members of that
community. It indicates some measure of common claim that persists and can
override the particular claims of private or personal ownership. It is instructive
to look at two examples other than the more familiar right of eminent domain.
In many Northern European countries, such as Scotland, Sweden, or Finland
there are “right to roam” laws. The Finns, for instance, recognize in law a long
established custom they call jokamiehenoikeus. Anyone has the right to wander
through land that belongs to others; this right permits limited use of the land in
activities such as camping, collecting minerals, harvesting wild berries and
mushrooms, and fishing. With the right come various responsibilities to respect
the property, wildlife, and the personal privacy of the entitled owners, but the
key point is that one’s right of ownership cannot prevent a prior right of use by
non-owners. We find another interesting case of property law that separates us-
age from ownership in the ancient Mosaic code in what is sometimes called the
“right of gleaning.” “When you reap the harvest of your land, you will not reap
to the very edges of the field, nor will you gather the gleanings of the harvest;
nor will you strip your vineyard bare, nor pick up the fallen grapes. You will
leave them for the poor and the stranger.”24 Thus when in the Book of Ruth
the widowed foreigner Ruth provided for herself and her mother-in-law by gath-
ering the gleanings from the harvest in Boaz’s field, she was taking what was
hers to take. Boaz the owner did not permit this because he was kind and gene-
rous man, though it seems he was such a character. The field was open to Ruth,
the Moabite widow, because Boaz was a just man, rendering to her what was
hers to glean by an obligation that superseded Boaz’s rights of use tied to his
ownership claims. The right of gleaning was not so much an individual land
owner’s indulgence, but the way that a righteous man in Boaz’s circumstance
would have followed the Mosaic law. It is important to emphasize that Fin-
land’s “right of roaming” and ancient Israel’s “right of gleaning” are civil laws
or customs that protect the right to the use of certain material goods and that
this right cannot be superseded by the right of ownership. In asserting such
rights of common use, there is no intention to deny the entitlement of private
property nor to deny or dishonor the fact of landowner’s work which produces
and preserves the property’s bounty.

Customs and laws such as eminent domain and the rights of roaming and
gleaning are examples of civil accommodations to the conflicting social vectors

24 Leviticus 19:9–10 (trans. New Jerusalem Bible); see also Lev 23:22; Deuteronomy
24:19–22.

The hypothesis I wish to propose at this point is that the customs or civil
laws25 of one’s particular community or civic association are crucial to estab-
lishing the extension of rights of ownership to rights of use. As a general mat-
ter, civil law (or custom) regulates the distribution and use of power in a civic
association in accordance with some understanding of the good that pertains or
ought to pertain to the community as a whole. Let us take for granted that
communities or civic associations consider prosperity, peace, and justice as
essential elements of the public interest or common good. As means to those
dominant ends, customs and laws establish a system of property (private and pub-
lic, individual and collective) to regulate the terms of ownership and use of mat-
erial goods. The term “property” names the legally recognized power over the
disposition of goods one owns.26

25 See James Bernard Murphy, The Philosophy of Positive Law: Foundations of Ju-
risprudence (New Haven and London: Yale University Press, 2005) for a learned and
philosophically subtle discussion of the nature of positive law and its relation to both
 customary and natural law.

26 In his illuminating synthesis Anton Rauscher introduces the notion of property as
the moral power of a (physical or juridical) person to dispose of the goods to which he
has a right of ownership. Private Property: Its Importance for Personal Freedom and
Social Order, trans Stephen Wentworth Arndt (publication of the German original at
Paderborn: Bonifatius, 1990; English translation published in Cologne: Ordo Socialis,
V. From Ownership to Use

In order to bring out the importance of law and custom in the genesis of the concept of property it is important to see that the move from ownership to the right of use is not self-evident. In fact, it is precisely from and because of the gap between the two claims that property in the full and legal sense of the term emerges. Let me develop the notion of the gap between right of ownership and right of use. Imagine a complete stranger enters into someone's, say Arvid's, house and announces that the house suits him and his family just fine, and so he'll be moving in. Perhaps Arvid says, "You can't do that. This house is mine." The assertion of ownership, however, strikes up no resonance in the stranger. He does not deny Arvid's ownership; it just means nothing to him. There is, to his mind, no relevance of the assertion to the occasion. He simply looks about and repeats: "This house suits me just fine." And let's admit for the sake of the story that the house indeed serves quite well the stranger's needs. In this thought experiment, the stranger acts in a perfectly rational way insofar as the rationale of property is tied to the service of a (any) person's material needs. Arvid's house fits the stranger like hand to glove. Now Arvid might well block the stranger's intention to take over his house. Perhaps he threatens him with superior force. Or maybe he calls on the civil authorities who enforce the community's private property laws. The stranger understands that he is defeated by superior power. But what he does not see is the justice in the superiority of Arvid's power over the suitability of Arvid's house to his own purposes. The scenario depicted here is intended to force the question: what is the reason in the commonly accepted tie of ownership to use? What category or insight must the stranger have in order for Arvid's assertion "You can't do that; this house is mine" to count as a rational explanation?

What stands before us at this stage of our genetic account of the concept of property is what I have called the "gap" between the ownership of a thing and the right of use of that same thing. Before passing on the next section in which I shall elaborate the hypothesis that it is the civil law or the customs of a community that regulates the connection, it will be useful to draw into clearer focus the good that is at issue in regulating the operative relationships between ownership and use. The good of a thing — what needs or interests it serves — enter into consideration at the beginning, in the very making of the thing, for production requires envisioning the good at the end of the artifact's use. In productive activity it is the existence of the made thing that holds pride of place; ownership or possession is keyed to the thing "in hand," as it were. By contrast, in the act of using a thing it is the good for which the thing was originally brought into existence that is actualized. What is potential in the thing as owned is actualized in the thing as used. Use brings a thing toward its destined purpose or end. Ownership is an expedient, however necessary, toward that end. There is a petit drama in the experience of ownership's expedient character. If what I have said is true about work's original claim to possession of a thing as "own's own," namely, that the process of transforming the raw materials at hand into an artifact involves in some sense a communication of the maker's personal identity to the made-thing, then the subsequent use of a thing can be experienced as a kind of loss. The term "loss" is misleading if it suggests that the product ceases to exist. What it primarily intends to communicate is a kind of alienation that comes with the use of something that one owns. The act of use transports the product from the limited domain of "belonging to one (Owner)" into the distinct and more universal sphere of "perfective of any (User)." It is the use of material goods that actualizes the universally perfective quality of the things, their promise of satisfaction to virtually any human person who is properly disposed to use or enjoy them.

VI. The Legal Form of Property

It is positive law of a civic association, whether understood as its formal legislation or its common or customary law that mediates the gap between the affirmation of what is one's own and the power over its use. To recall the earlier scenario, when the owner Arvid tells the stranger that he may not use his house because he owns it and that he has the right to block the stranger's entry, Arvid has reason on his side. But "reason" here is not just the assertion of authorized coercive force. His reason is the order of the civil or common law of the land. The term "property" in fact refers to specific socially recognized powers that one possesses over exterior things. Calling such things one's property signifies specific rights of power or dominion over these things. Positive laws and customs of given civic associations regulate how these exterior things stand in no 3), p 22. His notion of property as a recognized disposition of power over material goods by the owner is what merits attention. He calls it a moral power. At the very least, however, it is a legal or civic power, which is all I wish to assert at the start. As the argument develops, however, we shall see that among the more significant justifications for positive or civil laws of property are the moral and social virtues that a system of property encourages among the members of a community.

27 The point would be most evident in cases of the ownership of the first instance which flows directly from the work of the maker. Here the identity or personal investment of the maker communicated to the made-thing would seem most acute. But it can be extended to ownership of the second instance which is had through a given culture's various mechanisms of ownership transfer, as for instance in inheritance, purchase, or receiving as a gift.

28 This sentiment perhaps expresses something of what Maritain had in mind when he wrote that "there seems no reason ... why one person more than another should have the use of goods of this world" (Maritain, p. 206).
practical matters with respect to ownership and use. The more elemental notions of ownership and universal destination have to be lifted up into the order of the human community through law and custom. This elevation is the final stage in the constitution of property.\textsuperscript{29} Texas State trespass law and the Finnish right to roam law, for instance, represent quite different specific instances of positive law or custom established in the concrete circumstances of distinct historical and culture conditions. In regulating the terms of ownership and use of property, law and custom are founded upon the more elemental personal relationships established between persons and material things that we have previously examined in terms of the principles of appropriation and universal destination. Custom and positive law are not intended to abrogate or replace the relevance of the universal fittingness of material wealth to humankind as a whole, nor are they intended to annul or attenuate the identity that work establishes between persons and the things that they fashion and administer. Law and custom elevate these more fundamental personal dynamics into the order of civic associations. They should make the world of human affairs more human. Law brings common order and public reason into community affairs. Arvid's reason was the law (or custom) of the larger, established community. By not hearing it or not adhering to it, the stranger stands outside of the civic order.\textsuperscript{30}

It would be a further question to ask about the soundness of the law's reason or the goodness of its established order. In one way or another positive and customary law are themselves brought to judgment.\textsuperscript{31} One ultimately wants to believe that the law is just because it is right and not ultimately that it is right because it is the law. In raising this issue, however, I have exceeded the limits of this paper and crossed over to the very large question of the nature of law and grounds of its obligatoriness. Yet, as a final contribution to these more limited reflections on the personalist foundations of property, I wish to draw attention to an interesting suggestion of David Lametti.\textsuperscript{32} Into a postmodern setting that has rejected libertarian and utilitarian theories of property, Lametti introduces the concept of moral virtues as the governing end of a viable theory of private property. He proposes to draw out of the law of property, and especially private property, what he calls the "morality of aspiration." Appealing to Aristotle and Aquinas, he proposes to recapitulate the institution of private property within a teleological vision of the common good, keyed to the service, promotion, and development of virtue. If it is the case that the social practice of private property encourages among the members of a society the cultivation of the moral virtues and intellectual gifts, and if it is the case that "the common good indicates the sum total of conditions that allow people, either as groups or as individuals, to reach their fulfillment more fully or easily,"\textsuperscript{33} then properly regulated institutions of private property seem eminently concordant with the conditions for human flourishing. I find Lametti's proposal of the cultivation of the virtues as a justification of the institution of private property interestingly concordant with my understanding of personalist foundations of property.

VII. Property's Network of Relations

The concept of property is shaped within the broad framework of three relationships that tie material things to human persons. This set of relationships frames the way human persons provide for themselves and their communities the material wherewithal to sustain life and prosperity. Our food, clothing, land, and dwellings, the means of our transportation, communication, education, defense, entertaining and religion—these are the sorts of things that become our property. They are not persons, who are our family members, fellow citizens, friends and enemies. They are not ideas or thoughts or sentiments. Nor are they those common cosmic things such as galaxies or forces such as magnetism. When we speak of property we are interested with just those sorts of things, material non-persons, of which we can properly say that they are one's own and which we use in satisfaction of the needs and interests of our individual and communal lives.

The first relation in the constitution of property recognizes in material things a potentiality for satisfying some need or interest of mankind. In a broad sense,
the orientation of the things of the world to the service of human life permits one to speak of the goodness of creation or the beneficence of nature. Even if the contemporary cosmologist would reject such a strong sense of purposiveness, science’s own explanatory mechanisms conclude in the recognition of an equally remarkable evolutionary adaptability of human beings to the given conditions of the cosmos. In sum, the principle that has come to be called the “universal destination of material goods” rests on the fact that the non-human world provides the basic material conditions for human life. It only adds to the simple fact of the matter that it is no mere accident: one recognizes in the reality a certain fitting relationship between mankind and the world human beings inhabit. At this level of analysis there is as yet no property or ownership. We only acknowledge in a broad class of material things a universal potentiality for or orientation toward the good of mankind in general. Things are not divided into those that are mine and those that are yours. Quite the opposite: it appears that anything, seen simply as an answer to human need or interest, is equally destined to this person as to that person.

The second constitutive relation enters into our “work-up” of the concept of property due to the obvious difference between the earth’s potentialities and their actualization in the satisfaction of man’s particular needs and interests. Things need to be made into available and serviceable goods. Through the act of production and the arts of management and administration material things are made into serviceable and available goods. It is the genius of the laborer, the worker, and the manager that appropriates the resources of the earth. What is broadly destined for many, or any, is appropriated by this one or that one and transformed into an available good. Work introduces an essential relationship of “one’s own” into the meaning of those things we shall finally call “property.” Just how this is so has been a central philosophical interest of this paper, but for the moment it is enough to identify work as the original basis for the appropriation which is a further step forward in the constitution of the notion of property.

Property receives its complete identity when appropriated material goods enter into the sphere of civic life governed by law and custom. The material things around which we order our lives in civic associations are recognized as homesteads, tools, copyrights, businesses, stocks and bonds. We buy, sell, inherit, deed, loan, trade, and insure these things in mutually understood compacts of law and custom. Civic society orders particular forms for the possession and transfer of ownership. The works of fabrication, management, and administration transform material resources into serviceable goods, but it is only as these goods, their usage, and ownership are regulated by civic law and custom that they become property in the full sense of the term. If property is a form of power, it is also a power that has been ordered with regard to the integrity and common interests of a civic association. In a given civic community the relationships of ownership and the use of material things are taken up into the ties of justice and benevolence that are essential to the civic bonds of a res publica.

VIII. Some Practical Implications

The just appreciation of property as an essential human institution requires an array of dispositions as part of the education of a culture or society. In his Restoration of Property Hilaire Belloc diagnosed in Western culture a growing indifference toward ownership of private property. He thought that both capitalism and communism were symptomatic, each in its own way, of a people grown content with the wage and the entitlement. The deeper intent of his book was to re-arouse Western man to the desire for ownership and personal property. In Belloc’s view the desire for ownership and property is a practical face of mankind’s love of freedom. He rightly understood that any restoration would have to start with a change in mentality. He was little inclined to the politics of revolution, and believed that where desire is ardent and widespread, the institutions will follow. “Change the culture” would be a contemporary way to put it. A healthy civic culture would foster admiration for and participation in the creative and personal dimensions of property. Although one need not share Belloc’s distributivist ideals or his nostalgia for the economy of the self-sufficient land owner, I do think there is wisdom to his understanding of the spirit of ownership and the commitment to personal property. What is needed is a restoration of a practical appreciation and effective cultivation of the dispositions and virtues that perfect the personalist foundations of property. Let me finish this paper with a short list of the sorts of disposition that I have in mind.

The importance of ownership and work. A society or legal system will find itself in some stage of immaturity or decay to the degree that it sanctions too great a separation between rights of ownership and the responsible agency of work. Recall that it is the elemental sense of work that establishes identity between the productive person and the things produced. In positive terms, work has personal meaning: one’s intelligence and labor is invested in those goods and services that contribute to a society’s prosperity. It is a mistake to reduce the good of work to the material goods that it puts at one’s disposal for use. John Paul II and decades before him John Dewey pointed out possibilities for exercising in our work a range of human excellences. There is wisdom to a culture that encourages the personalist ties of ownership and work.

Work's creativity and subsidiarity. Genius and creativity cannot be bureaucratized. They thrive in local situations and subsidiary institutions. One can franchise their results or findings. But the findings and results come from immersion in the particular creative intuitions of the inventors and entrepreneurs. A social order that fosters prosperity will take care to protect and liberate the social and institutional spheres in which productive creativity thrives. Moreover, acknowledgement and recognition of genius and creativity will have a surer and more abiding presence in local and subsidiary communities.

Solidarity of justice and benevolence. It is a mean and meager social order, if not dangerous and repressive, that denies or practically neglects the principle of universal destination of material things. The virtues of justice and benevolence witness to the fact that men and women know a measure of personal perfection in their exercise of responsibility that extends beyond self-interest. Enjoyment of private property belongs to a pattern of conduct that bears social responsibility. Ideologies that delegitimize private property effectively authorize the social usurpation of the power of property and thereby diminish the need and occasion for the development and practice virtues of justice and benevolence among members of a community. These social virtues englobe the ethics of ownership and extend the interpersonal ties that build up the web of human relationships. They bring to perfection, through responsible conduct on the personal and civic scale, the original intention of persons and the human community flourishing in created material world.

Industriousness, Stewardship, Optimism. Cultivating the personal disposition of industriousness should go hand and hand with appreciating the creativity at the origin of the property that is so much a part of world that surrounds and sustains us. One should learn the arts of stewardship for both natural resources and the genius of cultures that develop them for the wellbeing of humankind. Finally, the spirit of optimism gives the confidence that it is the same powers of reason and freedom, which are released in the developing material resource of the world, that can know and foster the good of the human community.

Summary

This essay brings out the personalist dimensions of the idea of property. What takes on the form of "property" by virtue of the law and customs of a civil society is something more primitive or foundational, namely, an external thing identified as "one's own." The idea of "one's own," for its part, rests upon or emerges from the even prior

Zusammenfassung