Whitefield BRIEFING

August 2003 (Vol.8 No.2)

By what right do Christians have property? The Teachings of Medieval Franciscans

Young-hae Chi

The issue

To have ownership over certain things means to have rights over them. Rights enable us to monopolize access to the resources and give us the freedom of deploying them as we see fitting to our own purpose. At the heart of such freedom is power - power to exclude. A proprietor can exclude legitimately other people from unsolicited access to what is owned. Thus the world is segmented into mutually exclusive zones of power, as a result of which some have more or less than others, and some even nothing, hence having to be subject to others' power for daily subsistence. The modern world has been shaped by such exclusion and zeal to enlarge the sphere of exclusion and this is how exchange in markets is characterized. How did we arrive at such an exclusive property relationship, and with what justification? What are its moral implications and to what extent are the implications acceptable from Christian ethical point of view? Is there an alternative understanding of property, and if so, on what theological ground? These are the questions that I will briefly explore here.

Self-ownership and subjective individual rights

How did I come to own something as legitimately mine? A simplified answer will run as follows. Here is a computer. I bartered it, in a market, with a bunch of spinach that I had grown. I sowed the seeds on a piece of land belonging to me. As for the land, since the world was initially unowned, whoever comes first and draws a line can declare that it belongs to him. That is what my first ancestor did, and I inherited the land from successive generations of ancestors. Next I mixed labour with the earth of my land. Since the labour is mine because it has been exerted out of my body, the fruit of that labour also belongs to me. Finally, the body is mine, including all its skills and talents. Hence this computer is my property.

In spite of some obvious problems[1], such defence has dominated some of the libertarian theories of individual property rights since the 17th century down to our days[2]. According to Locke, men entered society from the state of nature through contract. On entering society, though they renounced many of the rights they enjoyed in the state of nature, i.e., *ius naturale*

---

[1] It prompts, for example, the following questions. Is the exchange mechanism of the market just? How can one appropriate a piece of land to start with? Should the entire sea belong to someone simply because the person has briefly stirred it with his hands on a beach? But most crucially, do I truly own this body with its labour and all the natural talents?

[2] See John Locke, *The Second Treatise of Civil Government,* ed. by Laslett (Cambridge: CUP, 1988), §§. 26-7, pp. 286-8; Robert Nozick, *Anarchy, State, and Utopia* (Blackwell, 1974), pp. 167-82. I do not mean that modern theories of property rest solely on the natural rights tradition. For example liberals or utilitarians defend the institution of property on different philosophical and political premises.

(natural right), they retained some that are essential to their freedom and life. Property rights are one of them. The term "natural' denotes as much that they cannot be alienated from them as that they have a pre-societal origin. They are now integral to the freedom of individual, and therefore are located in the very subject of the person.

The term *ius* (right, or *iura* as its plural form) owes its subjective character to a particular notion of self. It is here that Christians encounter a crucial moral problem: the 'self' is morally self-referential. In asserting that 'I' own myself, the self does not look beyond itself. Instead it elevates itself to the position of the ultimate source of moral value: 'I bring *ius* into form because I am *ius* itself'. The idea of an objective moral order being a possibility is as offensive as denying the self licence to write its own moral law on the moral world. *Ius* stems from self's sheer will to refuse to see the world as a creation of God and its humble place in it. Such morally autonomous self has been integral to the concept of person in which modern thought has found a home for individual subjective rights; and Christians, whether knowingly or unknowingly, have colluded themselves with the moral vision of I-the-law-giver in accepting the notion of subjective rights that has been at the core of the moral justification of property ownership.

Franciscans on property

Strictly speaking the concept of subjective individual rights is not an invention of the 17th century. Already in the 14th century Pierre d'Ailly and Jean Gerson were propounding the prototype[3]. Yet if we move further back to the 13th century we cannot find the idea of subjective rights. It was unknown to the Franciscans of the 12th and 13th century and, for that matter, to anybody of the time[4]. One's exclusive power over a property was accrued to the owner not by the reason of subjective individual rights but by the conferment of legal rights by kings or courts. Although Franciscans could conceive no idea of a subjective form of rights for the reason stated above, their position towards legal ownership is significant, for it was at odds with the notion of exclusive power implicit in existing legal rights. It is particularly relevant to Christians, since, in attempting to develop theological arguments against the notion of legal ownership, they developed an alternative conception of rights by which they justified their own way of dealing with ecclesiastical resources. It is this alternative source of rights that will shed light on the moral problems that today's libertarian theory of individual rights gives rise to.

The circumstance in which Franciscans met their opponents was dramatic and yet perilous to the existence of the mendicant Order itself. During the mid-13th century, the secular masters in Paris University challenged the lawfulness of the mendicant practice of the minor Franciscan Friars, as did the Pope John XXII later in the early 14th century following the long established Roman legal tradition that no use of temporal goods is just without *ius*. It had been a standard Franciscan position that they renounced all forms of proprietary ownership - such as possession, usufructus, and use right, - and relied solely upon using received gifts. Although such simple use (*simplex usus*) had its immediate precedent in the life of humility and destitution, exemplified by St Francis of Assisi, it was in the ministry of Christ that they found the primordial form of simple use. He had neither money nor place to lay his head (Mt. 8.20). Christ owned nothing, but was perfect. Moreover he enjoined his followers to become perfect by renouncing possessions, as he himself was perfect (Mt. 5.48, 19.21). The point of this argument was that they relinquished all legal rights, but they acquired a different kind of *ius* by which they could still consume temporal goods.

What were these rights? According St Bonaventure, one could use temporal goods either by the right of brotherly love or by the right of natural necessity[5]. On the one hand, all temporal goods belong to Christians commonly in brotherly love. Love helps to see the spiritual need of his brother and temporal goods are intended to fulfil the material needs of the mendicant preachers who teach gospel truth. On the other, in the time of urgent need, one can use things by the very reason of urgency even if they legally belong to others. Both forms of right are theologically grounded rights, because God who is the sole owner of temporal goods instituted them. Far from being the objects of gratifying one's covetousness, temporal goods are merely means to promote brothers' spiritual journey to God by meeting their material and spiritual need. Without fulfilling this ultimate goal, i.e., the attaining of the beatific vision, no act of use can be just since it violates the given raison d'être of God's creation.

Justice of property

Since the Franciscans' problematic bears stark resemblance to ours, their solution also has direct relevance to us. Property is neither merely a material object nor legal power; it is an event. It appears in an act of use and dissolves when the act is over. Yet as an event, an act of use is not simply a bodily motion devoid of moral significance. In a world pronounced as 'good' by the Creator, no human act can take place in moral vacuum. In an act of use we make a thing 'property' only if we conform our act to moral imperatives which it is ordained to fulfil: it is to be used for furthering spiritual and material well-being of ours and brothers', and in moments of urgent need things should be universally communicated. Until we bring about this universal moral norm in concrete acts of use, there exists no property relationship into which we can legitimately call ourselves[6]. If the event of property occurs in the way just described, there is nothing in us as subject that establishes its justice; instead, justice is predicated upon the moral ideal of right existing eternally and objectively prior to our act. Our duty is to materialize the eternal moral ideals instituted by God on the material plane through an act of just use so that the eternal penetrates into the temporal shaping it according to its own image.

This allows an interesting comparison of the old and new ways in which we relate ourselves to temporal goods. In the old one, one first imposes proprietary rights on a part of the physical world. The part is carved out and enters into an exclusive realm of privilege and power. A person then freely disposes of the material object according to arbitrarily determined moral good. The good of property is thus determined by the expediency of the owner and this at the end of the process. In the new one, the moral good exists prior to the existence of property and externally to the circumstance of the person involved. Then an act of use is effected upon a part of the physical world; and only if the act is harmonious with the moral good, the material object comes into a relationship with him as a property. Right emerges only at the last stage. It remains at his disposal justly, that is, as right, only for the moment that the act serves the moral good ordained for the material world as a whole.

From this revised conception of property, we may be able to formulate a criterion of just allocation of economic resources. If it is through an act of right use that the justice of property is manifested and maintained, we cannot distribute temporal goods on the basis of, for example, a person's bodily labour, virtuous characters, or the mere fact of being a human. Instead we have to look at the likely effects of each's effort and performance. This is not to mean that the justice principle ought to revolve around desert, a conferment of reward for performances on backward justification. It rather demands attention to the fittingness of one's prospective performance to the advancing of well-being of the people concerned. We should not define fittingness solely in terms of productive efficacy of a society. Such utilitarian consideration may be necessary in some circumstances. But primarily it concerns how suitable a case of use will be to minimize detrimental factors in propagating and advancing the well-being of the individual members of the community. Nor does well-being rest only on economic affluence. Christians should maintain firmly that no use of economic goods, whether consumables or means of production, that does not in the end help to lead to spiritual *felicitas* (happiness) justifies the allocation of the goods which occasioned that particular instance of use.

---

[3] Gerson argues that *ius* is a dispositional *facultas* or power appropriate to someone and in accordance with the dictates of right reason.In this way the sky has *ius* to rain; and then by implication one has *ius* to acquire property. Gerson, *Oeuvres Completes*, III, ed. P. Glorieux (Paris, 1962), pp. 141-2, quoted in Richard Tuck, *Natural Rights Theories: their origin and development* (Cambridge University Press, 1979), pp. 25-6.

[4] Ironically Michel Villey traces the origin of subjective rights in the voluntarist philosophy of William of Ockham, a Franciscan in the early 13th century. But this argument is based upon a conjectural link between his moral philosophy and the legal concept at issue rather than any concrete textual evidence. For his argument, see Michel Villey, *La formation de la pensée juridique moderne* (Paris, 1975), p. 226.

[5] St Bonaventure, *Apologia Pauperum (Opera Omnia*, vol. 8. Quaracchi), translated by J. de Vinck, *The Works of Bonaventure: Defense of the Mendicants*, vol. IV, (Paterson, N.J.: St. Anthony Guild Press, 1960), X.14-6.

[6] I owe to Roderick Chisholm the idea that an actual event is the concretization of the archetype of the event. A similar thought is found in John Wyclif's metaphysics. See Roderick Chisholm, *Person and Object: A Metaphysical Study* (London, 1976), ch. IV; for John Wyclif's metaphysics see Gordon Leff, *John Wyclif: The Path to Dissent* (London, 1966), p. 149.

Living in Obedience

It would be interesting to imagine how history would have unfolded, if the Franciscan ideal of property justice had prevailed. We cannot live history again to undo; but we can undo the history by living it differently. Christians may own things but own only in the sense of using things rightly. There is nothing in us that establishes ultimate moral justification for our claim over a portion of the world. It is only by conforming to the objective command of God that we have rights at all. Certainly living differently is called for as a duty to uphold justice in the public realm. Yet for Christians it arises principally from the duty of obedience to the Lord Christ, since single-hearted obedience to the Lord is what distinguishes Christians from the rest. At each moment of using temporal goods, therefore we stand before God's judgment: we can use things only rightly or wrongly. There is no middle way!

Bibliography

Bonaventure,. *Apologia Pauperum (Opera Omnia*, vol. 8. Quaracchi), translated by J. de Vinck, *The Works of Bonaventure: Defense of the Mendicants*, vol. IV. Paterson, N.J.: St. Anthony Guild Press. 1960.

Lambert, M. *Franciscan Poverty : the Doctrine of the Absolute Poverty of Christ and the Apostles in the Franciscan Order 1210-1323*. New York: The Franciscan Institute St. Bonaventure University. 1998.

Nozick, R. *Anarchy, State, and Utopia*. Oxford:Blackwell. 1974.

O'Donovan, J. 'Natural Law and Perfect Community', *Modern Theology*, vol. 14, no. 1, January 1998.

Tierney, B. *The Idea of Natural Rights*. Atlanta: Scholars Press. 1997.

Villey, M. *La Formation de la Pensée Juridique Moderne*. Paris. 1975.

For Further Reading:

All of the books cited in this paper are warmly recommended for further reading, in particular.

Lambert, M., *Franciscan Poverty : the Doctrine of the Absolute Poverty of Christ and the Apostles in the Franciscan Order 1210-1323* (The Franciscan Institute Press, 1998).

O'Donovan, J., 'Natural Law and Perfect Community', *Modern Theology*, vol. 14, no. 1, January 1998.

Tierney, B., *The Idea of Natural Rights* (Scholars Press. 1997).

Also

Harris, J. W., *Property and Justice* (OUP, 1996).

Young-hae Chi is a member of the Headington Presbyterian Church in Oxford. Having previously studied politics and international relations, he is now doing a doctoral research in theology at Oxford University. The research is aimed at developing Christian ethical perspectives on the principle of property allocation as an alternative to the libertarian theory of property rights. He is currently a Whitefield Institute grantee.