

Christian Thought and Property Law
David W. Opderbeck
Preliminary Draft -- Do Not Circulate or Cite
January 17, 2017

Introduction

Anglo-American Property law presents a set of difficult problems for contemporary Christian thought. The dominant concepts of private property in contemporary Anglo-American property law trace their roots to sources that include the Westphalian settlement of the wars of religion, the Calvinist work ethic, the English Civil Wars, the Scottish Enlightenment, British Mercantile capitalism, and the entrepreneurial fervor of the American Great Awakenings. These sources supply a heady brew of Christian Protestant religion, patriotism and individualism. Like the old Guinness Stout ads suggested, this brew is not just intoxicating: it does contain some nutrients that have made us bold and strong, particularly against the threats of fascism during World War II and of totalitarian communism during the Cold War. But when mixed with even more potent spirits -- particularly racism -- "property rights" have justified terrible evils, not least the Atlantic Slave Trade. Today in the United States, elements of the Christian right have aligned themselves with rhetoric of Tea Party libertarians that exalts property rights as the fundamental pillar of society. At the same time, elements of the Christian left, though exercising a far smaller cultural influence than the religious right, have aligned themselves with movements such as "Occupy Wall Street" and "Black Lives Matter," which at their extreme edges sometimes advocate the violent destruction of property. This Chapter seeks to place the concept of "property" within the context of Christian thought, and offers some tentative suggestions for how Christian thinkers generally should approach property law.

The Biblical Witness

All of the Christian traditions agree that the Bible is a foundational norm for Christian thought, although there is significant disagreement about how to interpret and use it as a source. The Bible has been employed to justify monarchy and serfdom, slavery, strongly libertarian views of personal property, mercantilism, socialism, communism, redistributionism, and every other kind of property regime that could be imagined. One of the difficulties with the Bible as a source of norms concerning property rights is the diversity of its witness on this question. Nevertheless, it is possible to discern some overarching themes that can inform our present discussion.

1. Creation

First, the doctrine of creation establishes that the Earth belongs to God. The Biblical creation narratives are not scientific accounts of how the Earth came into existence, but rather establish the theological truth that God alone is the source and final authority over all of creation. In Genesis 2, God places the man and woman in the "Garden," and from that privileged place he gives them dominion over the Earth. From the perspective of the Bible's creation narratives,

then, humanity does properly exercise a kind of “right” over the rest of the created order. However, the scope of humanity’s authority is entirely derived from and subject to God’s ultimate rule.

The nature of humanity’s state in the “Garden” has provoked much theological and philosophical speculation over the millennia that relates directly to our question of property law. Most early and medieval Christian thinkers assumed that the Garden was a perfect state without any need for negative rights or the force of positive law to enforce such rights. Any need for negative rights and the force of positive law, including the right to exclude from private property and the resulting law of property, arose only because of Adam’s Fall, which introduced the depredations of sin into the creation. Private property rights were necessary and important because of the reality of sin, but they were always relative to a higher natural law derived from creation’s original perfection, which would be restored in the eschaton. Moreover, in the interregnum between the original creation and the eschaton, private property rights existed within a political framework that subordinated private property rights to the Crown and the Church, which ruled over Christendom on behalf of the New Adam, Christ, until Christ himself would return to consummate history.

During the Enlightenment another etiological narrative took shape, given particular force on Thomas Hobbes’ *Leviathan*. For Hobbes, the state of nature was one of perpetual conflict and human life without a social contract backed by the rule of law was always “short, nasty and brutish.” In Hobbes’ conception, private property rights took on a more “horizontal” aspect as element of the social contract between individuals. Yet another Enlightenment thinker, John Locke, agreed that raw nature was wild and untamed, but also argued that natural rights in property arise from the improvement of raw nature by rational human effort, first begun by Adam and Even in the Garden.¹

Neither Hobbes nor Locke included anything like the Christian doctrine of the Fall in their origin stories, and accordingly their accounts of negative rights in property and of positive law to enforce those rights were more absolute than earlier Christian accounts. Stated another way, private property rights played a more foundational role in Hobbes’ and Locke’s origin stories than in the Biblical origin stories as interpreted by most Christian thinkers prior to the Enlightenment. This is also reflected in the subtle but significant shift away from referring to “creation” in favor of the term “nature.”

2. Land and Covenant

A second major Biblical theme is that of the relationship between the land and God’s covenant with His chosen people, Israel. The Biblical law, the *Torah*, includes numerous provisions that sound similar to modern concepts of private property law and that are often cited as scriptural

¹ For a good discussion of Hobbes’ and Locke’s genealogies of property, see Jeremy Waldron, “Property and Ownership,” § 4, in Edward N. Zalta (ed.), *Stanford Encyclopedia of Philosophy* (Winter 2016 Edition), available at <https://plato.stanford.edu/entries/property/>.

sanction for private property regimes. Careful attention to the shape of the narrative and the laws themselves, however, reveals a much more complex picture.

The Biblical protohistory of Genesis 1-11 concludes with the great flood of Noah, the Tower of Babel, and the scattering of the nations. Humanity had been spared from complete destruction through Noah, but quickly returned to its rebellious ways at Babel. Nevertheless, God called Abraham to form a new, faithful people. Abraham's descendants were enslaved in Egypt, then freed by God under Moses' leadership. After spending forty years in the desert due to their disobedience, they were brought to the brink of the land promised to them. But that land was inhabited by the Canaanites and other tribes. As the narrative is presented to us, the property and other laws in the *Torah*, particularly in Leviticus and Deuteronomy, were encoded in anticipation of the entry into the promised land.²

The Levitical and Deuteronomic laws include numerous requirements concerning the land. Many scholars suggest that the overall framework reflects a clan-based system of land tenure typical of the ancient near east. Most notably for the purposes of this chapter, the Levitical law rendered title to family land inalienable: "The land, moreover, shall not be sold permanently, for the land is Mine; for you are but aliens and sojourners with Me. Thus for every piece of your property, you are to provide for the redemption of the land." (Leviticus 25:23-24 (NASB)). As Biblical scholar Christopher J.H. Wright has noted, "[t]he combined effect of these regulations was to take the land itself right off the market as a commodity. Speculation in land or amassing huge private estates by permanent land purchase were *technically* impossible in Israel."³

In addition, a portion of the land -- "the edges of the fields" -- were to be left for the poor. Other portions of the fruits of the land were to be dedicated as offerings, both in thanks to God and to support the Priestly class and the operations of the Temple. Moreover, the land itself was to be given a sabbath rest -- a fallow period every seven years. (Lev. 25:4).

One major hurdle remained: the Canaanites were not about to surrender their lands without a fight. The next part of the Biblical narrative arc is often shrouded in ignominy and is subject to intense contemporary scrutiny: God commands Israel to engage in total holy war against the Canaanites. Debates between the Bible's detractors and defenders often focus on the meaning of these conquest narratives. Some modern Christian apologists attempt to blunt their apparent force by suggesting that they are really about military activities typical of the time period or that they are mostly propaganda constructed much later as sort of patriotic broadsides against Israel's Babylonian captors. In any event, from the frame of reference of the overarching Biblical narrative, it is clear that the Canaanites held no property rights that demanded any respect from the Israelites. If the Canaanites were being judged for sins of idolatry, that

² In fact, the actual historical circumstances of the entry into the land and the creation and redaction of these different law codes is certainly far more lengthy and complex than a simple reading of the texts might suggest.

³ Christopher J.H. Wright, *Old Testament Ethics for the People of God* (Downers Grove: InterVarsity Press 2004), 163.

judgment included God's divestiture of any claims the Canaanites might have had to the land grounded in natural rights, social contract, or any other theory of property law.

The Hebrew Scriptures' prophetic literature are in large part commentaries on why Israel and Judah subsequently *lost* the land to the Assyrians and Babylonians. The reason given by the Prophets is that the nation failed to keep the *Torah*, in particular by participating in idol worship and by oppressing the poor. This part of the narrative, perhaps, helps place the stories of Canaan's conquest in perspective, particularly if the conquest narratives took their canonical form during the exile: Israel lost the land to Assyria and Babylon for the same reasons that the Canaanites lost it to Israel. The land belongs to God, who alone is worthy of worship and who requires compassion for the poor. God takes the land away from those who abuse it.

The prophetic literature, however, includes a note of hope. God made a covenant with Israel, which He will keep. Israel will return to the land, and a new era of peace will come. In the books of Ezra and Nehemiah we see the exiles return to Jerusalem and rebuild the Temple. During this "Second Temple" period, which lasted over 400 years, many Jews expected the fulfillment of their reading of the prophetic literature, that is, a restoration of the land under a king in the line of King David. It proved, however, a tumultuous time of foreign rule by the Ptolemies, Seleucids (prompting the Maccabean Revolt) and Romans. During the Roman period, the Temple was further rebuilt and expanded by Herod the Great. Jewish eschatological movements such as the Essenes continued to draw on the Bible's prophetic literature in constructive vivid accounts of the end of history, and much of Jewish piety centered on the promise of a Messiah who would permanently reestablish David's throne.

3. Wealth, Judgment, and New Covenant

From the Christian perspective, the New Testament Gospels pick up the story at this point. Yet the Messiah who comes is not a political King who wrestles the land back from Rome, but rather a suffering servant who dies condemned on a cross and leaves behind loosely organized followers who claim the crucified Messiah has risen again, ascended to heaven, and promised to return. What, then, of the land? To the point of this chapter, what of "property?"

In the Gospels, Jesus is notoriously skeptical of society's religious, political, and economic elites. Many passages in the Gospels seem to suggest that wealth itself is sinful. One classic story here is the encounter between Jesus and the "rich young ruler," narrated in Matthew's and Mark's Gospels. (Matthew 19:16-22; Mark 10:17-27). The young man asks Jesus what is necessary for eternal life. Jesus tells the man to "keep the commandments." (Matt. 19:17). The man responds, "which ones?" (Matt. 19:18 (NASB)). Jesus responds with a list from the Decalogue, and adds (with an obvious allusion to Leviticus 19:18) "and, You shall love your neighbor as yourself." (Matt. 19:18-19 (NASB)). The young man claims he has kept all these commandments, but asks "what am I still lacking?" Jesus responds: "If you wish to be complete, go and sell your possessions (ὑπάρχοντα) and give to the poor, and you will have

treasure in heaven; and come, follow Me.” (Matt. 19:16:21 (NASB)). The young man “went away grieving; for he was one who owned much property (κτῆματα).” (Matt. 19:22 (NASB)).

Another classic story is Jesus’ parable of the rich man and Lazarus the beggar in Luke 16. The rich man lives in luxury while the beggar lies at the rich man’s gate, hoping to receive even crumbs falling from the rich man’s table. The rich man dies and ends up in “Hades,” while Lazarus dies and is carried by angels into Abraham’s bosom. In Hades, the rich man begs Abraham, “send Lazarus so that he may dip the tip of his finger in water and cool off my tongue, for I am in agony in this flame.” (Luke 16:24 (NASB)). Abraham replies, “Child, remember that during your life you received your good things, and likewise Lazarus bad things; but now he is being comforted here, and you are in agony.” (Luke 16:26 (NASB)). It seems that the rich man and Lazarus’ reversal of fortunes in the afterlife results directly from the rich man’s hoarding of his property in this life.

This parable follows in Luke’s Gospel after the parable of the unrighteous steward, who is praised for writing down debts owed by third parties to his master. (Luke 16:1-9). Jesus glosses the parable as follows: “And I say to you, make friends for yourselves by means of the wealth of unrighteousness (μαμωνᾶ τῆς ἀδικίας), so that when it fails, they will receive you into the eternal dwellings” -- a strange and enigmatic saying! (Luke 16:9 (NASB)). After the parable, Jesus offers another famous teaching: “No servant can serve two masters; for either he will hate the one and love the other, or else he will be devoted to one and despise the other. You cannot serve God and wealth (μαμωνᾶ, KJV “mammon”).” (Luke 16:13 (NASB)). The point of the parable of the unrighteous steward seems to be that wealth is a master that enslaves us, so the servant of God should be prepared to give his wealth away for the higher cause of God’s Kingdom.

These parables are just a few illustrations of Jesus’ teachings about wealth. They reflect an overwhelming emphasis in Jesus’ teachings on the dangers of wealth, the sins of the wealthy classes, and the exalted place of the poor in God’s economy of justice.

Following on the Gospels, and in fact properly read together with the Gospel of Luke, the book of Acts tells of the story of how the early Christian community became the Church. Famously, Acts 2 says “all those who had believed were together and had all things in common; and they began selling their property (κτῆματα) and possessions (ὑπάρξεις) and were sharing them with all, as anyone might have need,” and Acts 4 tells us that

the congregation (πλήθους, multitude) of those who believed were of one heart and soul; and not one *of them* claimed that anything belonging to him (ὑπαρχόντων) was his own, but all things were common property to them. And with great power the apostles were giving testimony to the resurrection of the Lord Jesus, and abundant grace was upon them all. For there was not a needy person among them, for all who were owners of land or houses would sell them

and bring the proceeds of the sales and lay them at the apostles' feet, and they would be distributed to each as any had need.

(Acts 2:44-45; 4:32-35 (NASB)). The Greek words translated “property” and “possessions” are provided above not because they are technical terms, but to demonstrate more forcefully that the community described in Acts 2 and Acts 4 actually satisfied the conditions the rich young ruler could not meet.

In addition to the Gospels and Acts, a major portion of the New Testament is comprised of occasional letters to local churches from the Apostles (or persons writing pseudonymously in an Apostle's name). Unlike the *Torah*, which presumes a religious-political community under a temporal authority, these letters are devoid of specific kinds of temporal legislation. The letters do, however, often touch on how members of the Christian community should handle wealth, and here they uniformly view material wealth as a temptation and charity as a virtue.

Perhaps the most direct statement in the New Testament relating to what we today might call “property law” is found in the Apocalypse of John, better known as the book of Revelation. This text is often misused today as a kind of secret manual for the future, popularized in the “Left Behind” book and movie franchise. The text is best understood, however, in the vein of the Old Testament prophetic literature, as a political commentary on Rome. In effect, Rome is cast in the role of the Assyrians or Babylonians, or (with difficulty for later Christian-Jewish relations) in the role of unfaithful Israel, with the Christian faithful cast in the role of the Jewish exiles who will return to rebuild the city. In Revelation 18 an angel (messenger of God) passes judgment on “Babylon the Great” -- Rome -- shouting that

all the nations have drunk
The maddening wine of her adulteries.
The kings of the earth committed adultery with her,
And the merchants of the earth grew rich from her excessive
Luxuries.

(Rev. 18:2-3 (NIV)). Another “voice from heaven” then announces “Babylon's” judgment by “death, mourning and famine” and by “fire”: “Give her as much torment and grief,” the oracle proclaims, “as the glory and luxury she gave herself.” (Rev. 18:6-7 (NIV)). The oracle then offers a poignant and vivid image of what this judgment means for Roman trade:

The merchants of the earth will weep and mourn over her because no one buys their cargoes anymore— cargoes of gold, silver, precious stones and pearls; fine linen, purple, silk and scarlet cloth; every sort of citron wood, and articles of every kind made of ivory, costly wood, bronze, iron and marble; cargoes of cinnamon and spice, of incense, myrrh and frankincense, of wine and olive oil, of fine flour and wheat; cattle and sheep; horses and carriages; and human beings sold as slaves.

(Rev. 18:11-13 (NIV)).

This coming judgment is a disaster for Rome as well as for those whose personal and economic security lies with Rome. But it is offered in the text of Revelation as a word of *hope* for a community at the margins, the Christian community. For Roman rule will be replaced by a new city, the New Jerusalem, come down from heaven, with God at its center. Into this city -- with its gold-paved streets and jewel-encrusted walls -- all the kings of the earth will bring their treasure.

In a somewhat similar vein, the Apostle Paul focused in his letters on an immanently coming age of resurrection, judgment and consummation. The overarching theme for Paul, as for the author of John's Apocalypse, was vindication of God's purposes and of God's people under God's immediate rule. Similar themes, with different emphases, are evident in the apocalyptic passages in the New Testament books attributed to Peter.

In short, unlike the Old Testament, the New Testament does not speak directly to property *law*, at least not in terms of positive law. The New Testament literature does, however, continue the Old Testament's theological themes about God's ownership of creation, the dangers of the concentration of power and wealth, and the final vindication of God's purposes by His own acts of judgment. From the New Testament's perspective, the Christian community is outside the mainstream of power and wealth, and should remain outside that mainstream for the sake of its purity and preservation. The Christian community waits patiently for the hope of Christ's return and God's final consummation of history, which is immanent. It seems beyond the historical horizon of the New Testament authors to suggest any positive, redemptive role for anything like property law.

Historical Reception

The story of how the New Testament's eschatological vision worked through what became the Church in its first few centuries after the Apostolic age has been told as often as it has been fiercely debated. Christianity originally was seen as, and functioned as, a sect within Judaism. Early tensions arising from this dynamic can be seen in how the Apostles Peter and Paul -- themselves both Jews -- attempted, often bitterly disagreeing between themselves, to integrate non-Jewish followers of Jesus into the community. Meanwhile, around and immediately after the time of Jesus, Jewish Messianic hopes continued to boil over into rebellions. In 70 C.E., the Emperor Titus crushed a rebellion mounted by the Jewish "Zealots," laying siege to Jerusalem and ultimately destroying the Second Temple. Lacking a Temple, Judaism began to take the Rabbinical form eventually codified in the Babylonian Talmud. Christianity, meanwhile, increasingly became distinct from Judaism and flourished among people with no Jewish roots. The world known to these early Christians was ruled by Rome.

As the Apocalypse of John suggests, at this time Christianity held an outsider status.⁴ Christians were, infamously, periodically subject to persecution by Roman authorities, who often viewed Christians as dangerously subversive of the established political-religious order. In the early fourth century C.E., however, things changed. Constantine the Great consolidated power in a victory of Maxentius at the Milvian Bridge, spurred on by a vision of the cross. Constantine subsequently legalized Christianity and then adopted it as the State religion. Constantine was active in the Church's life, calling the Council of Nicea to resolve the Arian controversy, at which the assembled Bishops hammered out the Nicene Creed. He also began the project of Christianizing Roman law.

Constantine's reign marks a continental divide for contemporary political theology, and, accordingly, for any effort to discuss a "Christian perspective" on any aspect of private law, including property law. Perspectives on law and Christianity drawn from the main streams of Roman Catholicism, Eastern Orthodoxy or the Magisterial Reformation, on the whole, have viewed the "Constantinian shift" as a good thing. Today, dissenting voices that draw on the Radical Reformation, particularly on Anabaptist thought, argue that the Constantinian shift was disastrous. We can also identify a third stream of contemporary political theology, which is also highly skeptical of the Constantinian shift, but for somewhat different reasons and with very different results than the Anabaptists: liberation theology. The perspective a Christian thinker adopts on Constantine will affect dramatically what he or she thinks about property law.

1. The Early Church and Patristic Views

Comparatively little is known about the faith and practices of the Christian churches in the First and Second Centuries. Indeed, this period is subject to intense scholarly and ideological debate over whether the (subsequently determined) orthodox version of Christianity was initially a majority view or whether alternative Gnostic Christianities were more prominent. In any event, the documents we possess from this period suggest that early Christian communities practiced to some degree the kind of voluntary sharing of goods mentioned in Acts 5. Statements about voluntary sharing can be found in the *Didache*, the pseudonymous *Epistle of Barnabas*, the *Epistle to Diognetus*, and the *Shepherd of Hermas*.⁵ These documents do not condemn private property, and in fact assume that some members of the Church will own property, but exhort the wealthy to share with the poor.

Moving from the Second into the Third Centuries, some important Patristic thinkers evince a more directly negative attitude about wealth and private property.⁶ Irenaeus, for example, drawing on the mammon of unrighteousness (μαμωνᾶ τῆς ἀδικίας) in Jesus' parable of the unjust steward, suggested that all wealth, even from otherwise lawful commercial activity,

⁴ The Apocalypse may have been written as early as 60 C.E., in the time of Nero's reign, but many scholars date it at or within decades after the fall of Jerusalem in 70 C.E.

⁵ For a summary, see Justo L. Gonzalez, *Faith & Wealth: A History of Early Christian Ideas on the Origin, Significance, and Use of Money* (San Francisco: Harper & Row 1990), Chapter 5.

⁶ *Ibid.*, Chapter 6.

ultimately derives from greed, theft, and other sins.⁷ But perhaps the most direct commentary from this period on the dangers of wealth is found in Clement of Alexandria's commentary on the parable of the rich young ruler, *Quis dives salvetur? -- Who is the Rich to Be Saved?*⁸ Clement did not claim that it is necessarily wrong to possess things if they were properly used. Indeed, Clement said that "[r]iches . . . which benefit also our neighbours, are not to be thrown away. For they are possessions, inasmuch as they are possessed, and goods, inasmuch as they are useful and provided by God for the use of men; and they lie to our hand, and are put under our power, as material and instruments which are for good use to those who know the instrument."⁹ However, in his text *The Tutor*, he criticized luxuries such as excessive jewelry and thought the original, proper state of human life involved a communal sharing of goods:

God brought our race into communion by first imparting what was His own, when He gave His own Word, common to all, and made all things for all. All things therefore are common, and not for the rich to appropriate an undue share. That expression, therefore, "I possess, and possess in abundance: why then should I not enjoy?" is suitable neither to the man, nor to society. . . . For God has given to us, I know well, the liberty of use, but only so far as necessary; and He has determined that the use should be common. And it is monstrous for one to live in luxury, while many are in want.¹⁰

These warnings against wealth might reflect the Church's changing demographics, as more members of the higher classes of Roman society became Christians, and the issue of conspicuous wealth became more pressing.¹¹ For some Romans from wealthy families who had become disaffected with their culture, the Church's criticism of wealth may have in itself been attractive -- perhaps as part of the age-old story of a young person coming into adulthood by rejecting his or her parents' culture.¹² Even for those who heeded the call to poverty, the process of divestment may have been much more gradual than is often supposed -- more like wealthy people today who establish foundations than an immediate fire sale.¹³

2. The Developing "Mainstream" View

⁷ *Ibid.*, 110.

⁸ Clement of Alexandria, "Who is the Rich that Will be Saved?," in William Wilson (trans.), *Ante-Nicene Fathers*, Vol. 2 (Buffalo: Christian Literature Publishing 1885), available at <http://www.newadvent.org/fathers/0207.htm>.

⁹ *Ibid.*, XIV.

¹⁰ Clement of Alexandria, "The Tutor," in Philip Schaff, *The Ante-Nicene Fathers*, Vol. 2, available at <http://www.ccel.org/ccel/schaff/anf02.vi.iii.ii.xiii.html>.

¹¹ *Ibid.*, 106-107,

¹² See Peter Brown, *Through the Eye of a Needle: Wealth, the Fall of Rome, and the Making of Christianity in the West, 350-550 AD* (Princeton: Princeton Univ. Press 2013).

¹³ See *ibid.*

As we examine the development of the mainstream of Christian thought about private property, it is useful to compare a transitional figure, Lactantius, with two of the great thinkers in the post-Nicene and Medieval traditions, Augustine and Aquinas. The key text from Lactantius for our purposes is the *Divine Institutes*.¹⁴ Lactantius, a well-trained rhetor later known as the “Christian Cicero,” wrote the *Divine Institutes* as an apologetic treatise against the persecution of Christians that had begun under the Emperor Diocletian. He eventually became a key advisor to Constantine I and significantly influenced Constantine’s policy favoring Christianity.

In Book V of the *Institutes*, Lactantius explains how the Christian concept of “justice” coheres with the Roman tradition. The persecution of Christians under Diocletian was unjust because Rome had lost sight of its original justice. By allowing the Christians to flourish instead, Rome would move back towards its original state of justice. The parallels here with the Christian Biblical narrative of creation-fall-redemption are obvious and intentional.

In Chapter 5 of Book V, Lactantius quotes from the poem *Phaenomena* by Aratus, well-known in the Hellenistic world and also quoted by the Apostle Paul in his address at the Areopagus.¹⁵ The *Phaenomena* provides a tour of the constellations, and the stop at Virgo describes the virgin-goddess of justice Astraea, who once dwelled with men in the Golden Age but who was driven away by men’s violence and given a home among the stars by Zeus.¹⁶ In that Golden Age, Lactantius says,

*It was not even allowed to mark out or to divide the plain with a boundary: men sought all things in common; since God had given the earth in common to all, that they might pass their life in common, not that mad and raging avarice might claim all things for itself, and that that which was produced for all might not be wanting to any. And this saying of the poet ought so to be taken, not as suggesting the idea that individuals at that time had no private property, but it must be regarded as a poetical figure; that we may understand that men were so liberal, that they did not shut up the fruits of the earth produced for them, nor did they in solitude brood over the things stored up, but admitted the poor to share the fruits of their labour. . . .*¹⁷

This original state of justice, however, was lost through the greed and avarice of men. Lactantius argued that the loss of original justice was particularly evident in the misuse of property: “[a]nd the source of all these evils was lust; which, indeed, burst forth from the contempt of true majesty. For not only did they who had a superfluity fail to bestow a share upon

¹⁴ Lactantius, *Divine Institutes*, in Alexander Roberts, James Donaldson, and A. Cleveland Coxe, eds., *The Ante-Nicene Fathers, Vol. 7* (Buffalo: Christian Literature Publishing Co., 1886), available at <http://www.newadvent.org/fathers/07015.htm>.

¹⁵ Cf. Acts 17:28.

¹⁶ See <http://www.theoi.com/Titan/Astraia.html>

¹⁷ *Divine Institutes*, V.5.

others, but they even seized the property of others, drawing everything to their private gain; and the things which formerly even individuals laboured to obtain for the common use of men, were now conveyed to the houses of a few."¹⁸ Worse, the wealthy and powerful used the law to enforce their greed: "[t]hey also, under the name of justice, passed most unequal and unjust laws, by which they might defend their plunder and avarice against the force of the multitude. They prevailed, therefore, as much by authority as by strength, or resources, or malice."¹⁹

With the coming of Christ, Lactantius argued, the true justice of the Golden Age was restored, and is present in the Christian community. This is particularly true concerning wealth and possessions:

Someone will say, Are there not among you some poor, and others rich; some servants, and others masters? Is there not some difference between individuals? There is none; nor is there any other cause why we mutually bestow upon each other the name of brethren, except that we believe ourselves to be equal. For since we measure all human things not by the body, but by the spirit, although the condition of bodies is different, yet we have no servants, but we both regard and speak of them as brothers in spirit, in religion as fellow-servants. Riches also do not render men illustrious, except that they are able to make them more conspicuous by good works. For men are rich, not because they possess riches, but because they employ them on works of justice; and they who seem to be poor, on this account are rich, because they are not in want, and desire nothing.²⁰

Lactantius' negative attitude towards wealth and property was typical in the Patristic era. In addition to the sources we have already mentioned, Clement of Rome, Ambrose of Milan, Tertullian, St. Cyprian, St. Basil the Great, St. Gregory of Nyssa, St. Gregory of Nazianzus, St. John Chrysostom, St. Jerome -- all assumed the natural law mandated common ownership and wrote and preached thunderously against the accumulation of private property.²¹

Yet, as Hermann Chroust and Robert Affeldt noted in an excellent article published in 1951, the Church Fathers generally did not advocate for the overthrow of extant Roman property laws, but rather focused on the requirement of voluntary sharing.²² Chroust and Affeldt suggested that this reflected the influence of Stoicism on early Christian thinkers as well as the historical circumstances of these pre- or early-Christendom thinkers.²³ Lactantius' treatment of wealth and

¹⁸ *Divine Institutes*, V.6.

¹⁹ *Ibid.*

²⁰ *Divine Institutes*, V.16.

²¹ For an excellent summary, see Hermann Chroust and Robert J. Affeldt, *The Problem of Private Property According to St. Thomas Aquinas*, 34 *Marquette L. Rev.* 151 (1950-51).

²² *Ibid.*, 174-75.

²³ *Ibid.*

property law can be seen as a kind of transitional stage between the Apostolic age and Constantinian Christendom. The Christian community, at least as depicted in Lactantius' apologetic, continues to share goods in common like the community depicted in Acts 4 and like the people who lived in the Golden Age. The use of the law by greedy people to protect their usurpation of common goods against the poor is a prime example of the injustice of the present age, in contrast to the newly restored community present in Christianity. Indeed, even in the *Divine Institutes*, Lactantius qualified his reading of Aratus as "poetical." Private property apparently was not in his mind itself unjust. The question was whether the owner of private property possessed the virtues of justice and charity that would compel him to share his property with those in need, and whether the law would allow the greedy person to hoard necessary resources that should be available to everyone.

A similar transitional dynamic can be observed in St. Augustine's discussions of private property and wealth. One place in which this discussion is somewhat ignominiously apparent is in Augustine's polemics against the Donatists. For example, in an exposition of the Gospel of John's account of the baptism of Jesus (John 1:32-33), Augustine argued against the Donatists that the merits of baptism inhere in the sacrament itself and not in the merits of the officer who performs the sacrament.²⁴ As part of his battle against the Donatists, Augustine had urged the civil authorities to seize churches and lands held by Donatist sympathizers. The Donatist sympathizers argued that this was unlawful and unjust. In this sermon, Augustine defended the seizures through a crafty distinction between divine and temporal law:

By what right does every man possess what he possesses? Is it not by human right? For by divine right, *The earth is the Lord's, and the fullness thereof*. The poor and the rich God made of one clay; the same earth supports alike the poor and the rich. By human right, however, one says, This estate is mine, this house is mine, this servant is mine. By **human** right, therefore, is by right of the emperors. Why so? Because God has distributed to mankind these very human rights through the emperors and kings of this world. Do you wish us to read the **laws** of the emperors, and to act by the estates according to these laws? If you will have your possession by human right, let us recite the laws of the emperors; let us see whether they would have the heretics possess anything. But what is the emperor to me? You say. It is by right from him that you possess the land. Or take away rights created by emperors, and then who will dare say, That estate is mine, or that slave is mine, or this house is mine?²⁵

If property ownership is not a natural right, but only a human, temporal right, the Emperor can define property law however he sees fit. Further, the Emperor is properly charged with the

²⁴ Augustine, Tractates on the Gospel of John, Tractate 6, in John Gibb, trans., *Nicene and Post-Nicene Fathers, First Series*, Vol. 7. Edited by Philip Schaff. (Buffalo, NY: Christian Literature Publishing Co., 1888), available at <http://www.newadvent.org/fathers/1701006.htm>.

²⁵ *Ibid.*, 6.25.

protection of the Church against heresy, and therefore the Emperor can confiscate the property of heretics. Augustine anticipates the response: why should we care what the Emperor says? We must obey the Emperor, Augustine says, because God ordains the temporal authority and scripture requires us to obey it.²⁶

It is interesting to note the shift between Lactantius and Augustine on this point concerning property. Lactantius on the cusp of the Constantinian shift, appeals to the Golden Age, not to the authority of an Emperor, to protect the rights of religious dissenters, and in the process marginalizes private property law, although he does not entirely reject the concept of private property. Augustine, shortly after the Constantinian shift, appeals to the authority of the Emperor alone to justify the confiscation of property from religious dissenters. For both Lactantius and Augustine, private property rights do not occupy a central place in a good social order but rather, to the extent private property rights exist, they are decidedly subservient to the demands of charity and to the unity of the Church.

The height of the historic mainstream view is perhaps reflected in Aquinas' discussion in the *Summa Theologica*. The *locus classicus* for Aquinas' views is in II-II, Question 66 ("Of Theft and Robbery") and Questions 77-78 ("Cheating" and "The Sin of Usury").²⁷ In his discussion of theft and robbery, Aquinas lists the objections to private property we noted above in the Church Fathers: all things belong to God alone.²⁸ Aquinas responds by distinguishing the "nature" and "use" of things.²⁹ In their nature, things belong only to God, but in their use, things are given to the dominion of human beings for their profit.³⁰ This capacity of dominion consistent with human reason and will is part of the image of God in humanity.³¹ Further, Aquinas argues, the exercise of dominion over things is *necessary* to human life because it fosters careful, orderly, industrious action and peaceful relationships when each person is contented with his own property.³² Here, however, Aquinas introduces an important qualification concerning how property should be used: "man ought to possess external things, not as his own, but as common, so that, to wit, he is ready to communicate them to others in their need."³³

How does Aquinas square his statements about the propriety and need for private property and the requirements of common possession? In typical fashion, he invokes the distinction between positive and natural law. Social "agreement" about the "division of possessions" is a matter for

²⁶ *Ibid.*, 6.26. For further discussion of Augustine's views on the limitations of private property, see Richard J. Dougherty, "Catholicism Economy: Augustine and Aquinas on Property Ownership," *J. Markets & Morality* 6:2 (Fall 2003), 479-495. Dougherty helpfully notes that Augustine's views reflect an effort to "navigate between the Manichean attack on private property ownership as immoral and the too-ready embrace of property as an unqualified and essential good." *Ibid.*, 483.

²⁷ Thomas Aquinas, *Summa Theologica*, II-II (Question 66, 77-78), *trans.* Fathers of the English Dominican Province (Cincinnati: Benziger Bros. 1947), available at <http://www.ccel.org/ccel/aquinas/summa.i.html>.

²⁸ ST II-II, Q. 66, Art. 1., Obj. 1-2.

²⁹ *Ibid.*, Ans.

³⁰ *Ibid.*

³¹ *Ibid.*

³² *Ibid.*, Art. 2, Ans.

³³ *Ibid.*

positive law.³⁴ This sounds much like Augustine's view, but Augustine addressed this aspect of positive law in more occasional texts that were primarily about the respective spheres of authority belonging to Church and State and the role of the State in protecting the Church. Aquinas goes further in making a positive case for property rights as part of how the positive law rationally orders society.

Yet Aquinas does not suggest the positive law could properly encode absolute property rights or that the sharing of property with those in need must remain solely voluntary. He addresses the common ethical problem of whether it is lawful to steal "through stress of need."³⁵ He argues that

While it is impossible for all to be succored by means of the same thing, each one is entrusted with the stewardship of his own things, so that out of them he may come to the aid of those who are in need. Nevertheless, if the need be so manifest and urgent, that it is evident that the present need must be remedied by whatever means at hand (for instance when a person is in some imminent danger, and there is no other possible remedy), then it is lawful for a man to succor his own need by means of another's property, by taking it either openly or secretly: nor is this properly speaking theft or robbery.³⁶

A full discussion of Questions 77 and 78 of II-II is perhaps best suited to chapters in this book on contract law, since they concern the propriety of obtaining a profit on the exchange of property (acceptable with limitations) and on the charging of interest (unacceptable). However, these sections demonstrate that Aquinas regarded "property" as subsisting only in land and tangible things and that he thought profits on the exchange of property should be limited.

Regarding profit, Aquinas argues that profit generally is not virtuous or necessary because it suggests the goods were sold for more than their intrinsic value.³⁷ However, he allows that if a "moderate gain" is directed by a trader to a virtuous purpose, such as "the upkeep of his household or for the assistance of the needy," or as "payment for his labor," profit-taking can be consistent with virtue.³⁸ This attention to the ends to which a "moderate" profit could be put, rather than only to the inherent character of the act itself, would seem to suggest that the charging of moderate interest also could be consistent with virtue.³⁹ Here, however, Aquinas echoes the traditional Christian teaching against usury.⁴⁰ Money, in Aquinas' view, is not real form of goods, but was created by humans for the pragmatic purpose of facilitating the

³⁴ *Ibid.*

³⁵ *Ibid.*, Art. 7.

³⁶ *Ibid.*, Ans.

³⁷ *Ibid.*, Art. 4, Ans.

³⁸ *Ibid.*

³⁹ *Ibid.*, Q. 78, Art. 1, Obj. 1.

⁴⁰ *Ibid.*, Q. 78, Ans.

exchange of goods.⁴¹ When money is exchanged for goods, the money is “consumed,” which is its proper function.⁴² But when interest is charged on money lent, the money-lender has sold “what does not exist, and this evidently leads to inequality which is contrary to justice.”⁴³

For Aquinas, then, private property rights in land and tangible things can serve a valuable social purpose and are a proper subject for the positive law. Both the scope of private property rights and the ability to profit from transactions in property, however, should be limited by the requirements of charity to persons in need.⁴⁴

3. The Magisterial Reformers

The Magisterial Reformers -- Luther, Calvin, and their immediate followers -- accepted the mainstream view that private property rights are not part of the created order but are necessary for the present stability of society. Indeed, Luther thundered against the Anabaptists (whom we will discuss in the next section) because their views on common ownership were subversive of social order.

[Expand]

4. Anabaptist Views

The early Anabaptists collectively were often accused by the Magisterial Reformers and their heirs as teaching a community of goods in a way that undermined the stability of society.⁴⁵ It is likely that some of the first generation of the “Swiss Brethren” -- that is, spiritual descendants of Conrad Grebel -- practiced a community of goods, but this did not become a distinctive of that movement.⁴⁶

The community of goods, however, was part of the even more radical views of Thomas Müntzer, who some scholars suggest was the ideological father of modern communism.⁴⁷ It also was emphasized by other early radical Anabaptist who held chiliastic views, such as the Melchiorites.⁴⁸ This heady brew of social unrest and apocalypticism spilled into the notorious Münster Peasant’s Rebellion in 1534-35.⁴⁹

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ *Ibid.*

⁴⁴ As Dougherty notes, “[t]he principled defense of an absolute or unqualified right to the possession of private property, then, is not found in Aristotle, Augustine, or Aquinas.” Dougherty, *supra* Note ____, 491.

⁴⁵ See James M. Strayer, *The German Peasant’s Revolt and Anabaptist Community of Goods* (Montreal: MQUP 1991), Chapter 4.

⁴⁶ *Ibid.* See also Thomas N. Finger, *A Contemporary Anabaptist Theology: Biblical, Historical, Constructive* (Grand Rapids: Intersarsity Press 2004), 234-243.

⁴⁷ Strayer, *The German Peasant’s Revolt.*, Chapter 5.

⁴⁸ *Ibid.*, Chapter 6.

⁴⁹ *Ibid.*

The community of goods also was, and remains, a distinctive of the Hutterite branch of Anabaptist Christianity. An excellent historical exposition of the minority Hutterite Anabaptist view on property can be found in Peter Walpot's "Great Article" book, written in 1577.⁵⁰ A segment of that text, titled "True Yieldedness and the Christian Community of Goods," lays the foundation for the communal ethos of the Hutterite "Bruderhof" system.⁵¹ Walpot wrote that

Private property does not belong in the Christian Church. Private property is a thing of the world, of the heathen, of those without divine love, of those who will have their own way. For there would be no property if it were not for selfish will. But the true community of goods belongs among believers. For by divine law all things should be held in common and nobody should take for himself what is God's any more than the air, rain, snow or water, the sun or other elements. Just as these cannot be divided up, so it is with temporal goods, which God has given in the same portion and measure for the common good. These should not be made private, and surely this cannot be done according to divine or Christian law. For owning private property is contrary to the nature and conditions of his creation. Whoever encloses and holds privately that which is and should be free, sins and goes against the One who created it free and made it free.⁵²

The resulting "Bruderhof" system also, however, resulted in a significant weakening of the family.⁵³ Groups of community members lived in long houses with small attic rooms for married couples, and children were removed for communal education as soon as they were weaned.⁵⁴

For most Anabaptist traditions, in contrast to the more radical Hutterites, the "ideal of realizing the prescriptions of Acts 2 and 4 eventually took the form of Christian mutual aid instead of Christian community of goods."⁵⁵ The Swiss Brethren statement at the Frankenthal Disputation of 1571, for example, said that

A Christian may have personal property and buy and sell. However, he must follow the teaching of Paul that he serve the poor with his property, and have it as though he had it not. That the People in Moravia [the Hutterites] practise community of goods, we wish neither to praise nor to defend.⁵⁶

⁵⁰ See "Peter Walpot," in Daniel Liechty, ed. and trans., *Early Anabaptist Spirituality: Selected Writings* (New York: Paulist Press 1994), 137.

⁵¹ *Ibid.*, 138.

⁵² *Ibid.*, 191, § 145.

⁵³ Strayer, *The German Peasant's Revolt*, 144-147.

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*, 160.

⁵⁶ Quoted in *ibid.*, 161

In his outstanding contemporary Anabaptist systematic theology, Thomas Finger notes the affinity between Anabaptist perspectives on wealth and property with liberation theology, the subject of this Chapter's next section.⁵⁷ However, Finger notes that Anabaptists' stress on personal conversion, regardless of class, differs in some respects from liberation theology's preferential option for the poor, which seems to place the poor in a special soteriological category in virtue of being poor.⁵⁸ Consistent with the mainstream of Anabaptist thought, Finger does not suggest private property should be abolished, but rather that voluntary "economic sharing" in the form of mutual aid across economic and class divides should characterize the Church's life.⁵⁹

5. Liberation Theology

The liberationist view is that individualistic concepts of property rights have led to forms of global capitalism through which the poor have systematically been oppressed. Drawing on Marxist thought, many liberation theologians argue that the "Christian view of property" requires a political order in which property rights over capital goods are restricted. Some liberationists even argue that violence is justified to overthrow the existing legal-political order, not least in redistributing capital to the poor.⁶⁰

The relationship between liberation theology and Marxism represents a significant point of tension that bears directly on our consideration of Christian thought and property law. Marx, of course, rejected the concept of private property: the Communist Manifesto tells us that "the theory of Communists may be summed up in the single sentence: Abolition of private property."⁶¹ Scholars dispute precisely what Marx's opposition to "private property" meant -- many argue that Marxism seeks common ownership only of the means of industrial production -- but in any event a Marxist political / legal system would not endorse the kinds of private property rights at least over land and capital resources found in Anglo-American law.⁶² In their handbook *Introducing Liberation Theology*, Leonardo Boff (one of the leading liberation theologians) and his brother Clodovis Boff state that

Liberation theology uses Marxism purely as an *instrument*. It does not venerate it as it venerates the gospel. And it feels an obligation to account to social scientists for any use it may make correct or otherwise

⁵⁷ Finger, *A Contemporary Anabaptist Theology*, 243-248.

⁵⁸ *Ibid.*, 249-250.

⁵⁹ *Ibid.*

⁶⁰ See, e.g., James Cone, *A Black Theology of Liberation, Fortieth Anniversary Edition* (New York: Orbis 2011).

⁶¹ Karl Marx and Friedrich Engels, "Manifesto of the Communist Party," in *Karl Marx and Friedrich Engels: Collected Works*, vol. 6 (New York: International Publishers 1976), 498.

⁶² For a discussion of some of the scholarly debates about Marx's view of private property, see, e.g., George C. Brenkert, "Freedom and Private Property in Marx," *Philosophy and Public Affairs* 8:2: 122-147 (Winter 1979).

of Marxist terminology and ideas, though it does feel obliged to account to the poor, to their faith and hope, and to the ecclesial community, for such use.⁶³

This ambiguity about Marxism leads to ambiguities about what, precisely, liberation theology says about private property. At the very least, consistent with Marxism, liberation theology criticizes the concentration of ownership of land or other capital resources in individuals or corporations who do not actually produce material goods rather than in the laborers who produce those goods.

Since liberation theology first developed in the Latin American context, where poor farmers and migrant workers were being displaced by commercial developers, “land” is a significant theme for liberation theology and praxis. Liberation theologian Miguel De la Torre writes that “[t]he commodification of land -- making it into something that can be bought and sold -- turns it into a source of power over others and can also turn it into an idol, something to be worshipped.”⁶⁴ De la Torre argues that “when wealth is concentrated in the hands of a few, democracy is threatened if the privileged few use their property to control the direction and policies of the society.”⁶⁵ He focuses particularly on the historical origins of property title claims, which in North America are always ultimately rooted in violence and fraud against Native Americans and the forced labor of African slaves.⁶⁶ For De la Torre, property rights encode a zero sum game: “[w]hen property (and free markets) secures the liberty of the wealthy class, with the help of the government, it is generally secured at the expense of a marginalized class that becomes increasingly alienated.”⁶⁷ For De la Torre, the root of Western property law lies in Roman law, incorporated into Christendom as a result of the Constantinian shift, rather than Christian concepts.⁶⁸

In a chapter on “The Economics of Liberation Theology,” Valpy Fitzgerald notes that some liberation theologians employ more subtle reasoning that is akin to how some welfare

⁶³ Leonardo Boff and Clodovis Boff, *Introducing Liberation Theology* (Maryknoll: Orbis Books 1987). The Boff brothers have been engaged in a personal and theological dispute with roots in the Roman Catholic Church’s hesitations about liberation theology. Leonardo has left the Priesthood, while Clodovis now criticizes liberation theology, and the brothers openly criticize each other. See Sandro Magister, “Clodovis and Leonardo Boff, Separated Brethren,” *Chiesa Espressonline*, July 14, 2008, available at <http://chiesa.espresso.repubblica.it/articolo/205773?eng=y>. For a discussion of the ongoing relationship between Liberation Theology and the Roman Catholic Church under Pope Francis, see Jeffrey Klaiber, S.J., “Pope Francis and Liberation Theology,” *Political Theology Today*, December 6, 2013, available at <http://www.politicaltheology.com/blog/pope-francis-and-liberation-theology-jeffrey-klaiber-s-j/>; “Pope Francis and the Ongoing Dialogue of Liberation Theology,” *Political Theology Today*, December 20, 2013, available at <http://www.politicaltheology.com/blog/pope-francis-and-the-ongoing-dialogue-of-liberation-theology/>.

⁶⁴ Miguel Della Torre, *Doing Christian Ethics from the Margins* (____), kindle 7024.

⁶⁵ *Ibid.*

⁶⁶ *Ibid.*

⁶⁷ *Ibid.* 7962,

⁶⁸ *Ibid.*

economists think of “public goods” infrastructure resources.⁶⁹ Fitzgerald suggests that the “traditional” Catholic view of private property rights, represented in Aquinas, allows for such rights because “of human selfishness arising from original sin,” while “liberation theologians argue that this sinful selfishness will be overcome as the ‘new land’ is approached.”⁷⁰ For some liberation theologians, Fitzgerald says, “natural resources such as land and water [that] are considered by economists as essentially public goods,” can “constitute the first step in the recovery of common ownership (the basis for peasant life in Latin America until the present century) dismantled by the civilisation of wealth.”⁷¹ At the same time, Fitzgerald concludes that liberation theology, with its focus on local *praxis*, has not developed a thoroughgoing, systematic economic theory.⁷²

A Modest Proposal

The mainstream view of Christian thought is that property law is useful and good for the ordering of temporal society but that it is necessary because of covetousness and sin. Private property would not have been part of the original state of humanity in the Garden, nor will it be necessary in heaven. Given its necessity in the present age, however, it can be enacted in ways that are consistent with Christian charity and with created human dignity. More radical perspectives, both from some corners of Anabaptist thought and from liberation theology, argue for the abolition of private property, or at least for the common ownership of the means of production of capital goods.

As an initial synthetic observation, I would issue a plea to my colleagues in the legal academy who are serious about reflecting on private law from an explicitly Christian framework: let’s not easily assume the “mainstream” view is the only view, or the “right” view. Without doubt, legal academics are among the privileged class in North American society. Most of us are not as wealthy as our law school classmates with careers in private practice, but all of us do well enough to own some private property of our own, and we have vested personal interests in the integrity of our existing political-legal system, however much we might argue with each other over details. On the whole, North American Christian legal academics have not been anywhere near the forefront of legal reform on behalf of the poor, to our shame. We need to pay much more attention to voices within our Christian traditions that are outside the perceived “mainstream.”

In this vein, even within the mainstream view, we should remember that the metaphysics of modern Western property law are embedded in an a-theistic narrative of scarcity rather than in the Christian doctrines of creation and grace. As Jeremy Waldron has noted, systems of property rights are necessary only because “[i]n all times and places with which we are familiar, material resources are scarce relative to human demands that are made on them. . . . Scarcity,

⁶⁹ Valpy Edwards, “The Economics of Liberation Theology,” in Christopher Rowland, ed., *The Cambridge Companion to Liberation Theology*, 218-234 (Cambridge: CUP 2d ed. 2007).

⁷⁰ *Ibid.*

⁷¹ *Ibid.*

⁷² *Ibid.*

as philosophers from Hume to Rawls have pointed out, is a presupposition of all sensible talk about property.”⁷³ Waldron further suggests that “[i]f this assumption were ever to fail (as Marx believed it someday would) then the traditional problem of the nature and justification of rival types of property system would probably disappear.”⁷⁴

The Christian doctrines of creation and consummation tell us that scarcity is not the real state of things. In the “Garden” -- in creation as God intended it -- there is abundance, not scarcity. The creation myths of Western property law, including those of Locke and Hobbes, contradict Christian doctrine. Moreover, the eschatological goal of creation is the fullness of the Divine life, plenitude without end. The promise of eschatological fulfillment secured by Christ’s resurrection, for Christian thought, diffuses any inclination to anxious accumulation or desperate claims to possession.

At the same time, we should note that, even in the Garden, there was “work,” and work was good. Even in the Garden, humanity was tasked with cultivation and stewardship -- with “gardening!” Any garden is potentially subject to a tragedy of the commons, and “stewardship” implies the kind of dominion needed to avoid such tragedies. There is nothing inconsistent about some concept of dominion in the Garden -- a dominion clearly given by God to Adam in Genesis 2. The problem, though, is not really “scarcity,” because there was more than enough in the Garden, and there will be more than enough in the coming Kingdom, for everyone’s needs, and no one’s “needs” will fall outside good, just proportions. The proper rubric for Christian thought is not “scarcity” but “gift.”

A gift can be misused, and through misuse, destroyed. A gift given to one person can be stolen by another, and by theft, despoiled. But these circumstances do not imply any inadequacy in the gift itself. To suggest that there is a natural “right” to private property is to suggest that creation is inadequate and that human desire is inherently excessive and finally irredeemable. Christian theology tells us that all of creation, including human nature, was originally “good” and that all of creation will be fully restored and redeemed. The problem, according to Christian theology, is that the goodness of creation is now marred by sin. Scarcity is a result of sin, not of “nature.”

Anything that occasioned by sin is merely contingent, not necessary, because God in Christ is always able to redeem. At the same time,. We find it hard to imagine a world without idolatry and covetousness, where nothing is hoarded and nothing is stolen, but that possibility is the driving force of Biblical imagination.

All of this means that, for a Christian legal theorist, property rights can never be construed as basic or fundamental. Property rights are pragmatic second-order rules that promote more basic goods. [Expand]

⁷³ Jeremy Waldron, *The Right to Private Property* (Oxford: Clarendon Press 1988), 31.

⁷⁴ *Ibid.*, 31-32.

