

THE BEST OF THE OLL #8

Jean-Baptiste Say, “Of the Right of Property” (1819)

“There are some truths so completely self-evident, that demonstration is quite superfluous. This is one of that number... Yet how often in practice is that inviolability of property disregarded.”



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Editor's Introduction

Jean-Baptiste Say (1767-1832) was the leading French political economist in the first third of the nineteenth century. Before becoming an academic political economist quite late in life, Say apprenticed in a commercial office, working for a life insurance company; he also worked as a journalist, soldier, politician, cotton manufacturer, and writer. During the revolution he worked on the journal of the idéologues, *La Décade philosophique, littéraire, et politique*, for which he wrote articles on political economy from 1794 to 1799. In 1814 he was asked by the government to travel to England on a fact-finding mission to discover the secret of English economic growth and to report on the impact of the revolutionary wars on the British economy. His book *De l'Angleterre et des Anglais* (1815) was the result.

After the defeat of Napoleon and the restoration of the Bourbon monarchy, Say was appointed to teach economics in Paris, first at the Athénée, then as a chair in "industrial economics" at the Conservatoire national des arts et métiers, and finally the first chair in political economy at the Collège de France. Say is best known for his *Traité d'économie politique* (1803), which went through many editions (and revisions) during his lifetime. One of his last major works, the *Cours complet d'économie politique pratique* (1828-33), was an attempt to broaden the scope of political economy, away from the preoccupation with the production of wealth, by examining the moral, political, and sociological requirements of a free society and how they interrelated with the study of political economy.

In the chapter "On the Right of Property" in his *Treatise* Say (1767-1832) discusses the nature of property rights, beginning with the insight that most economists take it as a given, yet historical knowledge shows that any given property arrangement is a mixture of the justly acquired and the violently seized. He also argues that property is not limited to ownership of "things" but also includes an individual's "talents and faculties." Say has some very harsh words to say about taxation and another pressing issue of his day, slavery, which he without a moment's hesitation calls "detestable" under all and any circumstances.

“The industrious faculties are, of all kinds of property, the least questionable; being derived directly either from nature, or from personal assiduity. The property in them is of higher pretensions than that of the land, which may generally be traced up to an act of spoliation; for it is hardly possible to show an instance, in which its ownership has been legitimately transmitted from the first occupancy. It ranks higher than the right of the capitalist also; for even taking it for granted, that this latter has been acquired without any spoliation whatever, and by the gradual accumulations of ages, yet the succession to it could not have been established without the aid of legislation”

“Of the Right to Own Property” (1819)¹

It is the province of speculative philosophy to trace the origin of the right of property; of legislation to regulate its transfer; and of political science to devise the surest means of protecting that right. Political economy recognises the right of property solely as the most powerful of all encouragements to the multiplication of wealth, and is satisfied with its actual stability, without inquiring about its origin or its safeguards. In fact, the legal inviolability of property is obviously a mere mockery, where the sovereign power is unable to make the laws respected, where it either practises robbery itself, [26] or is impotent to repress it in others; or where possession is rendered perpetually insecure, by the intricacy of legislative enactments, and the subtleties of technical nicety. Nor can property be said to exist, where it is not matter of reality as well as of right. Then, and then only, can the sources of production, namely, land, capital, and industry, attain their utmost degree of fecundity. [27]

“There are some truths so completely self-evident, that demonstration is quite superfluous. This is one of that number.”

There are some truths so completely self-evident, that demonstration is quite superfluous. This is one of that number. For who will attempt to deny, that the certainty of enjoying the fruits of one's land, capital and labour, is the most powerful inducement to render them productive? Or who is dull enough to doubt, that no one knows so well as the proprietor how to make the best use of his property? Yet how often in practice is that inviolability of property disregarded, which, in theory, is allowed by all to be so immensely advantageous? How often is it broken in upon for the most insignificant purposes; and its violation, that should naturally excite indignation, justified upon the most flimsy pretexts? So few persons are there who have a lively sense of any but a direct injury, or, with

the most lively feelings, have firmness enough to act up to their sentiments! There is no security of property, where a despotic authority can possess itself of the property of the subject against his consent. Neither is there such security, where the consent is merely nominal and delusive. In England, the taxes are imposed by the national representation; if, then, the minister be in the possession of an absolute majority, whether by means of electioneering influence, or by the overwhelming patronage foolishly placed at his disposal, taxation would no longer be in reality imposed by the national representatives; the body bearing that name would, in effect, be the representatives of the minister; and the people of England would be forcibly subjected to the severest privations, to further projects that possibly might be every way injurious to them. [28]

It is to be observed that the right of property is equally invaded, by obstructing the free employment of the means of production, as by violently depriving the proprietor of the product of his land, capital, or industry: for the right of property, as defined by jurists, is the right of use or even abuse. Thus, landed property is violated by arbitrarily prescribing tillage or plantation; or by interdicting particular modes of cultivation; the property of the capitalist is violated, by prohibiting particular ways of employing it; for instance, by interdicting large purchases of corn, directing all bullion to be carried to the mint, forbidding the proprietor to build on his own soil, or prescribing the form and requisites of the building. It is a further violation of the capitalist's property to prohibit any kind of industry, or to load it with duties amounting to prohibition, after he has once embarked his capital in that way. It is manifest, that a prohibition upon sugar would annihilate most of the capital of the sugar refiners, vested in furnaces, utensils, &c. &c. [29]

The property a man has in his own industry, is violated, whenever he is forbidden the free exercise of his faculties and talents, [30] except insomuch as they would interfere with the rights of third parties. A similar violation is committed when a man's labour is put in requisition for one purpose, though designed by himself for another; as when an artisan or trader is

¹ Jean Baptiste Say, *A Treatise on Political Economy; or the Production, Distribution, and Consumption of Wealth*, ed. Clement C. Biddle, trans. C. R. Prinsep from the 4th ed. of the French, (Philadelphia: Lippincott, Grambo & Co., 1855. 4th-5th ed.). Book I, Chapter XIV “Of the Right to Own Property.” <oll.libertyfund.org/title/274/37998>.

forced into the military life, whether permanently or merely for the occasion.

“The property a man has in his own industry, is violated, whenever he is forbidden the free exercise of his faculties and talents, except inasmuch as they would interfere with the rights of third parties.”

I am well aware, that the importance of maintaining social order, whereon the security of property depends, takes precedence of property itself; for which very reason, nothing short of the necessity of defending that order from manifest danger can authorise these or similar violations of individual right. And this it is which impresses upon the proprietors the necessity of requiring, in the constitution of the body politic, some guarantee or other, that the public service shall never be made a mask to the passions and ambition of those in power.

Thus taxation, when not intended as an engine of national depression and misery, must be proved indispensable to the existence of social order; every step it takes beyond these limits, is an actual spoliation; for taxation, even where levied by national consent, is a violation of property; since no values can be levied, but upon the produce of the land, capital, and industry of individuals.

But there are some extremely rare cases, where interference between the owner and his property is even beneficial to production itself. For example, in all countries that admit the detestable right of slavery, a right standing in hostility to all others, it is found expedient to limit the master's power over his slave. [31] Thus also, if a society stand in urgent need of timber for the shipwright or carpenter, it must reconcile itself to some regulations respecting the felling of private woods; [32] or the fear of losing the veins of mineral that intersect the soil, may sometimes oblige a government to work the mines itself. It may be readily conceived, that, even if there were no restraints upon mining, want of skill, the impatience of avarice, or the insufficiency of capital, might induce a proprietor to exhaust the superficial, which are commonly the

poorest loads, and occasion the loss of superior depth and quality. [33] Sometimes a vein of mineral passes through the ground of many proprietors, but is accessible only in one spot. In this case, the obstinacy of a refractory proprietor must be disregarded, and the prosecution of the works be compulsory; though, after all, I will not undertake to affirm, that it would not be more advisable on the whole to respect his rights, or that the possession of a few additional mines is not too dearly purchased by this infringement upon the inviolability of property.

Lastly, public safety sometimes imperiously requires the sacrifice of private property; but that sacrifice is a violation, notwithstanding an indemnity given in such cases. For the right of property implies the free disposition of one's own; and its sacrifice, however fully indemnified, is a forced disposition.

When public authority is not itself a spoliator, it procures to the nation the greatest of all blessings, protection from spoliation by others. Without this protection of each individual by the united force of the whole community, it is impossible to conceive any considerable development of the productive powers of man, of land, and of capital; or even to conceive the existence of capital at all; for it is nothing more than accumulated value, operating under the safeguard of authority. This is the reason why no nation has ever arrived at any degree of opulence, that has not been subject to a regular government. Civilized nations are indebted to political organization for the innumerable and infinitely various productions, that satisfy their infinite wants, as well as for the fine arts and the opportunities of leisure that accumulation affords, without which the faculties of the mind could never be cultivated, or man by their means attain the full dignity, whereof his nature is susceptible.

The poor man, that can call nothing his own, is equally interested with the rich in upholding the inviolability of property. His personal services would not be available, without the aid of accumulations previously made and protected. Every obstruction to, or dissipation of these accumulations, is a material injury to his means of gaining a livelihood; and the ruin and spoliation of the higher is as certainly followed by the misery and degradation of the lower classes. A confused notion of the advantages of this right of property has been equally conducive with the personal interest of the wealthy, to make all civilized communities pursue and punish every invasion of

property as a crime. The study of political economy is admirably calculated to justify and confirm this act of legislation; inasmuch as it explains why the happy effects, resulting from the right of property, are more striking in proportion as that right is well guarded by political institutions.

Notes

[26.]The strength of an individual is so little, when opposed to that of the government he lives under, that the subject can have no security against the exactions and abuses of authority, except in those countries where the guardianship of the laws is entrusted to the all-searching vigilance of a free press, and their violation checked by an efficient national representation.

[27.]Although, according to our author, it is the province of speculative philosophy to trace the origin of property, the existence of which, in all politico-economical inquiries, is assumed as the foundation of national wealth, it may not here be improper to introduce a few observations on the *Right of Property*, illustrating its historical origin, and pointing out its true character. Most writers on natural law, among whom may be named Grotius, Puffendorff, Barbeyrac, and Locke, ascribe, in general, the origin of property to priority of occupancy, and have much perplexed themselves in attempting to prove how this act should give an exclusive right of individual enjoyment to what was previously held in common Blackstone, although he does not enter into the dispute about the manner, as has been remarked, in which occupancy conveys a right of property, expresses no doubt about its having this effect, independent of positive institutions.

Later writers on jurisprudence have adopted other theories on the subject of property, which being altogether unsatisfactory, we will not notice, except to remark that the most refined and ingenious speculations, although equally inconclusive, respecting the nature and origin of property, are those of Lord Kames, in the *Essay on Property*, in his *Historical Law Tracts*.

Dugald Stewart, however, is the first inquirer who has taught us to think and reason with accuracy on this subject, and it is to his observations on the *Right of Property*, contained in the supplement to the chapter, "Of Justice," in his work on the "Philosophy of the Active and Moral Powers of Man," that we must refer

the reader who is desirous of possessing just and unanswerable arguments for the true foundations on which property rests. We must here content ourselves with extracting a few passages, which will exhibit this illustrious philosopher's views of the origin of the acquisition of property, which he traces to two distinct sources.

"It is necessary," says Stewart, "to distinguish carefully the complete right of property, which is founded on labour, from the transient right of possession which is acquired by mere priority of occupancy; thus, before the appropriation of land, if any individual had occupied a particular spot, for repose or shade, it would have been *unjust* to deprive him of possession of it. This, however, was only a transient right. The spot of ground would again become *common*, the moment the occupier had left it; that is, the *right* of possession would remain no longer than the *act* of possession. Cicero illustrates this happily by the similitude of a theatre. 'Quemadmodum theatrum, cum commune sit, recte tamen dici *potest* ejus esse cum locum quem quisque occupavit.' The general conclusions which I deduce are these:—1. That in every state of society labour, wherever it is exerted, is understood to found a right of property. 2. That, according to natural law, labour is the *only* original way of acquiring property. 3. That, according to natural law, mere occupancy founds only a right of possession; and that, whenever it founds a complete right of property, it owes its force to positive institutions."

After premising these leading propositions, he proceeds with what he terms a slight historical sketch of the different systems respecting the origin of property, from which we have only room to copy the following passage, which, however, contains this eminent author's views of the *right of property, as recognised by the law of nature*; and the *right of property, as created by the municipal regulations*, and demonstrating the futility of the attempts hitherto made to resolve all the different phenomena into *one general principle*.

"In such a state of things as that with which we are connected, the right of property must be understood to derive its origin from two distinct sources; the one is, that natural sentiment of the mind which establishes a moral connexion between labour and an exclusive enjoyment of the fruits of it; the other is the municipal institutions of the country where we live. These institutions everywhere take rise partly from ideas of natural justice and partly (perhaps chiefly) from ideas of

supposed utility,—two principles which, when properly understood, are, I believe, always in harmony with each other, and which it ought to be the great aim of every legislator to reconcile to the utmost of his power. Among those questions, however, which fall under the cognizance of positive laws, there are many on which natural justice is entirely silent, and which, of consequence, may be discussed on principles of *utility* solely. Such are most of the questions concerning the regulation of the succession to a man's property after his death; of some of which it perhaps may be found that the determination ought to vary with the circumstances of the society, and which have certainly, *in fact*, been frequently determined by the caprice of the legislator, or by some principle ultimately resolvable into an accidental association of ideas. Indeed, various cases may be supposed in which it is not only useful, but necessary, that a rule should be fixed; while, at the same time, *neither* justice nor utility seem to be much interested in the particular decision."—American Editor.

[28.]Adam Smith has asserted, that the security afforded to property by the laws of England has more than counteracted the repeated faults and blunders of its government. It may be doubted, whether he would now adhere to that opinion.

[29.]It would be vain to say to him, why not employ your works in some other way? Probably, neither the spot nor the works of a refinery could be otherwise employed without enormous loss.

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[30.]The industrious faculties are, of all kinds of property, the least questionable; being derived directly either from nature, or from personal assiduity. The property in them is of higher pretensions than that of the land, which may generally be traced up to an act of spoliation; for it is hardly possible to show an instance, in which its ownership has been legitimately transmitted from the first occupancy. It ranks higher than the right of the capitalist also; for even taking it

for granted, that this latter has been acquired without any spoliation whatever, and by the gradual accumulations of ages, yet the succession to it could not have been established without the aid of legislation, which aid may have been granted on conditions. Yet, sacred as the property in the faculties of industry is, it is constantly infringed upon, not only in the flagrant abuse of personal slavery, but in many other points of more frequent occurrence.

A government is guilty of an invasion upon it, when it appropriates to itself a particular branch of industry, the business of exchange and brokerage for example; or when it sells the exclusive privilege of conducting it. It is still a greater violation to authorize a gendarme, commissary of police, or judge, to arrest and detain individuals at discretion, on the plea of public safety or security to the constituted authorities; thus depriving the individual of the fair and reasonable certainty of having his time and faculties at his own disposal, and of being able to complete what he may begin upon. What robber or despoiler could commit a more atrocious act of invasion upon the public security, certain as he is of being speedily put down, and counteracted by private as well as public opposition?

[31.]This is merely an instance of the necessity of counteracting one poison by another. Translator.

[32.]Probably, also, were it not for maritime wars, originating, sometimes in puerile vanity, and sometimes in national errors of self-interest, commerce would be the best purveyor of timber for ship-building; so that, in reality, the abuse of the interference of public authority, in respect to the growth of private timber, is only a consequence of a previous abuse of a more destructive and less excusable character.

[33.]If no one knows so well as the proprietor, how to make the best use of his property, as our author has just remarked, what advantage can result to society from the interference, in any case, of public authority, with the rights of individuals in the business of production. Nothing but the absolute maintenance of the social order should ever be permitted, for an instant, to violate the sacred right of private property. Quite as specious, though equally unsound reasons may be assigned for imposing restraints upon a variety of other employments besides mining.] American Editor.

Further Information

SOURCE

The edition used for this extract: Jean Baptiste Say, *A Treatise on Political Economy; or the Production, Distribution, and Consumption of Wealth*, ed. Clement C. Biddle, trans. C. R. Prinsep from the 4th ed. of the French, (Philadelphia: Lippincott, Grambo & Co., 1855. 4th-5th ed.). Book I, Chapter XIV “Of the Right to Own Property.” <oll.libertyfund.org/title/274/37998>.

FURTHER READING

Other works by Jean-Baptiste Say (1767-1832) <oll.libertyfund.org/person/166>.

School of Thought: 19th Century French Classical Liberalism <oll.libertyfund.org/collection/28>.

“The distinctive principle of Western social philosophy is individualism. It aims at the creation of a sphere in which the individual is free to think, to choose, and to act without being restrained by the interference of the social apparatus of coercion and oppression, the State.”
[Ludwig von Mises, “Liberty and Property” (1958)]



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