

## Chapter 4

# Property and the Economy

The use and ownership of material things is a topic to which natural law thinkers have consistently given thought. In Chapter 2, we observed that the proper use of material goods, whether as individuals or in exchanges between individuals and communities, is a prime focus of commutative justice and distributive justice. This, however, does not exhaust the scope of natural law analysis of these questions.

If individuals and communities are to make free choices for moral goods and to be virtuous, they often require what might be called “instrumental goods.” These are goods that have their own value and which can be used to protect and promote the pursuance of fundamental goods like work and truth, but which are not in themselves fulfilling.

Material things are a prominent example of such an instrumental good. They are not a fundamental good in the sense that goods such as life, truth, and friendship are intrinsic to human identity. Rather, material things—whether in the form of the natural world, or things that humans have created by applying their intelligence and labour to the natural world, or devices that act as a symbol or store of value (like money)—are goods which are a means that help humans to flourish. Money in the form of capital, for instance, enables entrepreneurs to build businesses that grow and employ people, thereby enabling others to participate in the good of work.

The question then becomes: how do we ensure that material things help to promote the flourishing of all members of a community? The natural law answer to that question lies in the application of two principles: common use and private ownership.

### **Private property as the means for common use**

Natural law's treatment of issues of property begins with the observation the earth and all it contains is to be used by and on behalf of all people, in the sense that nothing is predestined to be used by any one person or group (Grisez, 1993: 790). To that extent, the use of material goods is "common."

Common use should thus not be understood as a type of end-state of affairs in which a perfect distribution of material wealth is achieved once and for all and never changes. This would be to deny the truth and necessity of human freedom and the fact that people's responsibilities, obligations, and holdings of wealth are in a constant state of flux. What matters is that material goods are used in ways that enhance the conditions that promote the flourishing of every person and community.

So how do we give effect to the principle of common use? Natural law's response has been that it is usually realized through private ownership—so much so that private possession of property isn't just permissible; it is usually essential for realizing this goal. Natural law's condemnation of theft can be understood as pointing towards this conclusion, and helps to establish private property as something that is an immediate derivation of natural law.

Aquinas drew upon Aristotle to outline three reasons to favour the private ownership of material goods. First, he notes, people tend to take better care of what is theirs than of what is common to everyone, since individuals tend to shirk responsibilities that belong to nobody in particular. Second, if everyone were responsible for everything, the result would be confusion. Third, dividing up things generally produces a more peaceful state of affairs. By contrast, sharing things in common often results in tension. Individual ownership, then—understood as the power to manage and dispose of things—is legitimate and necessary (ST II-II, q.66, a.2).

Nevertheless, natural law doesn't regard private ownership of material goods as absolute. In the first place, private ownership is a *means* of ensuring common use and that material goods serve humanity. Aquinas himself specified that "if the need be so manifest and urgent that it is evident that the present need must be remedied by whatever means be at hand (for instance when a person is in some imminent danger, and there is no other possible remedy), then it is lawful for a man to succor his own need by means of another's property" (ST II-II, q.66, a.7).

This is not an endorsement of theft. What it means is that if a particular manifestation of private property is actually obstructing common use, then the ownership of that property is no longer private. An example is someone who is starving to death and on the point of death and whose only opportunity to save her life is by eating an apple on a tree belonging to someone else.

Elsewhere Aquinas provides a clearer indication of what constitutes “imminent danger.” In discussing almsgiving, he states that “it is not every sort of need that binds us as a matter of strict obligation, but only what is a matter of life and death” (ST II-II, q.32, a.5).

Later natural law thinkers broadly follow Aquinas’s treatment of common use and private ownership. But different dimensions of this teaching were stressed more than others.

One early modern scholastic, Tomas de Mercado (1530–1576), sharpened Aquinas’s point about the way in which private ownership encouraged personal responsibility by highlighting how it also encouraged people to be more productive and creative in their use of their property. He noted that people tend to be more naturally inclined to care for their own home rather than the homes of others. “If universal love,” Mercado wrote, “will not induce people to take care of their things, then private interest will. Hence private goods will multiply. Had they remained in common possession, the opposite will be true” (Mercado, 1571/1975: bk.2, ch.2, fol.19).

One also sees more extensive critiques of common ownership during the period of the second scholasticism of the sixteenth and seventeenth centuries. Domingo de Soto (1494–1560) repeated Aquinas’s criticism of common ownership, but stressed other particular negative features of such collectivized property arrangements. Common ownership, he maintained, tended to corrode the virtue of liberality (generosity), not least because “those who own nothing cannot be liberal” (de Soto, 1553-1554/1968: bk.4, q.3, fol.105-6).

Other scholastics, such as Juan de Mariana, underlined the abuses associated with common ownership. Speaking of his own religious order (the Jesuits), he exclaimed, “Certainly it is natural for people to spend much more when they are supplied in common than when they have to obtain things on their own. The extent of our common expenses is unbelievable!” (Mariana, 1605/1950a: 604).

Martín de Azpilcueta maintained that, even in cases of extreme need, it was not proven “that extreme need makes the needy the absolute owner of

the neighbour's good. It only gives them a right to use them if it is necessary to escape the need" (Azpilcueta, 1556: 206).

Some of these scholastic glosses on Aquinas's position on common use and private property, we may speculate, owe something to external factors. One was the emergence, after the sixteenth century religious schisms in Western Europe, of the modern state: one which became increasingly powerful and, in terms of economic policy, more inclined to impose heavier taxation and quite willing to engage in currency debasements to reduce government debts. In their criticisms of the negative effects of such policies, Mercado and Mariana explicitly linked their arguments to considerations about unjust infringements of private ownership of property. Mariana went so far as to describe currency debasement as a form of theft (Mariana, 1609/1950b: 586).

Similar arguments about the use and ownership of material goods are to be found in seventeenth and eighteenth century Northern European Protestant natural law treatments of private property. In his *De iure praedae Commentarius* [Commentary on the Law of Prize and Booty], Grotius stated that because all things had been given by God to "the human race, not upon individual men, and since such gifts could not be turned to use except by private occupation, it necessarily followed that what had been seized on should become his to each" (Grotius, 1604/2006: 11). From this was derived the right to property, not least because it was "permissible to acquire to oneself, and to retain, those things which are useful for life" (Grotius, 1604/2006: 10). "Let no one occupy," he added, "what has been occupied by another" (Grotius, 1604/2006: 13).

A later generation of Protestant natural law scholars elaborated upon these points using the language of rights more expansively. This is especially evident in the writings of the Presbyterian ministers and philosophers Gershom Carmichael (1672–1729) and Francis Hutcheson (1694–1746). Both men are rightly described as forefathers of the Scottish Enlightenment. Yet they are also part of the natural law tradition. Carmichael even acknowledged that he found "the doctrines of the Scholastics, or rather of the more ancient among them... much more correct and more consonant with sound reason, as well as with sacred scripture, than the doctrines that are opposed to them today" (Carmichael, 1724/2002: 229).

Concerning material goods, Carmichael held that God does not appear to have assigned any one particular external non-human thing to any one

particular human being. Property needs therefore to be secured by some type of human action—specifically “by human labor and more closely adapted for human purposes” (Carmichael, 1724/2002: 94).

On this basis, Carmichael identified different categories of property rights, most notably “*real or personal*” rights (Carmichael, 1724/2002: 78). Real rights, Carmichael states, involve possession and use of things (i.e., property) to which corresponds the obligation of others not to disturb them in their use of things. Personal rights are about those things and services conditionally owed to us (Carmichael, 1724/2002: 78) as a result of agreements mediated through devices like contracts. Neither real nor personal rights in Carmichael’s schema are “absolute” insofar as they may be created, exchanged, transferred, or abolished. But Carmichael stresses that any such creation, exchange, or abolition should normally occur through voluntary consent. Only in emergency situations may the state abrogate such rights.

Hutcheson’s line of reasoning about property is similar. According to Hutcheson, human reason contains clear evidence of what God desires of human beings (Hutcheson, 1747/2007: 104-5). One of these desires, he maintains, is that “we ought to promote the common good of all, and that of particular persons” (Hutcheson, 1747/2007: 109). In Hutcheson’s view, it is through people pursuing their advantages without harming others or violating the natural law that the common good is advanced: “he who profits one part without hurting another plainly profits the whole” (Hutcheson, 1747/2007: 110). Hutcheson then argues that there are so many “enjoyments and advantages” that all people desire and can procure for themselves “without hurting others, and which ’tis plainly the interest of society that each one should be allowed to procure, without obstruction from others.” It follows, he states, that “each man has a *right* to procure and obtain such advantages and enjoyments” (Hutcheson, 1747/2007: 110).

In delineating different property rights, Hutcheson adopted Carmichael’s categories of real and personal rights (Hutcheson, 1747/2007: 145). He initially focused upon what are the human and just conditions that allow us to say that one person owns certain goods to the exclusion of others (Hutcheson, 1747/2007: 137-8). But Hutcheson went on to add that the natural fruits of a person’s labour are the foundation of merit that provides one person with a basic title to particular property (Hutcheson, 1747/2007: 139-140).

In part, Hutcheson may be forging an argument against the position of his contemporary David Hume (1711–1776) who believed that property emerges as a result of the usefulness of a convention that emerges over time and eventually receives endorsement and codification in law. While not dismissive of these factors, Hutcheson clearly believes that private property is more than a convention. It is also a requirement of natural reason and justice and “requisite also to the maintenance of amicable society”: that is, the common good requires property arrangements that allow people to own things and use them to the exclusion of others (Hutcheson, 1747/2007: 137-138). In other words, it is through private property that material goods serve the well-being of all.

### **Scholastics and markets**

One way in which private property helps realize the principle of common use is that it identifies who owns what, and who therefore has the specific power to invest or exchange which elements of property. These are essential preconditions for the workings of a market.

The development of key ideas underpinning free markets is normally associated with Adam Smith’s *Wealth of Nations*. But as Odd Langholm points out, “historians of economic doctrine now recognize that modern theory is the product of continuous growth over a much longer period of time than was previously assumed” (Langholm, 1998: vii).

In his 1954 *History of Economic Analysis*, the economist and historian of economic thought Joseph Schumpeter drew attention to the work of Jesuit and Dominican scholastics who made vital contributions to clarifying key economic concepts. His conclusion was that “the economics of the doctors absorbed all the phenomena of nascent capitalism and... served... as a basis for the analytic work of their successors, not excluding A. Smith” (Schumpeter, 1954: 94).

The global expansion of commerce and trade which began in the Middle Ages and accelerated from the late fifteenth century onwards raised many moral questions for merchants in Christian Europe. What, for instance, constituted a just price? Were money markets permissible? Was it legitimate for the state to give one merchant or a business a monopoly on a given product or type of industry? Many commercial traders, anxious about their salvation, turned to their confessors for guidance.

Confronted with this and other moral questions, many clergy in turn looked to theologians and canon lawyers charged with the responsibility of providing guidance to priests on such subjects. In his discussion of money changing, Mercado informs his readers that he wants to help confessors “who, abstracted as they are from the world, cannot understand the ways of these entangled dealings” (Mercado, 1571/1975: bk.2, ch.2, fol.313). Some of the most detailed descriptions of sixteenth and seventeenth century commercial life are contained in these writings.

Having gathered such information, many scholastics applied the insights of natural law to the new situation enveloping European life and, increasingly, the Americas and the Far East in the wake of European colonialization. This produced an unprecedented number of treatises on the moral dimension of economic life by scholastics like Mercado, Vitoria, de Soto, and Grotius, which sought to assess the ethical dimension of the new and developing commercial practices in light of the demands of natural law.

These scholastics’ inquiries consequently embraced activities and practices as varied as taxation, coinage, foreign exchange, credit, and prices. They also analyzed the workings of the banking business of their time, and showed how the fluctuations in foreign exchange were related to changes in the purchasing power of different currencies.

One unforeseen result of these reflections was the theoretical conceptualization of important aspects of commercial life. These include the subjective theory of value (the idea that a good has whatever value which the valuing agent gives it), a simple version of the quantity theory of money (the notion that the general price level of goods and services is proportional to the money supply in an economy), and deep understanding of the nature of inflation through studying the effects of coinage debasement.

Scholastic thinkers were also the first to work out important concepts vital for a market economy such as the distinction between value in use and value in exchange, the idea of comparative advantage, the concept of scarcity, the character of opportunity cost, the origins and nature of capital, and the economic role of interest (Gregg, 2016: 39-87). Some scholastics such as Leonardus Lessius were especially critical of monopolies established by legal grants from rulers, portraying them as sins against justice and charity, and violations of people’s freedom to engage in trade (Lessius, 1606/2020: IV lib. 2, cap. 21, dub. 20).

There are, however, two areas in which scholastic thinkers made distinctive contributions to the development of contemporary free economies that reflect responses to particular issues confronting society at the time. Many scholastics writing in the early modern period were living at a time in which the premier Catholic power of the time, Spain, had not only acquired a world empire but also was experiencing the economic costs of the almost continuous wars that accompanied and followed such acquisitions.

While Aquinas's treatment of the state had outlined the limits of the scope of government power, scholastic writers gravitated to underscoring the state's limited competence in the economic realm. De Soto, for example, emphasized how the state's excessive intervention in economic life damaged the common good: "Great dangers for the republic spring from financial exhaustion; the population suffers privations and is greatly oppressed by daily increases in taxes" (1553-1554/1968: bk.3, q.6, a.7).

Reacting to the financial privations visited upon Philip II's Spain as the king struggled to suppress rebellion in the Netherlands, ward off Muslim invaders from the Mediterranean, and maintain order throughout his ever-expanding dominions, Mariana argued that public law and government should focus on protecting private property rather than usurping it. While he noted that taxation was necessary if government was to perform its essential functions, Mariana observed that the state tended to move beyond such boundaries very quickly and to increase taxation accordingly (1609/1950b: 23-27). Mariana also argued that government-sponsored currency debase-ments, excessive expenditures, and subsequent tax increases effectively facilitated the slow but systematic violation of private property (1605/1950a: 548).

The second important contribution scholastic thinkers made to the development of market economies concerned the issues of prices—or, more precisely what constituted a just price. In this regard, Aquinas's reasoning provided the basic foundations for the natural law treatment of this issue, which matured in the period of the second scholasticism.

Aquinas invested considerable effort in examining how one determined the justice of a given commercial transaction, how one measured the value of a good, and what constituted a just price.

The question of the just price, he argued, fell primarily into the area of commutative justice: that is, what individuals who enter freely into an exchange owed each other

In Aquinas's view, it was normally the case that the measure of something's value is the price it would presently fetch "in the market" [*secundum commune forum*] (ST II–II, q.61 a.4c; II–II, q.77 a.1, a.4c, and ad.2). This was understood as the exchanges between willing buyers and sellers in the same place and timeframe, with all parties to the exchange being aware of the merits and defects of what is being exchanged (ST II–II, q.77 a.1).

Significantly Aquinas specified that this market price will vary from time to time and location to location, depending on whether the good is scarce or abundant [*secundum diversitatem copiae et inopiae rerum*] (ST II–II, q.77 a.2, ad.2). He also insisted that sellers who enter the marketplace did not violate justice if they sold a commodity at the available price knowing that the price will fall when other sellers come to market, provided that they do not lie to anyone (ST II–II, q.77 a.3, ad.4). Though Aquinas agreed that the state could regulate prices in emergencies (Roover, 1974: 331), he held that the just price is normally the market price in the absence of fraud or collusion.

Later scholastic thinkers continued to develop this line of thought, especially through linking price to value. Unlike Adam Smith, they did not adhere to a labour theory of value (the idea that the value of goods and services depends upon how much work has been expended on creating a product). Instead, they drew upon Aquinas and other medieval natural law thinkers like Bernardino of Siena (1380–1444) and Antonio of Florence (1389–1459) to develop the idea that the value (and therefore price) attached to goods and services primarily depended upon the utility attached to them by people. They often employed the phrase "common estimation" to describe this.

According to these scholastics, three elements determined the price of saleable goods. These were a good's *viruositas* [objective use in value], *raritas* [scarcity], and *complacibilitas* [desirability or common estimation] (Chafuen, 2003, 81). Over time scholastic thinking on this subject gravitated towards the conclusion that the just price was the value of the good as determined by common estimation in the market. Francisco de Vitoria, for example, wrote that wherever there is a marketable good, the price was not determined by the nature of the good or the labour employed to create it. "If," he specified, "according to common estimation, the bushel of wheat is worth four silver pieces and somebody buys it for three, this would constitute an injustice to the seller because the common estimation of a bushel of wheat is four silver pieces" (Brown Scott, 1934: bk.2, q.2, a.1).

In determining what drove “common estimation,” Luis de Molina focused on the question of utility. He maintained that “it should be observed that a price is considered just or unjust not because of the nature of things in themselves... but due to their ability to serve human utility. Because this is the way in which they are appreciated by men, they therefore command a price in the market and in exchanges” (Molina 1593/1597; 1759: 167-168). Molina then specifies that he understand utility as *subjective* utility: “the nature and the need of the use given to them determined the quantity of price... it depends on the relative appreciation which each man has for the use of the good” (Molina 1593/1597; 1759: 168).

### **An optimistic view of commerce**

Some scholastic thinkers regarded commercial activity as morally indifferent. Others, however, ascribed positive moral characteristics to trade and commerce. The economic historian Henry Robertson records that Jesuits like Suárez and Molina were unashamed promoters of the social benefits of enterprise, financial speculation, and the expansion of trade (Robertson, 1973). De Soto even portrayed commercial activity as evidence of civilizational development:

Mankind progresses from imperfection to perfection. For this reason, in the beginning barter was sufficient as man was rude and ignorant and had few necessities. But afterward, with the development of a more educated, civilized and distinguished life, the need to create new forms of trade arose. Among them the most respectable is commerce, despite the fact that human avarice can pervert anything (de Soto, 1553-1554/1968: VI, q.II, a.2).

Aquinas had prefigured this favourable view of commerce, including its non-economic benefits. Aquinas rejected Aristotle’s view that those involved in commerce would become obsessed with their own riches and unconcerned with the common good (Finnis, 1998: 200-210). Instead, Aquinas held that it was possible for people to engage in commerce with correct intentions ranging from the desire to help the needy to the duty to take care of one’s family (ST II–II, q.77, a.4c). Though warning against the folly and sin of greed,

Aquinas believed that those involved in commerce, including those using and managing capital, were capable of doing great things.

Aquinas's reflections on the nature of the virtue of magnificence were especially revealing. He defined magnificence as the virtue of "that which is great in the use of money" (ST II-II, q.134, a.3). It is not so much, he specified, about making gifts or charity. Nor, Aquinas added, does the person who embraces this virtue "intend principally to be lavish towards himself" (ST II-II, q.134, a.1). Rather, he said, magnificence concerns "some great work which has to be produced" with (1) a view to the good that goes beyond the immediate gain, and (2) which cannot be done "without expenditure or outlay" of great sums of money. Moreover, magnificence for Aquinas also concerned "expenditure in reference to *hope*, by attaining to the difficulty, not simply, as magnanimity does, but in a determinate matter, namely expenditure" (ST II-II, q.134, a.4).

It is important to note that Aquinas was not focused here upon questions of property or wealth *per se*. Likewise, *magnificentia*—understood by Aquinas as the doing of great works which require great expenditure and the use of reason to ensure that there is minimal risk of great loss (ST II-II, q.134)—is not so much about who owns the wealth. As Aquinas specified, the poor man can also choose to do great things (ST II-II, q.134, a.3). Rather it is about the one who *deploys* great sums to help realize a "great work." That encompasses an extraordinary spectrum of individuals, ranging from the banker lending capital to others to businesses that seek to use the capital loaned to them to start and grow an enterprise.

### **Commerce across borders**

This positive evaluation of commerce on the part of medieval and early modern natural law thinkers represented a break with the classical world's view, which was generally indifferent or even hostile. But it was an evaluation that became even more significant as European world trade expanded across the continents from the sixteenth century onwards.