

The Citadel of Private Property



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Defining Conservatism Series

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The essayist Paul Elmer More taught: "property is the basis of civilization."¹ Conservatives have long recognized this insight. Indeed, Robert Nisbet describes the conservatism of Edmund Burke as "founded...upon the unities of property, family, local community, and social class."² Jeffrey Hart notes that Burke "did not make that grotesque but familiar distinction between property rights and human rights, but viewed property as a human right."³ Although not absolute,⁴ the right to own and control one's property is a pillar of conservatism and, as Paul Elmer More taught, of Western society itself.

One reason for the conservative's preoccupation with the defense of private property is that the right of property is closely connected with other social institutions, specifically family and religion, whose autonomy is crucial to the existence of ordered liberty. Private property becomes the setting where family and faith are most commonly lived out. The protection of private property affirms the proposition that there exist areas where the state cannot interfere – a proposition at the core of family and religious autonomy.

As an example, in the recent Main Street Plaza controversy, part of what was at stake was a religious institution's ability to control the use of its property in a manner consistent with its mission. The free exercise of religion and the right of private property were completely intertwined. In that case, the ACLU asserted "speech" rights that became merely a front for an egregious intrusion onto the property of others. If the courts had accepted the ACLU position, the speech they supported would take place on property that would have been, de facto, seized from the church by the state (to provide a government-sponsored protest area). The seizure would be totally unnecessary to protect the right of speech since any desired speech could have taken place on public property or on private property owned by protesters or their sympathizers.

It is no surprise that the enemies of family and religion are typically hostile to the institution of private property.

Additionally, as Richard Weaver points out, "the citadel of private property make[s] existence physically possible" for the free individual.⁵ This is true because an individual or family's ability to exclude state or other influences from their property makes possible a sphere in which other freedoms can be exercised without restraint. If all property were "public" then existence would rely entirely on the whim of the state. Private property allows an individual or family a sphere of privacy and some autonomy.

By extension the institution of private property, "also provides indispensable opportunity for training in virtue."⁶ Professor Weaver explains that this is related to the fact that the control of property entails choice and responsibility: "Because virtue is a state of character concerned with choice, it flourishes only in the area of volition. . . . here in the domain of private property, rational freedom may prove the man; here he makes his virtue an active principle, breathing and exercising it, as Milton recommended."⁷ Having ownership and control of property also means having responsibility for it. This allows for the exercise of virtues like self-reliance and industry. The possibility of stable ownership also encourages owners to think of the future, sometimes with an eye to passing their property to descendants.

Noted historian and Harvard University professor, Richard Pipes, argues in his book *Property and Freedom* that historical discussions about property have revolved around four themes: its relation to politics, ethics, economics, and psychology.

First, "the political argument in favor of property holds that...it promotes stability and constrains the power of government. Against property it is claimed that the inequality that necessarily accompanies it generates social unrest."

Second, "from the moral point of view, it is said that property is legitimate because everyone is entitled to the fruits of its labor. To which critics respond that many owners exert no effort to acquire what they own and that the same logic requires everyone to have an equal opportunity to acquire property."

Third, "the economic line of reasoning for property holds that it is the most efficient means of producing wealth, whereas opponents hold that economic activity driven by the pursuit of private gain leads to wasteful competition."

And fourth, "the psychological defense of property maintains that it enhances the individual's sense of identity and self-esteem. Others assert that it corrupts the personality by infecting it with greed."

Pipes concludes, "These four approaches fairly exhaust the range of arguments for and against property articulated during the past three thousand years. At its most fundamental, the controversy pits the moral approach against the pragmatic."⁸

The Twentieth and Twenty-first Centuries have seen appalling incursions on the right of private property throughout the world, sometimes in totalitarian regimes but also in the Western democracies.

Chief among the culprits is the confiscatory state, driven or abetted by various motives. The most prominent of these is the spirit of envy inherent in social leveling projects. Paul Elmer More notes:

The burden of proof is entirely on those who assert the sufficiency of communal property; their theory has never been proved, but in innumerable experiments has always failed. And, in fact, the real strength of socialism, the force that some think is driving us along the edge of revolution, is in no sense a reasoned conviction that public ownership is better than private ownership, but rather a profound emotional protest against the inequalities of ownership.⁹

A more common threat currently experienced in the United States is the attempt by government to take property at the behest of moneyed interests.

Conservatives are aided in their defense of private property against its determined enemies by strong constitutional guarantees. As Professor Michael McConnell notes: "Protection of private property was a nearly unanimous intention among the founding generation."¹⁰ The Federalist Papers describe the protection of private property as "the first object of government"¹¹ and say the U.S. Constitution was "instituted no less for protection of property than of persons or individuals."¹² Unlike rights of privacy, the United States Constitution specifically provides: "[N]or shall private property be taken for public use, without just compensation."¹³

Similarly, the first section of the Utah Constitution's Declaration of Rights says, "All men have the inherent and inalienable right . . . to acquire, possess and protect property."¹⁴ The constitution states further, "Private property shall not be taken or damaged for public use without just compensation."¹⁵ These State and Federal provisions are important not only in stating the principle that private property rights deserve respect but they also provide a practical constraint on government since they do not allow the government to take private property unless for a public use and the taking is justly compensated.

Recent events give us reason for grave concern that these guarantees will, however, be an ineffectual protection because they have been eviscerated by elastic interpretations such as that illustrated in the U.S. Supreme Court's *Kelo v. City of New London* decision.¹⁶ In that case, a town had taken property from its owners with the intent of turning it over to private redevelopers to increase the town's tax base. The court held that even a generalized "benefit" to the community like this could justify a taking of private property. It is easy to see that a decision such as this will not act

as a significant curb on state power.

Thankfully, in the wake of this decision citizens and state legislatures are acting to restore more robust protections to the institution of private property but ongoing threats must not be discounted. Threats to the free ownership and control of private property are, clearly, not a thing of the past.

Conservatives understand that the defense of private property is a defense of limited government and ordered liberty. It is an important contribution to virtue and a decent, sane existence. It is a worthy occupation.

Endnotes:

¹ Byron C. Lambert, editor, *The Essential Paul Elmer More*, pg. 297, 1972.

² Robert Nisbet, *Twilight of Authority*, pg. 48, 1975.

³ Jeffrey Hart, "Burke and Radical Freedom," *American Conservative Thought in the Twentieth Century*, pg. 461, 475, 1970.

⁴ Roger Scruton, *The Meaning of Conservatism*, third edition, 2002, pgs. 67-68 (describing appropriate limitations on private use of property).

⁵ Quoted in Frank S. Meyer, *Richard M. Weaver: An Appreciation*, Modern Age, Summer/Fall 1970, pgs. 243, 245.

⁶ Ibid.

⁷ Ibid.

⁸ Richard Pipes, *Property and Freedom*, Vintage Books, June, 2000, pg. 4.

⁹ Byron C. Lambert, editor, *The Essential Paul Elmer More*, 298, 1972.

¹⁰ Michael McConnell, *Contract Rights and Property Rights* 76 CALIFORNIA LAW REVIEW 267, 270 (1988).

¹¹ James Madison, *The Federalist Papers*, No. 10.

¹² James Madison, *The Federalist Papers*, No. 54.

¹³ U.S. Constitution, Amendment V.

¹⁴ Utah Constitution, article I, section 1.

¹⁵ Utah Constitution, article I, section 22.

¹⁶ *Kelo v. City of New London*, 545 U.S. 469 (2005).