

C Y C L O P A E D I A
of
P O L I T I C A L S C I E N C E
P O L I T I C A L E C O N O M Y
and of the
P o l i t i c a l H i s t o r y o f t h e U . S .

Edit ed b y

JOHN J. LALOR

VOL.III Oat h - Zollverein

New York

Maynard, Merrill & Co.
1899

University of Cincinnati Library

the United States a system of promotions has been established far more extensively based upon character, capacity and seniority than any enforced in the civil administration. Cadets, after passing successfully the rigid tests of the military academy at West Point, are promoted (by appointment) to be second lieutenants in the regular army. Any vacancies left, after exhausting such graduates, are filled by promoting those shown to be sufficiently meritorious from among the non-commissioned officers of the army; and if there are still vacancies unfilled, appointments to them may be made from civil life. But neither the promotion nor appointment last named can be made until after detailed reports as to merits and an examination of the qualifications of the candidates by a board of five officers. The age of the candidate must be between twenty and thirty years. No officer of the corps of engineers, below the grade of field officer, can be promoted until he shall have been examined and approved by a board of three engineers, senior to him in rank; and very nearly the same rule of promotion prevails in the ordnance department. — Promotions to the rank of captain are made regimentally on the basis of seniority. Promotions in established regiments and corps are also made according to seniority. But seniority does not prevail in the selection of a brigadier general or of any officer above that grade. And when, anywhere in the army, an officer in the line of promotion is retired, the next officer in rank must be promoted to his place, according to the rules of the service. Promotions from the army to be an ordnance officer are based on examinations. — General officers appoint their own *aides de camp*; and here, therefore, is a kind of promotion hardly otherwise regulated than by the discretion of the general making it. Vacancies in the places of commissioned officers are filled by promotion through a nomination by the president in his discretion, subject to confirmation by the senate. Promotions in the navy stand upon principles closely analogous to those enforced in the army. Appointments to active service are made from the naval cadets graduated from the academy at Annapolis. No naval officer can be promoted to a higher grade, in the active list, until he has been examined by a board of naval surgeons and found physically qualified; and no line officer below the grade of commodore, and no officer not of the line, can be promoted on the active list until his mental, moral and professional fitness to perform all his duties at sea have been established to the satisfaction of a board of examining officers of not less than three senior officers appointed by the president. In time of peace the condition of a satisfactory examination applies even to a commodore seeking promotion to the grade of admiral on the active list. The examining board is authorized to take testimony under oath, and to examine the files and records of the navy department. These, with other provisions for which we have not space, seem to require in some particulars a more rigid test of merit for promotion in

the navy than is required in the army. — Our limits will not allow us to set forth the rigid tests of promotion enforced in the naval and military services of the European states. — There can be no doubt that the higher public respect and social position enjoyed by officers of the army and navy, and warranted by their superior qualifications, and the infrequency of their misconduct, as compared with the civil servants of the government, are largely a consequence of such wise and just conditions of appointment and promotion. Every advance in the official scale thus made proclaims, not a triumph of political influence, but a manly victory won in one of those examinations, in which the official record and the personal merits of the candidate are investigated and adjudged. That the effects of the vicious methods and the selfish and partisan influences which have so largely prevailed in making promotions in the civil service, have made themselves felt to a considerable degree in the execution of the army and navy systems for promotions—causing pernicious exceptions and evasions in their enforcement—can hardly be doubted. To arrest those influences, to remove political forces and favoritism more completely, as the means of securing promotions and privileges in the army and navy, are duties which congress can not too promptly perform. Every meritorious officer would welcome such a reform, and all others would hope for less advantage from neglecting their duties and studies in order to secure political influence and the interposition of congressmen and politicians in their favor.

DORMAN B. EATON.

PROPERTY. I. *Right of Property.* Political economy inquires into the principles which preside over the formation and distribution of wealth. It takes for granted the existence of property, which is its starting point; it considers it as one of those primary truths which manifest themselves at the origin of society, which are everywhere found impressed with the seal of universal consent, and are accepted as necessities of the civil order and of human nature, without even dreaming of discussing them. — Read the fathers of economic science: they are almost uniformly silent on this great question. The chief and oracle of the physiocrats, Quesnay, who understood and enlarged upon the social importance of property, does not take the trouble to define it, except in a treatise on natural law. Turgot, the statesman, philosopher and economist, Turgot, who in his work on the distribution of wealth, has thrown brilliant light on the origin, has nothing to say on the principle, the right or the form of property. The master of masters, the author of the "Wealth of Nations," Adam Smith, scarcely makes mention of it, without doubt because he saw in it no subject for discussion. J. B. Say decides debate on this subject to be futile, and undeserving the consideration of the science. "The speculative philosopher," he says, in the fourteenth chapter of his book, "may busy himself in finding out

the real foundations of the right of property; the juriconsult may lay down the laws which govern the transmission of things possessed; political science may show what are the surest guarantees of this right; but so far as political economy is concerned, it considers property simply as the strongest incentive to the production of wealth, and pays little attention to what establishes and guarantees it." In another place (vol. ii., chap. iv.) he says: "It is not necessary, in order to study the nature and progress of social wealth, to know the origin of property or its legitimacy. Whether the actual possessor of landed property, or the person by whom it was transmitted to him, obtained it by occupation, by violence, or by fraud, the result, as regards the revenue accruing from that property, is the same." — At the time when J. B. Say wrote, the problem which absorbed and agitated men's minds was the production of wealth. The European world felt itself poor; it began to understand the productiveness of labor, and craved wealth. Credit extended its operations; commerce spread in spite of war; and manufacturing industry, developing rapidly, presaged already the marvels which have since marked its course. Production in its different forms was the great business of the time. This rising tide carried all with it, population, labor, resources. All had a clear road to travel with their goal before their eyes, nor did they stop to revert to their own situation or that of others. Property seemed then a sort of common stock from which all, with a little effort, might draw in abundance, and which would reproduce itself unceasingly. No one dreamed of calling the right to it in question. The silence of economists is but a translation of the rational indifference of public opinion on the subject. — At a later period, population having increased in all the states of Europe, the value of land and the rate of wages having generally risen, personal property, thanks to the progress of commerce and industry, equaling or nearly equaling immovable property, and competition, which affected every kind of work and all investments, reducing profits as well as the outlets for human activity, the problem of the distribution of wealth came to the front. The number of poor persons seemed to increase with the number of the rich. It was even believed, for a time, that industrial civilization tended to increase the inequality which naturally exists among men. In this transition period, which still continues, sects were formed to preach to those discontented with the social order, we know not what sort of a future, the first step to which was the abolition or transformation of property. — Favored political revolutions, those fatal doctrines which at first held subterranean sway in some sort until they had hardened the hearts and corrupted the minds of the people, broke loose in the streets of France; the arguments used against society served to load the muskets and point the bayonets of revolt. At first it was necessary to defend social order by armed force; and now, whether we be economists,

philosophers or juriconsults, we all understand that our duty is to point out in such a way as shall convince the most incredulous, that society, having force on its side, has also reason and right in its favor. — It was in the light of events that the programme of political economy was extended. A place has now been assigned it in the discussion of the origin and right to property. It must base its intervention here on observation of facts, just as philosophy does, in expounding and commenting on principles. Socialism, by attacking the foundation of social order, compels all the sciences to contribute, each its share, to its defense. — II. *Opinions of Philosophers and Juriconsults on Property.* Until our time the question of property had been abandoned to philosophers and juriconsults. The usefulness of their labors is incontestable; they prepared the ground and paved the way for political economy. If they did not always completely observe and demonstrate the nature of things, they had at least had glimpses of it. It was Cicero who showed that the earth became the patrimony of all by labor, and proved that the person who attacked this right of appropriation violated the laws of human society. After him Seneca, although he exaggerated, in accordance with the ideas of his time, the rights of sovereignty, yet recognized that property was an individual right. *Ad reges, potestas omnium pertinet, ad singulos proprietates.* — Nevertheless the person would wander from his road who sought to find in the writings of philosophers or juriconsults, either a complete theory of property, or even an exact definition of it. Grotius, who is in the front rank of doctors of natural and international law, has given in a few lines a history of property from which communism might draw its arguments. According to this author, after the creation God conferred on the human race a general right to everything. "This was done," he says, "that each might take for his use whatever he wished, and consume what it was possible for him to consume. * * Matters remained thus until, from the increase in the number of men as well as of animals, the land, which was formerly divided by nations, began to be divided among families; and since wells are a supreme necessity in dry countries, and are not equal to supplying a large number, each appropriated what he was able to seize." — Charles Comte remarks that the publicists of this school, Wolf, Pufendorf and Burlamaqui, confined themselves to paraphrasing the ideas of Grotius. All supposed that, in the origin of societies, men, to satisfy their wants, had only to take what they found ready at hand, that the earth produced without labor, and that appropriation was nothing but occupation or conquest. — Montesquieu did not understand, any better, the part played by labor in the formation of individual property. "Just as men," he says (book xvi., of the "Spirit of the Laws,") "abandoned their natural independence to live under political laws, they renounced the natural community of goods to live

under civil laws. The first laws gave them liberty, the next property." Montesquieu, the only publicist since Aristotle who undertook to base the laws of social order on observation, was nevertheless unable to prove among any people, however primitive, the existence of that supposed community of goods which, according to him, has its origin in nature. The most savage tribes, in ancient as in modern times, had a very definite idea of mine and thine. Property and the family have everywhere served as the foundations of order, and law has only confirmed, by giving expression to them, relations already established. — Blackstone does not go farther than Montesquieu, whose ideas agree with those of J. J. Rousseau, on the state of nature. Bentham himself, the writer who, more than any other, departed from the accepted ideas of his times, declares that property does not exist naturally, and that it is a creation of the law. — There is some consolation for proprietors in Bentham's assurance, that property will perish only with the law. As human society can not exist without law, and since the end of the law would be the end of society, property may safely count on a long lease of life. Besides, Bentham, following the example of Montesquieu, confounded the idea of property with that of the guarantees which property receives from civil and political laws, guarantees fitly represented by taxation. The best refutation of Bentham's theory is to be found in some passages from Charles Comte, which it may be well to reproduce here. "If nations can only exist by means of their property, it is impossible to admit that there is no natural property unless it be admitted that it is unnatural for men to live and to perpetuate themselves." "It is true that there is no image, no painting, no visible feature which can represent property in general; but it can not from this be concluded that property is not material, but metaphysical, and that it belongs entirely to the conception of the mind. There is no visible feature by which a man in general can be represented, because in nature there exist only individuals, and what is true of men is true also of things." "Individuals, families and peoples subsist by means of their property; they could not live on metaphysical relations or conceptions of the mind. There is in property something more real, more substantial, than a basis of expectation. A false, or at least a very incomplete idea is given of it when it is defined as if it were a lottery ticket, which is also a basis of expectation." "According to Montesquieu and Bentham, it is civil laws which give rise to property, and it is clear that both mean by civil laws the decrees of public power which determine the possessions which each one may enjoy and dispose of. It would, perhaps, be more correct to say that it is property which gave birth to civil laws; for it is hard to see what need a tribe of savages, among whom no property of any kind existed, could have of laws or of a government. The guarantee of property is undoubtedly one of the most essential elements of which it is com-

posed; it increases the value of property, and assures its duration. A great mistake would be made, however, were it supposed that this guarantee was all there is of property; the civil law furnishes the guarantee of property, but it is human industry which gives birth to property. Public authority is needed only to protect it and to assure to all the power of enjoying and disposing of it." "Were it true that property exists or is created by decrees and by the protection of public authority, it would follow that the men who in any country were invested with the power of legislation, would also be invested with the power of creating property by their decrees, and could, without committing injury to the right of property, despoil some of it to the advantage of others: they would have no other rules to follow than their own desires or caprices." — The Scotch school, from Locke to Reid and Dugald Stewart, was the first to give a nearly correct definition of the right of property; as the physiocratic school was the only one, previous to 1789, that understood its importance, and brought out into relief the beneficial influence it exercised on the economy of society. But at the time of the French revolution these teachings had not yet corrected the ideas of all; for Mirabeau said to the constituent assembly that "private property is goods acquired by virtue of the laws. *The law alone constitutes property*, because it is only the political will which can effect the renunciation of all, and give a common title, a guarantee to the use of one alone." Touchet, one of the jurists who contributed most to the drawing up of the civil code, shared at that time this opinion, and declared that "It is only the establishment of society and conventional laws which are the real source of the right of property." — There is not much difference between Mirabeau's statement and that of Robespierre, who wrote, in his declaration of rights, "Property is the right that each citizen has to the enjoyment of that portion of goods guaranteed to him by the law." And Robespierre is not far removed from Babeuf, who desired that the land should be the common property of all, that is, that it should belong to nobody. Mirabeau, who pretends that the legislator confers property, admits, by so doing, that he can take it away; and Robespierre, who expressly reserves the state's right in property, and reduces the proprietor to the position of a mere usufructuary, by refusing him the power of selling or disposing of it by will or otherwise, is the direct and immediate forerunner of communism. — I know that the convention gave, in the declaration of rights which serves as a preamble to the constitution of 1793, a very reassuring and very sound definition of the right of property. Article sixteen reads: "The right of property is the right belonging to every citizen, of using and disposing as he likes, of his goods, his revenues, of the fruit of his labor and his industry." And article nineteen adds a guarantee, which all subsequent French constitutions reproduced: "No one shall be deprived of the least portion of his property without

his consent, except when public necessity, legally proven, evidently demands it, and then only on condition of just compensation previously made." — But, doubtless, the convention reserved the application of those fine maxims, as it did the abolition of capital punishment, for times of peace. No government ever committed more flagrant outrages on the right of property. Confiscations and maximum laws, to say nothing of the inflation of assignats and bankruptcy, marked its savage sway, and if it made France victorious and terrible abroad, it ruined and impoverished her at home. The convention evidently thought, with Saint-Just, that "The man who has shown himself the enemy of his country, can not be a proprietor in it." It treated the nobles and priests as Louis XIV. had treated Protestant refugees after the revocation of the edict of Nantes. It adopted, in the interests of the republican state, the theory of feudal origin, that the sovereign, the king, had direct and supreme dominion over the goods of his subjects. — M. Troplong called attention to the concordance of the demagogical doctrine of property with the maxims of despotism: "All that exists throughout the length and breadth of our states," said Louis XIV. in his instructions to the Dauphin, "whatever be its nature, belongs to us by the same title; you must be fully persuaded that kings are the absolute lords, and have naturally the full and free disposition of all the goods possessed both by church people and by laymen, that they may use it in everything; likewise husbandmen." Put this absolute sovereignty into the hands of a socialistic republic, and it will assuredly lead to the measures demanded in the following lines by Gracchus Babeuf: "The land of a state should assure a subsistence to all the members of that state. When, in a state, the minority of its people has succeeded in monopolizing its landed and industrial wealth, and by that means holds the majority under its sceptre, and uses the power it has, to cause that majority to languish in want, it should be known that such encroachment could only occur through the bad institutions of the government; therefore what former governments neglected to do, at the time, to prevent that abuse or to stifle it at the beginning, the actual administration should do to re-establish the equilibrium which should never have been lost, and the authority of the laws ought to operate a reform in the direction of the final maxim of the perfected government under the social contract: *'Let all have enough, and no one too much.'*" — At last the era of the civil code dawned on France and on Europe. Then for the first time the public power laid down and sanctioned the true principles respecting property. M. Portalis expressed himself before the legislative assembly in the following terms: "The principle of the right of property is in ourselves; it is in no way the result of human convention or of positive law. It lies in the very constitution of our being, and in our different relations to the objects which surround us. Some philosophers

seem astonished that man should become the proprietor of a portion of the earth which is not his creation, which will outlast him, and which obeys only laws that are not of his making. But does not this astonishment cease when all the marvels of man's handiwork are considered, that is to say, all that human industry can add to the work of nature." Yes, legislators, it is by our industry that we have conquered and reclaimed the land on which we live; by it we have made the earth more habitable, and better fitted to be our abode. Man's task, so to speak, was to complete the great work of creation. * * Let us put no faith in systems which pretend to make the land the property of all, that men may have a pretext for respecting the rights of no one." — The civil code (articles 544, 545), collecting and condensing the principles laid down in previous constitutions, defined property as follows: "The right of using and disposing of things in the most absolute manner, provided that they are not used in a way prohibited by the laws or regulations." Charles Comte has rightly pointed out that this definition applies to the usufruct's right as well as to property. The definition of the civil code sins in another way: it does not limit the power which is given to legislators, or to the administration, of making rules regarding the use of property. On that account, property lacks all guarantees; it is not defended against arbitrary power. The law might forbid a landowner to sow seed, to plant vines or trees, to erect any building on his land, to sell, exchange or give his property away. In a word, the definition of the civil code admits of Egyptian monopoly as well as of French liberty. Fortunately, legislative custom and public morals correct the rashness of the legal text. — The civil code declares property inviolable. Following the examples of the constitutions of 1791, 1793 and 1795, it declared that no one should be compelled to part with his property, unless for the public good, and in consideration of just compensation previously made. But is it absolutely the fact, as M. Troplong thinks it to be, that the state, by these provisions, only reserved to itself the rights attached to political requisition? But did the state by those provisions shelter property from the public power as well as from the usurpation of private persons? This is the weak side of the civil code. Its authors laid down principles, all of whose consequences they had not drawn. While declaring property inviolable, they failed to shield it from sequestration by government, or from confiscation. — The emperor Napoleon said to the council of state, on Sept. 18, 1809: "Property is inviolable. Napoleon himself, with the numerous armies at his disposal, can not take away a single farm. For to violate the right of property in one man is to violate it in all men." Admirable words, to which his acts did not correspond. — III. *Origin, Character and Progress of Property.* Why is it that the great majority of philosophers and jurists have succeeded so ill in defining property?

How does it happen that the origin and nature of an institution which holds so high a place in social order, have been revealed to us with any degree of clearness, only since the end of the last century? How is it that the highest intellects, when brought to bear on this study, have too often evolved only such theories as the humblest of landowners could not reconcile with his every-day practice? It is because the phenomenon which they studied and described has more than once changed character. Property has shared in the general progress of civilization; it has, at the same time, followed a law of development of its own. It has advanced as liberty, as industry and as the arts have done, in the world; it has passed through different and successive stages, each corresponding to a different theory. — The distinction of mine and thine is as old as the human race. From the time that man became aware of his personality, he sought to extend it to things. He appropriated the land and what it produced, animals and their increase, the fruit of his energy and the works of his fellow-men. Property exists among pastoral peoples as well as among those nations which have reached the highest point of agricultural wealth and of industry; but it exists among them under different conditions. The occupation of land was annual before it became lifelong, and it was lifelong, in the person of the tenant, before it became hereditary and in some sort perpetual. It belonged to the tribe before it belonged to the family, and it was the common domain of the family before it took an individual character. Poets, who were the first historians, attest this gradual transformation — The marked distinction between the ancient and the modern world is, that formerly property was too often acquired by conquest, while now its essential basis is labor. Not only in antiquity and in the middle ages did individuals, as well as peoples, enrich themselves by usurpation, but free men disdained industry, and the earth was tilled by slaves. Armed force, which was the surest title to the possession of land, procured also the instruments of production. How was it possible to sound the nature or take in the full horizon of property at a time when the conqueror arrogated to himself the right, at one time of selling the conquered like beasts of burden, and at another of making serfs of them; when men were treated as though they were goods and chattels; when labor passed first through the ordeal of slavery, and then through that of serfdom, before it became the honor of free men and the wealth of nations? — This is not all. Property, in undergoing a progressive development similar to that of liberty, has extended and increased, and has, so to speak, invaded space. When civilization begins, what man possesses is very trifling: a few herds, some rude implements, a spot of land which produces corn in the middle of a desert waste; as yet he has scarcely appropriated any natural agents. Agricultural peoples, which succeed the pastoral tribes, soon increase ten-fold and a hundred-fold the property which now, little by

little, becomes connected with the surface of the earth. But it remains only for nations skilled in industry and commerce to bring property to its highest development. When the land becomes, in some sort, individualized, and each portion falls into the hands of an owner who makes it productive with his capital and by the sweat of his brow, those who find themselves left out in this partition of the land are not, on that account, excluded from property. Capital has its origin in accumulation. Personal property is grafted on landed property. Treasures accessible to all are formed, of which each can have a share, and which he can increase by his labor. A parcel of land which in Algeria is worth perhaps \$2, and in the western states of America about \$5, sells readily in western Europe for from \$100 to \$1,000. In spite of the high price which improved agriculture speedily gives to rural property, there is no exaggeration in saying that to-day the personal property of England and France far exceeds the value embodied in the land. — It may be added, that, as civilization advances, each citizen witnesses the increase and extension of the common property which he enjoys equally with all other citizens of the state. Roads, canals, railways, schools, and other public establishments are incomparably more numerous and better administered to-day than they were half a century ago. What would it be, if we were to compare the sum of enjoyments and capacities which society put at the disposal of its members in the republics of Greece and Rome and those enjoyed by them in our day? The humblest of our laborers would not like to find himself exposed to the misery or the humiliations which awaited the proletarian of ancient days in the agora or the forum. It is, then, rightly that M. Thiers, calling to mind that property is a universal fact, affirms, at the same time, that it is a *growing* fact. — Let us listen to Thiers, portraying the origin and the growth of property in historic times: "Among all peoples, however rude they may be, we found property, at first as a fact, and afterward as an idea, an idea more or less clear according to the degree of civilization attained, but invariably settled. Thus, the savage hunter has at least his bow, his arrows and the game which he has killed. The nomad, who is a shepherd, at least owns his tents and his flocks. He has not yet admitted property in land, because he has not yet thought of applying his labor to it. But the Arab who has raised numerous flocks, is satisfied that he is the proprietor of the land, and exchanges its products against the wheat which another Arab, settled on the land, has produced elsewhere. He measures exactly the value of the object which he gives, by that of the object which is given him; he knows that he is the proprietor of the one before the barter, and of the other after it. Immovable property does not yet exist for him. Sometimes only he is seen, during two or three months of the year, to establish himself on land which belongs to no one, to plow it, to sow it with seed, to reap

the harvest, and then to wander off to other places. * * The duration of his property is in proportion to his labor. Little by little, however, the nomad becomes settled and turns agriculturist, for it is an instinct in man to wish to have a place of his own, a home. * * He ends by choosing a tract of land, by dividing it into patrimonies, on which each family establishes itself, and works and cultivates it for itself and its posterity. As man can not allow his heart to wander among all the members of the tribe, and as he longs for a wife of his own, children whom he may love, care for and protect, in whom his hopes, his fears, his very life, may be centred, so he has need of his own parcel of land, which he may cultivate, plant, beautify according to his tastes, fence in, and which he hopes to transmit to his descendants, green with trees which have grown not for him, but for them. Then to the personal property of the nomad, succeeds the landed property of an agricultural people; this second property grows, and with it come laws, complicated, it is true, which time makes more just and more provident, but the principle of which it does not change. Property, at first the result of instinct, becomes a social agreement, for I protect your property that you may protect mine. As man advances, he becomes more attached to what he owns; in a word, more a proprietor. In a barbarous state he is scarcely proprietor at all; civilized, he is one intensely. It has been said that the idea of property was weakening in the world. That is an error of fact. Far from growing weaker, it is being regulated, defined and strengthened. It ceases, for instance, to be applied to what is not capable of being possessed, that is, to man, and from that time slavery is at an end. This is an advance in ideas of justice, but not a weakening of the idea of property. * * Among the ancients the land was the property of the republic; in Asia it is that of a despot; in the middle ages it belonged to lords paramount. With the progress of the ideas of liberty, where man's freedom was accomplished, the liberty of his chattels and possessions was secured; he himself is declared to be the owner of his lands, independently of the republic, the despot, or the lord paramount. From that moment confiscation is abolished. The day the use of his faculties was restored to him, property became more individualized; it became more *proper* to the individual, more property than it was. — There is another observation to be made, and one more directly within the domain of political economy. It is, that the more property increases, is firmly established, respected, the more society prospers. "All travelers," says M. Thiers, "have been struck by the state of languor, of misery, and of rapacious usury, of countries in which property is not sufficiently well guaranteed. Go to the east, where despotism claims to be the only property owner, or, which is the same thing, return to the middle ages, and you will see everywhere the same thing: the land neglected, because it is the readiest prey to the avidity of tyranny, and left to the hands of

slaves, who are not free to chose their own career; commerce preferred, because it could more readily escape exaction; in commerce, gold, silver and jewels in request, being the valuables most readily hidden; all capital seeking conversion into these values, and when it actually seeks employment concentrating itself in the hands of a proscribed class, who, making a pretense of poverty, lived in houses wretched on the outside, gorgeous internally, opposing an invincible resistance to the barbarian master who would tear from them the secret of their treasures, and solacing themselves by making him pay more dearly for the money, thus, by usury, revenging themselves for his tyranny." — Such are the roots of property to be found in history. As far as the right of property is concerned, it may be said that the universality of the fact is sufficient to establish it. Were property something accidental in human society, were the institution established only among an insular people, and were it an exception to the general custom, it might be called upon to produce its title deeds; but it stands to reason that men must have the right to do as they have done at all times, and in every inhabited place. Universal consent is an infallible sign of the necessity for, and consequently of the legality of, an institution. — But the right can be proved independently of the histic reason. "Man," says M. Thiers, "has a first property in his person and his faculties; he has a second, less intimately connected with his being, but not less sacred, in the product of his faculties, which includes all that are called worldly possessions, and which society is in the highest degree interested in guaranteeing to him, for without this guarantee there would be no labor, without labor no civilization, not even necessaries, but, instead, destitution, brigndage and barbarism." This definition is neither sufficiently absolute nor complete. M. Thiers seems to place the foundation of property in labor alone. Undoubtedly it is its most legitimate source, but it is not the only one, nor, in point of date, is it the first. At the commencement of social life, man appropriated the soil by occupation, before he made it his own by the work of his arms. Everywhere wresting the ground from man or from beast, the taking possession of it preceded its cultivation. The land belonged to a tribe collectively before it was distributed among its different members. This is what the school calls the right of the first occupant, a right which is explained by the very fact of possession being taken without hindrance, and by the power to defend, to protect, and consequently to appropriate, the land occupied. — Side by side with the men who acquired their possessions by occupancy or by labor, there are nations and individuals who usurped what they possess by violence and by fraud. Laws, and public force at the service of the laws, justify that usurpation wherever their power extends, and commands both obedience and respect. But it happens, and history furnishes many examples of it, that the property thus wrongfully acquired is peaceably handed down from

generation to generation, gives rise to an infinite number of contracts, and becomes the basis of fortunes. After all these *faits accomplis*, ought the origin of landed estates to be sought for with a view to securing their condemnation? Or, rather, does not the interest of society demand that the subsequent transactions be legitimized, and their origin wiped out? This state of affairs has given rise to the system of prescription, which is the real safeguard of property. "No transaction would be possible," says M. Thiers, "no exchange could be made, if it were not settled that after a certain time the person who holds anything holds it lawfully, and may transfer it. Imagine what would be the condition of society, what acquisition would be certain, if it were allowed to go back to the twelfth or thirteenth century, and dispute possession with the holder of a piece of property, by proving that a feudal lord had taken it from his vassal and given it to a favorite, or to one of his men-at-arms, who sold it to a member of the guild of merchants, who, in turn, transmitted it, through many hands, to a long line of owners more or less respectable. It is very right that there should be a term fixed, after which what is, simply because it is, should be declared lawful and held as good. Were this not so, what a scene the world would present."—It must be said, however, that conquest and usurpation are not constant and exclusive facts, although it might be supposed they were, when we see Assyrians, Persians, Greeks, Romans, and, finally, the northern barbarians, each in turn dispossessing the other, and ruling the world by force of arms. Violence did not mark the beginning of all property. M. Thiers, after having stated, in contradiction to the well-understood and well-interpreted testimony of history, that "all society presented in the beginning this phenomenon of occupation more or less violent," admirably explains how it is that the greater part of landed property had its origin in labor. (*De la Propriété*, by M. Thiers, vol. i., ch. 10.)—Property draws after it, as a consequence, inequality of conditions in the social order, and this inequality in condition is itself only the reflection of the differences which nature has established among men. All men have not the same muscular strength, nor the same degree of intelligence, nor an equal aptitude for or application to work. By the very fact that there are some who are stronger, cleverer, and, it must be said, happier than others, there are some also who tread with a quicker and surer foot the way to wealth. Property does not aggravate these irregularities in nature, but it marks them in durable characters, and gives them a body. In the beginning the best farmer possesses most. What interest could society have in interfering with his better farming? The most skillful and robust cultivator of the soil, while enriching his family, adds to the general sum of products, and therefore enriches society also. Equality of condition, the equal partition of the land, and equality of wages, are three forms of the same

idea, which amounts to saying that the stronger ought not to produce more than the weaker, and that the thought of the enlightened man ought to sink to the level of that of the ignorant man; this would be to limit production, to repress intelligence, and to stifle literature, science and art in their very germ.—The right of possession includes, as a natural consequence, the right of disposing of the things possessed by you, of transmitting them to others, either for a consideration, or as a free gift; of exchanging, selling, or giving them away during life or by testamentary disposition, and of leaving them as an inheritance. Property implies the right of inheritance. Man is so constituted that he wishes to outlive himself. The care he feels for his self-preservation extends to his family; he would work much less for himself were he not, in working for himself, working for his family. Property reduced to a usufructuary interest would be of but half its value to individuals, and of but half its value to society.—This thought is expressed in pages which I prefer to borrow rather than attempt to adapt: "A man, if he had but himself to think of, would stop short in his career. As soon as he had provided for his old age, would you, through fear of encouraging idleness in the son, force the father himself into idleness? But does it follow, that, by permitting the hereditary transmission of property, the son must necessarily be an idler, consuming in sloth and debauchery the fortune left him by his father? Firstly, we would ask, what does the property which is to support the idleness of the son represent, after all? It represents previous work done by the father; and by hindering the father from working in order to compel the son to work for himself, all that is gained is that the son must do what the father has not done. There will have been no increase in the amount of work done. In the system, on the contrary, in which the right of inheritance is recognized, to the unlimited labor of the father is added the unlimited labor of the son; for it is untrue that the son remains idle because the father has left him a more or less considerable amount of property. To begin with, it is rare for a father to leave his son the means of doing nothing. It is only in cases of great wealth that this happens. But usually, in most professions, the father, in leaving the son his inheritance, only procures for him a better start in his career. He has only pushed him a little further, a little higher: he has given him the chance of working to greater advantage; of being a farmer, when he himself was only a farm servant; of fitting out ten ships, when he could fit out but one; of being a banker on a large scale, when he was one only on a small one: or of changing his position in life; of rising from one to another; of becoming a lawyer, a doctor, or a barrister; of being a Cicero or a Pitt, when he himself was a simple gentleman, like Cicero's father, or a cornet of a regiment, like Pitt's."—Thus, the right of inheritance is necessary to property, as property is to social order; it is that

right which, by permitting the accumulation of wealth, creates capital and makes labor productive. The laws of all free and industrious peoples sanction it; but it is so indispensable to the development of families and the progress of societies, that were it not the invincible consequence of human nature and of the social state, that, in a word, if it did not exist, it would be necessary to invent it. — IV. *Objections which have been raised against the Principle of Property.* The objections which have been taken to the principle of property are taken sometimes to the right, sometimes to the fact itself. The great opponent of property, M. Proudhon, is forced to recognize, that, as the possession of property has become general among all classes, it has approached the ideal of justice. But this more general possession of property, inseparably connected with the advance of civilization, does not disarm M. Proudhon's hostility, he contests the principle of property itself. Property, according to him, does not exist as a natural right; it is founded neither on occupation nor on labor. "Since every man," says this author, "has the right to occupy from the simple fact that he exists, and that to continue in existence he can not dispense with a material of exploitation and of labor; and since, on the other hand, the number of occupants varies incessantly, owing to births and deaths, it follows that the quantity of matter which each worker may claim, is variable like the number of occupants; that occupation is always subordinate to population; and finally, that, possession never being able rightfully to remain constant, it is, as a fact, impossible that it should become the basis of property."—To dispose of this paradox, all that is needed is to refute the point from which it starts. The prerogatives of the individual and of the species do not embrace a natural right to occupation any more than they do a natural right to labor. Undoubtedly, in the midst of a vacant space, the man who first occupies a field or a meadow, incloses it in bounds, and appropriates it, becomes its lawful possessor; but it is not by virtue of a right of possession inherent in every man, but because the ground previously belonged to no one, and because, in leaving his impress on that ground, he is not interfering with any previous right.—"A man," says M. Proudhon, "who was forbidden to travel over the highways, to rest in the fields, to take shelter in caves, to light a fire, pick the wild berries, to gather herbs and boil them in a piece of baked earth—such a man could not live. Thus the earth, like water, air and light, is a first necessity which each ought to be able to use freely, without injury to the enjoyment of them by another. Why, then, is the earth appropriated?" This thesis might have its good side in a condition of savagery. M. Proudhon's theory might succeed among a nation of hunters. But in an industrious and civilized community, it is but a late and faded echo of the declamations of J. J. Rousseau. Men nowadays do not live on wild berries or on herbs gathered in the fields; they are no longer reduced to live

in caves, or to prepare coarse food in earthen vessels. Civilization has bestowed on them possessions which far more than compensate for any supposed natural rights to gather wild fruit, to hunt or to fish; and the humblest workingman of the nineteenth century is certainly better lodged, better clothed and better fed than the typical man of M. Proudhon could be, with all his right to common possession of the land.—After having asserted that occupancy could not serve as a basis for property, M. Proudhon equally denies the title of labor. Charles Comte had said: "A piece of ground of fixed dimensions is only able to produce sufficient food for the consumption of one man for one day: if the owner by his labor can make it produce enough for two days, he doubles its value. This new value is his work, his creation; it is not taken away from any one; it is his property." M. Proudhon answers: "I maintain that the possessor is paid for his trouble and his industry by the double return, but that he acquires no right in the soil. I admit that the laborer may make the product of his labor his own, but I do not understand how property in the product carries with it property in the soil, or in matter. Does the fisherman who can catch more fish, on the same coast, than his companions, become, because of his skill, proprietor of the waters in which he fishes? Was a hunter's skill ever looked upon as conferring on him a right of property in the game of a whole canton? The cases are precisely similar: the diligent husbandman finds in a harvest, abundant and of better quality, the recompense of his toil; if he has made improvements on the soil, he has the right to a preference as possessor of it; never, under any consideration, can he be allowed to allege his skill as a farmer as a title to property in the soil he tills. To transform possession into property, there is more needed than labor, otherwise man would cease to be a proprietor as soon as he ceased to be a laborer: now, what constitutes property, is, according to the law, immemorial and uncontested possession, that is, prescription; labor is only the visible sign, the material act, by which occupation is manifested."—As sources of property, occupation and labor are the complements of each other. Possession would certainly be far from lasting, if cultivation did not follow to sanction it, by revealing and bringing into play the productive forces of the soil; and as for labor, it does not necessarily imply property, since a farmer who has spent a large amount of capital in the improvement of the land he leases, while he can demand compensation for that capital, does not therefore acquire a right of property in the domain. This much is true, and can be said without exaggeration. But to suppose that the possessor who has cultivated a piece of land, and who, by so doing, has improved the land and increased the capital which that land represents, to suppose that he has no rights beyond the fruit of the year, is a glaring error. To whom would this improved land belong? Would any one bestow capital on

it, give it a new value, just that this value might become the prize of the first comer? If this were so, no one would work. — M. Proudhon admits that the husbandman who has improved land "has the right to a preference in possession." Here, then, is another case, and the case presents itself often, in which property, to use the language of Proudhon's book, ceases to be robbery. There is no doubt that the proprietor has no need to work to preserve his right: but work adds to the titles of property, and makes them still more honorable. Now, the possessor who cultivates, even if he does not add to the value of the land, would very soon grow tired of his passion for work, if he were only allowed to receive from it the produce of one harvest. Agriculture is the offspring of permanency in property, and without the guarantees which the law attaches to possession, agriculture would make no progress. M. Proudhon has only to look at what happens to the best of land when in the hands of nomadic tribes, among whom the land is only scratched to secure the meagre harvest of the year. — But, it will be said, the land thus conceded in perpetuity is, little by little, sequestered, invaded; and the last comers are likely to see both hemispheres entirely filled up by the heirs of the first who occupied the land, or of those who wrested it, by violence or by fraud, from its original owners. Even if all this were so, the misfortune does not seem to us a very great one. Land, thanks to the progress of industry, is not the only source of wealth. The man who does not own a farm may buy a house, start a factory, or have an interest in some scheme for transportation. Property, supposing there were not enough for all in the form of land, would show itself abundant under new forms. Previous appropriation of the soil, instead of robbing future races, really tends to enrich them. — Very high intellects refuse to admit this supposed confiscation of the soil to the detriment of the latest comers. M. Thiers gives us considerations on this point which are decisive. I shall try to epitomize them here. "Some engineers have thought that there was coal enough in the bowels of the earth to last indefinitely, while others have thought, that, at the rate at which industry was advancing, there was not enough for a hundred years. Should we, then, abstain from using it, lest there should be none for our posterity? * * The society which should abolish property in land for fear of the earth's whole surface being invaded, would be every whit as absurd. Let us make our minds easy on that score. European nations have not yet cultivated, some the quarter, others the tenth part, of their territories; and of the entire globe not the thousandth part is occupied. Great nations have run their course hitherto, without having brought under cultivation more than a very small part of their dominions. Nations have passed through youth, maturity and old age; they have had time to lose their characteristics, their genius, their institutions, all that they lived by, without having, we

will not say, completed, but even much advanced, the cultivation of their territory. After all, space is nothing. Often, on the widest extent of land, men find it hard to live; and often, on the other hand, they live in plenty on the narrowest strip of ground. An acre of land in England or in Flanders supports a hundred times more inhabitants than an acre in the sands of Poland or of Russia. Man carries with him fertility; wherever he appears the grass grows and corn springs up. He brings with him his cattle, and wherever he settles he spreads around him a fertilizing soil. If, then, a day could be imagined when every corner of the globe should be inhabited, man would obtain from the same superficies ten times, a hundred times, nay a thousand times, more than he obtains to-day. What need be despaired of when the sands of Holland are transformed into fertile ground by man? Were he cramped for room, the sands of the Sahara, of the Arabian desert, of the desert of Cobi, would be covered by the fruitfulness which follows him; he would lay out in terraces the sides of the Atlas, of the Himalayas, of the Cordilleras, and cultivation would climb the steepest summits of the globe, and would only stop where, from the elevation, all vegetation ceases. This surface of the globe, invaded as is said, will not fail future generations, and, meanwhile, does not fail those of the present: for everywhere land is offered to men; it is offered them in Russia, on the banks of the Borysthènes, the Don and the Volga; in America, on the banks of the Mississippi, the Orinoco, and the Amazon; in France, on the coast of Africa, once the granary of the Roman empire. But emigrants do not always accept, and when they do, if nothing be added to the gift of the land, they go to their death on those distant shores. Why? Because it is not surface which is wanting, but surface covered with constructions, plantations, inclosures, the works of appropriation. Now, all these things exist only where former generations have been at the pains to put everything in such a position that the labor of the new comers may be immediately productive." — It is plain, then, that the earth, in spite of the extent of property, is not going to fail man. It is property well established, fenced around with guarantees, and become hereditary, which makes the land habitable and productive. Let us add, that under this régime the lot of the cultivator or tiller of the soil improves more rapidly than that of the owner. Property is in a special way a benefit to labor. (Compare COMMUNISM, MONOPOLY, LAND, SOCIALISM, etc.)*

L. FAUCHER.

* Property and the family are two ideas, for the attack and defense of which legions of writers have taken up arms during the last half century. Recent systems, founded upon old errors, but revived by the popular emotions which they aroused, have in vain disturbed, misrepresented, sometimes even denied, them. These ideas express necessary facts, which, under diverse forms, have been and will always be coming forth; they may thus be justly regarded as the fundamental principles of all political society, because from them originate, to a great extent, the two principal objects which

PROPERTY, Landed. (See RENT.)

PROPERTY, Literary. Under the heading of "Copyright" (see vol. i., p. 642), Mr. Macleod has given a comprehensive summary of the growth of the conception of literary property, and a speci-

fication of the enactments in Great Britain under which its status has been defined and regulated. He has also made reference to the copyright acts of some of the other states of Europe, as they stood twenty years ago. We here propose to supplement Mr. Macleod's statistics with such later

concern social laws, namely, the rights of man over things, and his duties toward his fellow-men. — *The Right of Property.* If man acquires rights over things, it is because he is at once active, intelligent and free; by his activity he spreads over external nature; by his intelligence he governs it, and bends it to his use; by his liberty, he establishes between himself and it the relation of cause and effect and makes it his own. — Nature has not for man the provident tenderness imagined by the philosophers of the eighteenth century, and dreamed of before them by the poets of antiquity when they described the golden age. She does not lavish her treasures in order to make life flow smoothly along in abundance and idleness for mortals; on the contrary, she is severe, and yields her treasures only at the price of constant labor; she maltreats those who have not sufficient strength or intelligence to subdue her, and when we consider the primitive races whom the arts of civilization had not yet raised above her, we may ask ourselves, with Pliny, if she did not show herself a step-mother rather than a mother. Left to itself, the earth presents here deserts, there marshes or inextricable forests; the most fertile portions are ordinarily the most inaccessible, because, situated in the valleys, they are encroached upon by stagnant waters, and infested by the miasms which exhale from them, or haunted by noxious animals which seek their food there; poisonous plants grow among the nutritious ones, without any outward sign by which to distinguish them, while yet we have not the warning of instinct which the animals have. The best fruits themselves have as yet, for the most part, only a coarse savor before cultivation has corrected their bitterness. Doubtless man can live, as he has, amidst this indifferent or hostile nature; but he would live there, timid and fearful as the roe of the forests, isolated, or collected in small groups, and lost in the immense spaces, in which his frail existence would be but an accident in the luxuriant life of organized beings; he would not feel himself at home, and would in very fact be like a stranger on an earth which he would not have fashioned according to his will, and where he would be neither the swiftest in the chase, the best protected against cold, nor the best armed for strife. — What even now distinguished him from other creatures, in this state of profound barbarism, were the divine powers of soul with which he was gifted. However torpid they might as yet have been, they would have taught him, without any doubt, to emerge from his nakedness and his feebleness: from the earliest times, they would have suggested the means of arming his hand with an axe of stone, like those which, buried in the calcareous deposits of another age, tell us to-day of the miserable beginning of our race upon the globe; they would have taught him to protect his body against the cold with the skin of the bear, and to shield his home and family from the attacks of ferocious beasts by arranging a cave for his use or building a hut in the midst of water, not far from the shore of a lake. But already man would have left upon matter some impress of his personality, and the reign of property would have begun. — When centuries have elapsed, and generations have accumulated their labors, where is there, in a civilized country, a clod of earth, a leaf, which does not bear this impress? In the town, we are surrounded by the works of man; we walk upon a level pavement or a beaten road; it is man who made healthy the formerly muddy soil, who took from the side of a far-away hill the flint or stone which covers it. We live in houses; it is man who has dug the stone from the quarry, who has hewn it, who has planed the wood; it is the thought of man which has arranged the materials properly and made a building of what was before rock and wood. And in the country, the action of man is still everywhere present; men have cultivated the soil, and generations of laborers have mellowed and enriched it; the works of man have dammed the rivers and created fertility where the waters had brought only desolation; to-day man goes as far as to people the rivers, to direct the growth of fish, and takes

possession of the empire of the waters. We reap the wheat, our principal food. Where is it found in a wild state? Wheat is a domestic plant, a species transformed by man for the wants of man. Thus products, natives of countries most diverse have been brought together, grafted, modified by man for the adornment of the garden, the pleasures of the table, or the labors of the workshop. The very animals, from the dog, man's companion; to the cattle raised for the shambles have been fashioned into new types which deviate sensibly from the primitive type given by nature. Everywhere a powerful hand is divined which has moulded matter, and an intelligent will which has adapted it, following a uniform plan, to the satisfaction of the wants of one same being. Nature has recognized her master, and man feels that he is at home in nature. Nature has been appropriated by him for his use; she has become his own; she is his property. — This property is legitimate; it constitutes a right as sacred for man as is the free exercise of his faculties. It is his because it has come entirely from himself, and is in no way anything but an emanation from his being. Before him, there was scarcely anything but matter; since him, and by him, there is interchangeable wealth, that is to say, articles having acquired a value by some industry, by manufacture, by handling, by extraction, or simply by transportation. From the picture of a great master, which is perhaps of all material productions that in which matter plays the smallest part, to the pail of water which the carrier draws from the river and takes to the consumer, wealth, whatever it may be, acquires its value only by communicated qualities, and these qualities are part of human activity, intelligence, strength. The producer has left a fragment of his own person in the thing which has thus become valuable, and may hence be regarded as a prolongation of the faculties of man acting upon external nature. As a free being he belongs to himself; now, the cause, that is to say, the productive force, is himself; the effect, that is to say, the wealth produced, is still himself. Who shall dare contest his title of ownership so clearly marked by the seal of his personality? — Some authors have tried to establish the principle of property on the right of the first occupant. This is a narrow view: occupation is a fact, and not a principle. It is one of the signs by which the taking of possession manifests itself, but it is not sufficient to make it valid before the philosopher or the lawyer. Let a man land upon a desert, and say: "As far as my eye can reach, from this shore to the hills which bound the horizon yonder, this land is mine"; no one would accept such occupation for a *bona fide* title. But let the man settle upon the most fertile hill-side, build a hut there, cultivate the surrounding fields, and the possession of the portion actually occupied will become a right, because he has performed a proprietary act, that is to say, has by his labor thereon impressed on it the seal of his personality. International law makes a distinction, in regard to this, between individuals and states; what it refuses to the former, it grants to the latter; and it recognizes the validity of a summary taking of possession, which does not injure any anterior right. It is because the occupation is of an entirely different nature: the one having as its object useful possession, the other sovereignty, which implies only a general protection; the proof of this is, that in modern society the sovereignty frequently passes from one state to another without property changing hands.* Montesquieu wrote: "As men have renounced their natural independence in order to live under political laws, they have renounced their natural community of possession to live under civil laws. The political laws gave them liberty; the civil laws, property." Bentham enlarged upon the same thought: "Property and law were born together, and

* The word "cultivate" (to work and sow) must not be taken too literally; possession of land may also be taken by placing flocks on it, by opening a mine on it, or otherwise. And if the government has taken possession in the manner indicated in the text, and an individual buys a piece of ground from it, this ground becomes individual property even if left unoccupied.

data as can now be obtained, to include the specification (not to be found in Mr. Macleod's article) of the copyright acts of the United States, and also to present some of the questions that have arisen concerning literary property between nations, and to describe the conventions in force or under

consideration for international copyright. — During the past twenty years, there has been a very considerable increase in the extent of international literary exchanges, and a fuller recognition, at least in Europe, of the propriety and necessity of bringing these under the control of international

will die together. Before law, there was no property; take away the law, and all property ceases." This was a narrow view. Montesquieu and Bentham, in order to consider but one side of the question, approached very near an exceedingly dangerous error, for it led to this consequence, that if the law had made property, the law could unmake it, and undid the very foundation which the authors intended to lay. It is evident that property originated before law, as before the formation of any regular society, since there has been appropriation of a certain part of matter ever since man has lived, and began, in order to subsist, to extend his hand and his intelligence about him. Property and the family have been the cause, and not the effect, of society; and the laws, to follow the beautiful definition placed by Montesquieu himself at the beginning of his work, "are the necessary relations which flow from the nature of things"; the laws have consecrated this necessary relation which was established between man and matter, but they have not erected a relation which would have been factitious and accidental. It is true that, without law, property has no guarantee against violence, and that it lacks security and solidity. But what right is there the exercise of which would be secure outside of the social condition? — It is also true that there are certain kinds of property which could not be produced without the protection of social law, because an advanced civilization and good government have the effect of widening the circle in which human activity can with safety move, and consequently extend the field of property. It is true, in short, that, in a certain number of particular cases in which natural right does not furnish sufficient light, the law decides and determines thus a positive right of property which it might perhaps determine otherwise, because it is important, in well organized society, that nothing, in such a matter, should remain in uncertainty, abandoned to the caprice of arbitrary power. But care must be taken not to confound a particular form or case with the principle of right itself. — It is, then, to the human being, the creator of all wealth, that we must come back; it is upon liberty that it is expedient to base the principle of property, and if any one would know by what sign it is to be recognized, we will answer that it is by labor that man impresses his personality on matter. It is labor which cultivates the earth and makes of an unoccupied waste an appropriated field; it is labor which makes of an untrodden forest a regularly ordered wood; it is labor, or, rather, a series of labors often executed by a very numerous succession of workmen, which brings hemp from seed, thread from hemp, cloth from thread, clothing from cloth; which transforms the shapeless pyrite, picked up in the mine, into an elegant bronze which adorns some public place, and repeats to an entire people the thought of an artist. It is labor which is the distinctive sign of property; it is the *condition* (or the means) of it, not the *principle*, which traces its origin to the liberty of the human soul. — Property, made manifest by labor, participates in the rights of the person whose emanation it is; like him, it is inviolable so long as it does not extend so far as to come into collision with another right; like him, it is individual, because it has its origin in the independence of the individual, and because, when several persons have co-operated in its formation, the latest possessor has purchased with a value, the fruit of his personal labor, the work of all the fellow-laborers who have preceded him: this is what is usually the case with manufactured articles. When property has passed, by sale or by inheritance, from one hand to another, its conditions have not changed; it is still the fruit of human liberty manifested by labor, and the holder has the same rights as the producer who took possession of it by right. — Violence, confiscation, fraud, conquest, have more than once disturbed the natural order of property, and mixed their impure springs with the pure sources of labor. But they have not changed the principle. Does the theft by which a lucky rascal is enriched interfere with the fact that labor is necessary for the production of wealth? Moreover,

we must not exaggerate at pleasure the extent of these deviations from the general rule. It has been said that if we could go back to the origin of all landed property, possibly none would be found untainted with some one of these vices, on the soil of old Europe, overrun and successively occupied by so many hordes of invaders in ancient times and the middle ages. But how far would we have to go back across the centuries? So far that it could not be told in the case of ninety-nine hundredths of landed estates, except by mere conjecture, based on the probabilities of history. French laws, for instance, have established the thirty-years limitation, firstly, because it is necessary, in order to give some fixity to property, that it should not be left exposed to endless claims, and then, because long possession is itself a title, and because a man who has himself or by his tenantry, or farmers, put continuous labor on the same soil for a generation, has made, so to speak, the property his own. Now what is this short legal limitation beside the long limitation of ages, and how would any one dare contest the lawfulness of the owner's right over lands now richly cultivated, covered with farms and manufactories, under the pretext that a Frank of the fourth century expelled from them a Gaul who was herding his flocks there? On the land has accumulated immovable wealth, which has sometimes increased the value of it a hundred-fold, and the origin and transmission of which are equally lawful. Out of the soil has grown the personal wealth which now forms a large part of the patrimony of society, and this wealth, the fruit of modern labor, is for the greater part free from the stain of brute force. War is no longer in our day a means of existence; it is rather a cause of ruin; conquerors aspire to usurp sovereignty, but they respect property. The political societies which have settled in new worlds, in America and Australia, have been established for the greater part by the clearings of the pioneers who made the land what it is, and bequeathed it to their children. There has been little or no violence there, in the many places where they have not had to strive against savage tribes, even in the occupation of the land. In the main, if we consider property as a whole, how small a place is occupied by the exception as compared with the rule, by violence as compared with labor! — *Social Utility of Property.* What is just is always useful. Property has such a character of social utility that society could not exist without property, and there is no thriving society without individual property. Therefore, when persons have desired to base property upon utility, arguments were certainly not lacking; but utility, which must be taken great account of in political subjects, is, as we have remarked, a result, and not a principle, and we must content ourselves with saying that the excellent effects of property corroborate the lawfulness of the right. "Man," says M. Thiers, "has a first property in his person and his faculties; he has a second, less adherent in his being, but not less sacred, in the product of these faculties, which embraces all that is called the goods of this world, and which society is deeply interested in guaranteeing to him; for without this guarantee there would be no labor, without labor no civilization, not even the most necessary, but only misery, robbery and barbarism." We can not imagine a society entirely devoid of the idea of property; but we can conceive of one, and even find such in history, where property is in a rudimentary condition, and it would not be difficult to prove that such a condition is indeed, as M. Thiers says, misery and barbarism. Man is not a god; labor, which is a healthful exercise for both soul and body, is at the same time painful; it is only at the cost of an effort that man realizes his thought in matter, and oftentimes he would not make this effort, so painful to him, if he were not encouraged by the thought of producing a useful effect, and of himself enjoying the result of it. Who would take the trouble to fell a tree, to divide it into boards, if he knew that the next day a savage would seize upon it to make a fire with it, or even build a hut? Activity would have no object, because it would

law. Americans also are beginning to appreciate how largely the intellectual development of their nation must be affected by all that influences the development of the national literature, and to recognize the extent to which such development must depend upon the inducements extended to

literary producers, as well as upon the character of the competition with which these producers have to contend. — Literary property is defined by Drone as "the exclusive right of the owner to possess, use and dispose of intellectual productions," and copyright, as "the exclusive right of

have no certain compensation; it would retire within itself, like the snail when threatened by danger, and would not venture out save for the satisfaction of the most immediate wants or the creation of property the easiest to defend — the hunting of game, or the manufacture of a bow or of an axe. In societies which have already risen to a certain degree of civilization, but which have not sufficient respect for property, this social imperfection alone is enough to impede progress and to keep men for centuries at a low level, to rise above which requires unheard-of efforts, and, above all, the knowledge of right. "All travelers," says M. Thiers elsewhere, "have been struck by the state of languor, of misery, and of greedy usury, in countries where property is not sufficiently protected. Go to the east, where despotism claims to be the sole owner, or what amounts to the same thing, go back to the middle ages, and you will see everywhere the same features; the land neglected, because it is the prey most exposed to the greediness of tyranny, and reserved for the slaves, who have no choice of employment; commerce preferred, as being able to escape more easily from exaction." A melancholy picture, but which has long been and still is, on a large portion of our globe, the true picture of humanity. When property, on the contrary, is fully recognized, respected and protected in its various forms, man does not fear to let his activity radiate in every direction. The picture of society is then entirely different: in place of a few thin, boughless shrubs, there will be seen a forest of immense oaks, spreading their branches far and wide, and exhibiting trunks more vigorous in proportion to the greater number of pores through which they breathe air and life. Far from injuring each other, men sustain each other by their individual development. For property is not a common fund fixed in advance, which is diminished by the amount which each appropriates; it is, as we have said, a creation of the intelligent force which dwells in man; each creation is added to the previous creations, and, putting new vigor into commerce, facilitates ulterior creations. The property of one, far from limiting for others the possibility of becoming owners, on the contrary increases this possibility; it is the strongest stimulus to production, the pivot of economical progress; and if the nature of things had not made a law with regard to it, anterior to all agreement, human law would have established it as the institution pre-eminently useful to the welfare and morality of nations. — *History of Property.* It will be understood, that, although the principle of property is always the same, it has not been comprehended and applied in the same manner at all times and in all countries. It is with the right of property as with most natural rights, which remain long buried in barbarism, and emerge from it gradually with the progress of civilization. We tend at present toward the plenitude of the right of property, and the most advanced nations of Europe and the new world appear to be not very far from the ideal of our conception. But how many centuries has it taken to free it from the exigencies or the ignorance of the past? The savages of America, who did not cultivate the soil, had no idea of landed property; custom made sacred the right of possession only for personal property; the land was common to all; it was a vast territory for fishing and hunting, open to all belonging to the tribe, but defended with jealous care against the encroachments of the neighboring tribes. When they improved and formed societies wisely organized, as in Mexico and Peru, they were necessarily obliged to take into account the appropriation of land, but their ideas even then did not rise to individual property. "No one," says Robertson, speaking of Peru, "had an exclusive right over the portion allotted to him. He possessed it only for a year. At the expiration of that time, a new division was made according to the rank, the number and the necessities of the family. All these lands were cultivated by the common labor of all the members of the community." In Mexico the grandees had individual property, but, he adds, "the bulk of the nation pos-

seesed the lands in a widely different manner. A certain quantity of land was allotted to each district proportionate to the number of families which formed it. This land was cultivated by the labor of the whole community. The produce was taken to a common warehouse, and divided among the families according to their respective needs." — The primitive nations do not appear to have risen much higher in the conception of the idea of property. Among the pastoral peoples of the east, property, composed principally of personal property and cattle, was almost wholly in the hands of the father of the family, of the patriarch, of the chief of the tribe; such are the customs of the Arabs, and we find them to-day in Algeria, where the land belonging to the members of the same *douar* or village in common, is distributed among them by the *caïd*. The same system, ascending from the head of a family to the prince, has concentrated all property in the hands of eastern despots, and enfeebled the progress of those beautiful countries by cutting into the roots of individual activity. The Jewish law had conceived the idea of the cancellation of personal debts every seven years and the restoration of alienated lands every fourteen years, at the great jubilee, with the view of retaining property in the same tribes and families: a law, which appears, however, not to have been very well observed. In Greece, Sparta and Athens there were indicated two opposite tendencies; one mutilating and suppressing almost the right of property, in order to fashion the citizen according to the will of the state; the other insuring, notwithstanding certain restrictions, civil liberty; but it is easy to see to which side the preferences of the philosophers inclined. Even in the laws, in which he tries to create a practical policy, Plato expresses himself thus: "I declare to you, as a legislator, that I regard you and your property as belonging, not to yourselves, but to your family, and your entire family, with its property, as belonging still more to the state." Rome, while sanctioning territorial property more solemnly than most other ancient governments, guaranteed it to her own citizens only, and centred it in the hands of the father of the family; conquest, moreover, was still among the principal modes of acquisition, and had given rise to immense possessions of the state (*ager publicus*) and to the agrarian laws. During the empire the juriconsults, under the influence of the new ideas propagated by the stoic philosophy and the Christian religion, set themselves to extricate persons too closely confined by family bonds, and property was the gainer by this advance in liberty. But in the middle ages the feudal system weighed heavily upon the land; confounding the ideas of property and sovereignty, it made the possessor of the land master of chattels and persons, bound both the one and the other by a multiplicity of bonds, the serfs to the glebe, the lords to the fief, and interwove society in a vast network of reciprocal servitudes. Personal property, long smothered by these various systems, showed itself only with timidity, under the shelter of the franchise, in the guilds of the arts and trades; the laws of the princes protected it only by keeping it under strict tutelage; it gradually increased, however, and was even beginning to develop quite rapidly, when the discoveries of Christopher Columbus and Vasco da Gama had opened the great course of the ocean to maritime commerce. But, at this period, the absolute power of kings was being raised upon the ruins of feudalism in the principal states of western Europe, and if property freed itself somewhat *de facto* from bonds put on it, it *de jure* only changed masters without acquiring any further independence. Louis XIV., who may be regarded as the most illustrious and most fully convinced representative of absolute power, wrote, for the instruction of the dauphin: "Everything within the extent of our states, of whatever nature, belongs to us by the same title. You should be fully convinced that kings are absolute lords, and have naturally the full and free disposition of all property possessed as well by the clergy as the laity, to use as wise stewards." About a century later, in 1806, another sovereign,

the owner to multiply and to dispose of copies of an intellectual production."—The English statute (5 & 6 Victoria) defines copyright to mean "the sole and exclusive liberty of printing or otherwise multiplying copies of any subject to which the word is herein applied."—The American statute

(U. S. Rev. Stat., sec. 4952) speaks of copyright in a book as "the sole liberty of printing, reprinting, publishing, * * and vending the same."—The French constitutional convention adopted, in January, 1791, a report prepared by Chopelin, which declares that: *La plus sacré, la plus inattaquable,*

not less absolute, said, during a session of the council of state: "Property is inviolable. Napoleon himself, with the numerous armies at his command, could not take possession of a single field, for to violate the right of property in one, is to violate it in all." His actions did not always exactly conform to this theory; nevertheless, this declaration shows what progress the idea of property had made in France, from the eighteenth to the nineteenth century. This was because the eighteenth century had passed between the two periods, and although it had not itself a clear idea of the sacred character of property, since it based it upon utility and the law, and declared it to have originated in a so-called primitive community, it had, nevertheless, shaken off the yoke of feudal servitude and the divine right of kings; it had pleaded the cause of liberty, and the revolution had made this cause triumph, by emancipating man, labor and the land; property could now be produced under its principal forms. — *Of the Objections to Property.* Property triumphed with liberty, one of the forms of which it is. It was just the time when it was about to be obliged to defend itself against the most malevolent adversaries, who attacked it in the name of a pretended equality; jealous of seeing large fortunes displaying themselves side by side with extreme poverty, they foolishly believed that to deprive of the fruits of their labor those who had lawfully acquired them, was to encourage labor and to relieve poverty. The convention, guided by principles entirely different from those of the constituent assembly, slid more than once down this declivity, and following the convention, Gracchus Babeuf collected and exaggerated the doctrines of the mountain out of which he created modern communism. "When," says he, "the minority in a state have succeeded in engrossing landed and industrial wealth, and by this means hold the majority under their rod, and use their power to cause them to languish in want, the fact should be recognized that this encroachment could take place only under the protection of the government, and then what the old administration failed to do in its time to prevent the abuse or to repress it at its birth, the present administration should do, in order to re-establish the equilibrium which should never have been lost, and the authority of the law should effect an immediate change in the direction of the ultimate principle of the perfected government, of the social contract: that all should have enough, and no one too much." There have been at all times those who have dreamed of a community of property, and who could do so the better, as individual property was in their time less extended and less firmly established. Plato wrote his "Republic"; Campanella, his "City of the Sun"; Thomas More, his "Utopia"; Fenelon, his "Bética" and his "Government of Salentum"; but they created a speculative philosophy rather than a policy, and intended, above all, to trace for mankind an ideal of virtue: a mistaken, erroneous conception, but more disinterested, nevertheless, than that of modern communists. The principal object of the latter is enjoyment; their theories have been suggested by the sight of the wealth which was increasing rapidly in modern society, but distributing its favors in an unequal manner, as it proportioned them to the labor, to the intelligence, to the capital of each one and to the circumstances of production: they have wished that those less favored should have a larger share without having a heavier burden of labor, and they have conceived of no better way to do this than to limit or confiscate capital, that is to say, property, which is the lever of labor. — The Saint-Simonians, to attain this end, proposed to organize a powerful priesthood, composed of the ablest men in science, the arts and manufactures. This priesthood would have given an impetus to all society; the priest would have been "the living law"; there would have been no longer emperor nor pope; there would have been a father "disposing of all the capital and products, and distributing them to each according to his merits." They arrived at this conclusion, that "all property is property of the church,"

and that "every kind of business is a religious function." They did not see that property is the very reward of the labor which they were extolling, and the fruit of the economy without which labor deprived of capital, is reduced to impotence; they did not see that hereditary transmission is the consequence and the extension of property, and, under pretence of increasing social wealth, wealth which for lack of being managed and renewed by the force of individual interests, would have insensibly melted away in the hands of their high priest, they ended in an immense despotism; in order to pursue the shadow of comfort, they would have forfeited, without knowing it, their real welfare, and they did not hesitate knowingly to sacrifice liberty, the most important of all possessions in a society of civilized men. This is where the first of the systems hostile to property would have led to. — That of Fourier dates from about the same period, that is to say, the consulate. But it found no echo until after the great eclat which Saint-Simonism caused at the beginning of the reign of Louis Philippe. Fourier was not, properly speaking, a communist; he proclaimed liberty, and admitted capital. But, in fact, he incloses both the one and the other in a system of exploitation in common which unites them; there is no longer but one kind of liberty, that of abandoning one's self without restraint to one's various appetites; there is no longer but one kind of property, that of the phalanstery. Is that truly liberty which, with a firm will for a guide and responsibility for a guarantee, directs the spirit of man toward a definitive end? Is this truly property, that is to say, the full and entire possession of the various things which man has appropriated to himself by labor? — The latest adversary of property is M. Proudhon, who in a famous pamphlet has taken up again a paradox of Brissot's, viz., that property is theft. M. Proudhon does not recognize, either in possession or labor, sufficient reasons to justify property. "Since every man," he says, "has the right to possess simply because he exists and can not do without material for exploitation and labor in order to live; and since, on the other hand, the number of occupants varies continually by birth and death, it follows that the quantity of material to which each laborer may lay claim is changeable, like the number of occupants; consequently, that possession is always subordinate to the population; finally, that, as possession in law can never remain fixed, it is, in fact, impossible that it should become property." Elsewhere, in answering the argument of Ch. Comte, who sees a title to property in the superior value obtained by the possessor when the latter, thanks to his labors, has drawn subsistence for two persons from soil which had formerly fed but one, M. Proudhon adds: "I maintain that the possessor is doubly paid for his trouble and his industry, but that he acquires no right to the land. Let the laborer claim the fruits as his own; I grant that he should have them, but I do not understand that the ownership of the produce involves that of the material." This concession places all personal property outside of litigation, as it consists entirely of the produce which the laborer has made his own and has not consumed. There remains landed property, or, to express it more clearly, the very small portion of the value of real estate which is not the result of labor, a personal capital buried in the soil and confounded with it. Now, no economist maintains that every man, on coming into this world, has a right to a portion of it, and especially to a portion equal to that of others in the very country in which he is born. Possession is a fact, and not a right; it may give rise to a right when, having taken place upon land still unpossessed, it is sanctioned by labor; that is all. Society guarantees the rights of individuals, it is her first duty; in the system of M. Proudhon she would commit the double fault of wishing to do them too much good by seeking to make a fortune for them, and of doing them too much harm by spoiling some of a right logically anterior to herself, for the purpose of endowing others with a gratuitous benefit. — (The above note is the joint production of L. Wolowski and Emile Levasseur.—Ed.)