

## THE ETHICAL FOUNDATIONS OF PRIVATE PROPERTY: THE CUBAN CASE

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“Justice is destroyed in twofold fashion by the false prudence of the sage and by the violent act of the man who possesses power.”

— St. Thomas, *On the Book of Job* (8,1)

The thirty six years of Castro’s omnipotent rule seem to be coming to an end. After more than a quarter of a century of oppression and tyranny, it is to be hoped that the expectations of the Cuban people, that a new dawn of political and economic freedoms is near at hand, finally will become a reality. But, these expectations must not be frustrated by uncompromising positions concerning the way the post Castro government should deal with some of the most pressing economic problems that the island will have to face after the fall of Marxism-Leninism. Perhaps, one of the most sensitive ones is the issue of compensation for the unlawful confiscations of private properties which took place in 1959 and the years that followed. An ethical and just solution must be found to this serious problem in order to avoid further divisions and antagonisms which could endanger the country’s future peace and stability, so much in need by the Cuban people.

Legitimate and honest differences of opinion, concerning the crucial issue of compensation should not only be welcomed but also encouraged. Plurality of ideas within a true democratic system, where the fundamental rights and duties of the human person are respected, are symptomatic of a healthy and free society. All Cubans affected by Castro’s illegitimate take over of rightfully owned properties during the early years of the revolution, have the right and duty to ex-

press their opinions in a matter of such importance for the future credibility of Cuba as a law abiding country.

But, it cannot be overlooked that the entire question of how the post Castro government is going to deal with this delicate problem is of interest not only to all Cubans inside and outside the island but also to all countries that respect the right to private property and the basic principles of a free economic order. The respect for private property is at the core of any free society. By not recognizing the injustice of forced expropriations without due compensation, you are *de facto* making a sham of the right of private property. Who can guarantee that future expropriations will not take place? What confidence, if any, will the people have in a system that ignores the trampled rights of those who have been unjustly expropriated? Any discussion of human rights becomes purely academic if the most elemental natural right of private property is ignored and not a word of protest is uttered against the unlawful and unethical actions of the past. The term democracy becomes meaningless and it would be ludicrous to talk about political and economic freedom.

Thus, the economic and political consequences of whatever action the new government will take concerning the touchy problem of compensation must be weighed very carefully. The recognition of the right to private property, past and present, must be given the highest priority. Otherwise, how can people believe in the sincerity of the new government if it does not recognize publicly the unlawful seizure of

private property together with all the other abuses and injustices of Castro's Marxist regime?

In this paper we will limit ourselves to an analysis of the ethical foundations of private property, emphasizing the traditional view that to own private property is not only a natural right of all free men and women but also that this inalienable right is closely connected with the *bonum commune* (the common good).<sup>1</sup> First we will discuss briefly the concept of property in accordance with the main currents of western thought that have prevailed through history. Second, we will comment on the basic forms of justice. For that, it will be necessary to relate the three basic types of justice with the three fundamental structures of community life. Third, we will mention the idea of the *bonum commune*, its distinctive attribute and the role and limitations of the public authorities as administrators of the common good. Fourth, attention will be given to the fact that justice requires some type of recompense and/or restitution to all those affected adversely by unlawful and unjust government expropriations if order and respect for the natural rights of men and women are to be maintained in a free society. Finally, it will be stressed that, as a result of Cuba's tragic and costly experiment with socialism, something more than justice will be needed to reestablish peace and order.

### THE PRINCIPLE OF PRIVATE PROPERTY

Ideas on property are all important in any serious discussion of economic matters.<sup>2</sup> It is the cornerstone of a free economic order and anathema to those who identify property as the primary cause of alienation. Defenders of economic liberalism have always maintained that the right to private property is not only

man's inalienable right but it is one of the major factors that contributes to production and efficiency.<sup>3</sup> On the other hand, socialists have challenged this position, claiming that in primitive societies communal property was the norm and that labour alone has the right to the product of human endeavour.

Limitations on the right of private property have been stressed throughout the entire course of history. Considerations of an ethical and a legal nature have placed restrictions on the absolute right of private property, subordinating it to a higher value: the common good. It has often been argued that the best guarantee against too much concentration of power is to give every man and woman the opportunity to own private property. Greed and too much concentration of economic power in the hands of the privileged few have been considered detrimental to society. Observations such as these have been made not only by the socialists and other social reformers but also by liberal scholars, including such a prominent classical economist as Adam Smith as will be shown later.

### 1. The Concept Of Property Prior to the Age of Liberalism

Was there a "Golden Age" where mankind was thought to have owned everything in common? Is the right to property derived from human nature or is it the result of a social contract? Different scholars have presented different views concerning this academic debate. Plato in the *Republic*, said quite clearly that, in the ideal State, the guardians or administrators should own things in common, including wives

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1. For an interesting analysis of the different approaches to private property see: *Marxism, Communism and Western Society*, A Comparative Encyclopedia, Edited by C.D. Kerning, (Herder and Herder, Volume VII, Principle-Socialist Patriotism, pp.68-90).

2. For the purpose of this paper the terms economic liberalism, capitalism and the free enterprise system will be used interchangeably.

3. Ludwig von Mises, the late Dean of the Austrian school of economics establishes a direct link between private property and civilization. He says: "All civilizations have up to now been based on private ownership of the means of production. In the past, civilization and private property have been linked together. Those who maintain that economics is an experimental science and nevertheless recommend public control of the means of production, lamentably contradict themselves. If historical experience could teach us anything, it would be that private property is inextricably linked with civilization. There is no experience to the effect that socialism could provide a standard of living as high as that provided by capitalism". See Von Mises, Ludwig, *Human Action, A Treatise on Economics*, (Chicago: Contemporary Books Inc., Third revised edition published by Henry Regnery Company in 1966, by arrangement with Yale University Press, p.264).

and children.<sup>4</sup> As the economist Edmund Whittaker comments: “Obviously, Plato’s arguments were political, not economic. Private property was to be forbidden to public officials in order that corruption and dissention might be minimized. In his more practical *Laws*, Plato abandoned the communism of the *Republic*, substituting a form of peasant proprietorship”<sup>5</sup>.

Aristotle rejected Plato’s views on property and categorically stressed that it was more in accordance with man’s nature to own property. In his *Politics*, he says the following: “Moreover, there is an immense amount of pleasure to be derived from the sense of private ownership. It is surely no accident that every man has affection for himself: nature meant this to be so. Selfishness is condemned, and justly, but selfishness is not simply to be fond of oneself, but to be *excessively* fond. So excessive fondness for money is condemned, though nearly every man is fond of everything of that kind. And a further point is that there is a very great pleasure in helping and doing favours to friends and strangers and associates; and this happens when people have property of their own”<sup>6</sup>.

The absence of communal ownership, insists Aristotle, will not abolish the evils of society. They arise out of the depravity of human character and not as the result of private property. Although Aristotle recommends private ownership, he does suggest a spontaneous distribution of goods by custom of generosity and not by enforced regulation. No citizen should be in want of subsistence.

It has often been said that the Fathers of the Church preached communism and that private property had to be abandoned by professing Christianity. The writings of the early Fathers do not give credence to this theory. Although it is true that very often Christians disposed of their possessions in such a way that they could be distributed to the poor, it is also true that such practices were considered as counsels of perfection and not the general norm. There was no general consensus on the question of private property. For example, St. Ambrose was of the opinion that private property was unchristian whilst St. Augustine, maintained the opposite view. The late scholastic doctor Miguel Salon invoked the authority of St. Augustine in condemning the so-called “apostolics” who claimed that those who owned property could not enter the kingdom of heaven.<sup>7</sup> This view of St. Augustine’s on the legitimacy of property seems to be corroborated by him in his *magnum opus* the *City of God* where, when writing about marriage, he says: “Thus, unjust as it is to encroach, out of greed, on another’s property, it is still more wicked to transgress, out of lust, the limits of established morals”<sup>8</sup>.

Perhaps, it is St. Thomas Aquinas and the early scholastics who have left posterity with one of the clearest interpretations of the right of private property and its relationship with natural law. In this respect, he followed very closely the reasoning of Aristotle. He argued that property is not against natural law.<sup>9</sup> On the contrary, the possession of material things is natural to man. St Thomas considered it was lawful for man to possess property for the following three reasons: 1) people take better care of what they possess for them-

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4. Plato, *The Republic* (New York: Random House, The Modern Library, Book V, p.189).

5. Whittaker, Edmund, *A History of Economic Ideas*. (New York: Longmans Green and Co., 1940, p.181).

6. Aristotle, *The Politics* (London: Penguin Books, Revised Edition, 1981, Book II, Chapter V, 1263a40, p.115).

7. Salon, Miguel, *Commentariorum* p.389. See: Chafuen, Alejandro, *Christians for Freedom, Late-Scholastic Economics*, (San Francisco: Ignatius Press, 1986).

8. St. Augustine, *The City of God* (Image Books, New York, 1958, Book XV, Chapter 16, p. 352).

9. According to St. Thomas: “The common possession of things is to be attributed to natural law, not in the sense that natural law decrees that all things are to be held in common and that there is to be no private possession; but in the sense that there is no distinction of property on grounds of natural law, but only by human agreement; and this pertains to positive law. Thus, private property is not opposed to natural law, but is an addition to it, devised by the human reason”. See *Summa Theologica*, II Part, Secunda Secundae, Question LXVI, Art. 2 in *Aquinas, Selected Political Writings*, Edited by A.P. D’Entreves (Oxford, England: Basil Blackwell, 1959, pp. 169-171).

selves than what belongs to all, 2) they will work harder on their own account than on account of others and 3) the social order will be better preserved with individual ownership and there will be less occasion for quarreling about the use of things owned in common.<sup>10</sup>

## 2. The Age of Liberalism

One of the most ardent defenders of private property in the modern age was John Locke. He argued that property was a natural right. Private property, according to him, was established by natural law. It was not the result of man's consent. Locke explicitly states that: "God gave the world to men in common; but since he gave it to them for their benefit, and the greatest convenience of life they were capable to draw from it, it cannot be supposed he meant it should always remain common and uncultivated. He gave it to the use of the industrious and rational, (and *labour* was to be *his title* to it;) not to the fancy or covetousness of the quarrelsome and contentious."<sup>11</sup>

Thus Locke seems to imply that it is labour which establishes man's right to own property. He claims that: "Whatsoever then he removes out of the state that nature had provided, and left it in, he has mixed his *labour* with, and joined to it something that is his own, and thereby makes it his *property*. It being by him removed from the common state nature hath placed it in, it hath by this *labour* something annexed to it, that excludes the common right of other men: for this *labour* being the unquestionable property of the labourer, no man but he can have a right to what that is once joined to, at least where there is enough, and as good, left in common for others."<sup>12</sup>

To Locke's credit it must be stated that when he wrote his essay on property, there still existed great

tracts of land that still lay waste and were available to future settlers. He had particularly in mind the American continent. Furthermore, his so-called theory of labour should not be interpreted in the Marxian sense because for him labour was very broadly defined.<sup>13</sup>

It is important to stress Locke's basic argument that property is a natural right. It preceded the social contract that was later entered into with the purpose of protecting the rights of private property. He insisted that no authority had the right to abrogate the right of private property without violating the social contract. In fact, Locke went as far as to say that such an unlawful action would justify a revolt and give ground for the deposition of the sovereign.

Adam Smith, as many economists within the British Classical School of Economics, had a liberal vision of the good free society. He defended freedom and justice but, as Edmund Whittaker states there was no consideration of property, as an institution, in his book *An Inquiry into the Nature and Causes of The Wealth of Nations* and much less a justification for it.<sup>14</sup> However, expanding on Locke's theory of property, Smith believed that as land became scarcer and population increased, the additional capital that belonged to others and provided assistance to labour resulted in greater payments to the owners of land and capital. As a result, the worker no longer received the entire produce of his labour. Both land and capital had become valuable capital and had a right to receive their corresponding share.

Smith was a firm believer in private property. He unequivocally states in *The Wealth of Nations*: "The property which every man has in his own labour, as it is the original foundation of all other property, so it

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10. Ibid., p.167-169. For an excellent review of the scholastic's contribution to economic analysis see, Schumpeter, Joseph, *A History of Economic Analysis* (New York: Oxford University Press, Chapter 2, pp.73-142).

11. Locke, John, *Second Treatise of Government* (Indianapolis, Indiana: Hackett Publishing Company, Chapter V, On Property, pp. 21-22).

12. Ibid. p. 19.

13. See: Vaugn, Karen Iversen, *John Locke, Economist and Social Scientist* (London: The Athlone Press, 1980, pp.81-96).

14. Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations* (Indianapolis, Indiana: Liberty Classics, Volume II, p.201).

is the most sacred and inviolable.”<sup>15</sup> But, he adds also that the existence of great property leads to great inequality and is not conducive to peace. Smith’s argument is as follows: “For one very rich man, there must be at least five hundred poor, and the affluence of the few supposes the indigence of the many. The affluence of the rich excites the indignation of the poor, who are often both driven by want, and prompted by envy, to invade his possessions. It is only under the shelter of the civil magistrate that the owner of the valuable property, which is acquired by the labour of many years, or perhaps of many successive generations, can sleep a single night in security. He is at all times surrounded by unknown enemies, whom, though he never provoked, he can never appease, and from whose injustice he can be protected only by the powerful arm of the civil magistrate continually held up to chastise him.”<sup>16</sup>

Smith repeatedly criticizes “the wretched spirit of greed and monopoly”. Such a spirit of greed, he claimed, was not in accordance with his theory of classical economic liberalism which was concerned with equal freedoms and rights of all men and not only of the few and privileged businessmen who monopolized all the wealth and power. Greed made a mockery of the kind of self interest that he assumed in his theory; a self interest that was subject to a legal and moral code of justice to others.

The wretched spirit of greed and monopoly, insisted Smith, conspired against the public interest. He feared that the power of civil government would fall easily into the hands of the greedy rich and powerful who would use such power to foster their own inter-

ests to the detriment of the poor. Although in theory, civil government is instituted for the security of property, in reality it is prone to defend the rich against the poor or those who have some property against those who have none at all.”<sup>17</sup> It is precisely to avoid such a danger that Smith recommends that in order “to make sure that every individual feel himself perfectly secure in the possession of every right which belongs to him, it is not only necessary that the judicial system should be separated from the executive power, but that it should be rendered as much as possible independent of that power.”<sup>18</sup>

However, in spite of the above reservations, Smith was convinced that the businessman, though led by his self interest and aiming only at his own profit, would also serve the best interests of the community. He believed that the “guiding hand” of the liberal institutions and the market mechanism, in conformity with the “natural” moral law, made it possible for the capitalist to invest his capital in the most productive manner so that it would increase the wealth of the nation. Behind all of Smith’s reasoning there was always the “invisible hand” of Providence at work. His deistic background is quite evident in all of his writings but especially in his brilliant work, *The Theory of Moral Sentiments* where he emphasizes the stoic concept of natural harmony. For Smith the selfish rich “are led by an invisible hand to help the poor and the interests of society at large.”<sup>19</sup> His reliance on the “invisible hand” apparently made him forget the fallen nature of man and his “natural” inclination towards evil.

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15. Ibid. p.138.

16. Ibid. p.710.

17. Ibid. p.715.

18. Ibid. p.723.

19. Adam Smith opined that the selfish rich are led by an invisible hand to help the poor and serve the interest of society at large. For example, according to him: “The rich only select from the heap what is most precious and agreeable. They consume little more than the poor, and in spite of their natural selfishness and rapacity, though they mean only their own conveniency, though the sole end which they propose from the labours of all the thousands whom they employ, be the gratification of their own vain and insatiable desires, they divide with the poor the produce of all their improvements. They are led by an invisible hand to make nearly the same distribution of the necessities of life, which would have been made, had the earth been divided into equal portions among all its inhabitants, and thus without intending it, without knowing it advance the interest of the society, and afford means to the multiplication of the species”. Smith, Adam, *The Theory of Moral Sentiments* (Indianapolis, Indiana: Liberty Classics, 1976, p.184-185).

### 3. The Socialist Reaction

Socialist scholars have always maintained that private property played—if at all—an insignificant role in primitive society. This position is contrary to most western research which has assumed that, even in the most primitive societies, there always existed a well developed awareness of individuality and of the need for private ownership.

Socialists, under any of its various interpretations, have always tended to deny that the right of private property is an inalienable right that is derived from natural law. They consider private property as an abnormal departure from its original state of collective ownership. The early history of modern socialism has hardly deviated from this position.

Socialism launched its attack on capitalism primarily as a result of the early abuses of the industrial revolution. But, it is important to remember that modern socialism had its roots in that very same liberalism which served as the basis for the rise of industrial capitalism. As Eric Roll, the prominent economic historian, has said; “the philosophy of natural law, and the utilitarianism which was one of its expressions, could bear a radical as well as a conservative interpretation”.<sup>20</sup> Marxism and the capitalism of the early industrial age are, respectively, prime examples of the radical and “conservative” interpretations of the natural law philosophy of the Enlightenment.

In the process of sweeping away with traditional institutions, capitalism had given rise to a wave of rising expectation which were not fully realized. The new ideal age did not materialize, at least for the majority of the poor of the XIXth century. This, “could not prevent the revolutionary fervour from persisting and turning against the new social order, if that order was found deficient in the light of the promises made.”<sup>21</sup> Private property became the “whipping

post” of the new and often violent social revolutionary movements.

One of the most influential and pernicious writers of the new secular intellectuals of the Age of the Enlightenment was Jean Jacques Rousseau. He popularized the idea that man became increasingly corrupted as society evolved from its primitive state of nature to higher stages of civilization and culture. In a large measure, he was responsible not only for the French revolution but also for the criticism that later developed of the capitalist system.

Commenting of the ideas of Rousseau, the prominent British historian Paul Johnson correctly claims that: “The evil of competition, as he saw it, which destroys man’s inborn communal sense and encourages all his most evil traits, including his desire to exploit others, led Rousseau to distrust private property, as the source of social crime.”<sup>22</sup> Rousseau identifies property and the competition to acquire it as the primary cause of alienation. Karl Marx could not have said it better. In fact, Rousseau’s views on property and competition, together with his related idea of cultural evolution, helped develop socialist thought and, in particular, Marxian theory.<sup>23</sup>

For Rousseau “the idea of property depends on many prior ideas which could only be acquired successively, and cannot have been formed all at once in the human mind.”<sup>24</sup> He believed that the social contract was simply a trick of the propertied classes to retain possession of what they had seized. He refused to accept the fact that possession originated in occupation or in acquisition. Neither occupation nor acquisition provided sufficient evidence to justify the right to ownership.

Rousseau’s views gave ample ground for the establishment of a totalitarian state. He justifies absolute

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20. Roll, Eric, *A History of Economic Thought* (London: Faber & Faber Ltd. 1954, p.233).

21. Ibid. p.233.

22. Johnson, Paul, *Intellectuals* (New York: Harper & Row, 1988, p.4).

23. As Whittaker correctly states: “Rousseau’s ideas had great influence and undoubtedly were one of the sources of inspiration of socialist writings on the subject of property.” Whittaker, op.cit.,p. 202.

24. Rousseau, Jean Jacques, *The Social Contract* (New York: Alfred A. Knopf, Revised edition, 1973, p.84).

power in the name of virtue, equality and freedom.<sup>25</sup> Under Rousseau's social contract, the individual not only becomes totally subordinated to the state but it is the duty of the state to reshape the minds of the citizens. As professor Nisbet says: "What Rousseau calls freedom is at bottom no more than the freedom to do that which the state in its omniscience determines. Freedom for Rousseau is the synchronization of all the social existence to the will of the state, the replacement of cultural diversity by a mechanical egalitarianism."<sup>26</sup>

Among the British reformers of the late XVIIIth century, William Godwin was one of the most influential. He, like some of his contemporaries, maintained that property represented exploitation. The names of William Thompson, John Gray and J.F. Bay can also be mentioned. To a greater or lesser degree, all of them believed that it was unjust for land to be in private hands and that the worker did not receive the entire product of his labour. Bray, for example stated that: "Priority of possession gives no title whatever; nor can any duration of enjoyment establish a right, where no right did originally exist". It is labour alone that gives the right to ownership.

In France the so-called Utopian socialists of the late XVIIIth and early XIXth centuries claimed to be pioneers in socialist thought but, in reality had relative influence in European society.<sup>27</sup> Schumpeter calls some of their "utopist" ideas unalloyed nonsense and hardly any of them can be taken quite seriously.<sup>28</sup>

It was P.J Proudhon who, to the question he poses in his well known book *Qu'est-ce que la propriete?* answers "*la propriete c'est le vol.*" Although Proudhon accepted the view that labour was the only source of wealth and constituted the only title to ownership, he did not attack private property as such. He believed that everyone should be permitted to enjoy the fruits of his labour. He objected to the abuse of property, what was called *droit d'aubaine* or the power to demand what was considered an unearned income. As Schumpeter says: "his big idea was gratuitous credit rather than abolition of private property."<sup>29</sup>

Karl Marx was the first to use the term utopian in a disparaging manner when referring to his socialist forerunners. The history of property, according to Marx and Engels, rests on well defined laws that depend on the evolution of the means and relations of production. For Marx the important thing was to make socialist thought "scientific" and not "utopian". He believed in action. All necessary steps had to be taken in order to bring to reality the ideal socialist world.

Without going into an analysis of Marx's theory on capitalism, it suffices to say that for him and his followers private property was the root of all evil. It was the "original sin" of Marxist theory. According to Engels: "Production at all former stages of society was essentially collective and, likewise, consumption took place by the direct distribution of the products within larger or smaller communistic communi-

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25. Nisbet, Robert, *The Social Philosophers* (New York: Washington Square Press Publications, 1982, p.44). Johnson, commenting on Rousseau's totalitarian ideas says: "In a number of ways the State Rousseau planned for Corsica anticipated the one the Pot Pot regime actually tried to create in Cambodia, and this is not entirely surprising since the Paris educated leaders of the regime had all absorbed Rousseau's ideas". Johnson, op.cit. p. 25.

26. Nisbet, op.cit. p. 41.

27. Schumpeter insists that the socialism of that period was non-Marxist and associantist because they adopted "the principle of running production by workmens' associations-of social reconstruction through producers' co-operatives". Schumpeter, op.cit.,p. 454. Louis Blanc, according to Schumpeter, is an exception. Among the better known utopian socialists are Charles Fourier(1772-1837) and Henri Comte de Saint Simon (1760-1825).

28. Schumpeter, op.cit. p. 455.

29. Ibid. p. 456.

ties.”<sup>30</sup> Society began to decay as soon as private property became institutionalized.<sup>31</sup>

Private property, insisted Marx, is the cause of the inequality that exists among men. It is only through the destruction of private property that man’s alienation will be eradicate and with it the existing inequalities that have brought so much misery to the labouring poor.

Capital is a collective product. It is not a personal but a social power, claimed Marx and Engels.. They considered modern bourgeois private property as “...the final and most complete expression of the system of producing and appropriating products that is based on class antagonisms, on the exploitation of the many by the few”. Hence, they concluded, “the theory of the Communists may be summed up in the single sentence: Abolition of private property.”<sup>32</sup> Lenin and Stalin did not deviate from these ideas and their destruction of private property in Russia was complete.<sup>33</sup>

Contrary to Marx’s and Engels’ expectations, both in theory and in practice, their views concerning private property have not withstood the judgement of history. With the elimination of private property, alienations and antinomies did not cease to exist in countries that were submitted to communism or other collectivist policies. If anything, they became more acute.

Past and present events have demonstrated the close relationship that exists between the right to own property and the permanence of freedom and justice. In fact, justice requires that the right to own property be respected. Freedom cannot long endure once the right to private property is abolished. Eastern Europe under communist domination and the former Soviet Union are sufficient proof of this truth.

### THE BASIC FORMS OF JUSTICE

What is justice? Since early antiquity until the present day, justice has been defined in different ways but, perhaps, the most adequate definition is the one that simply states that it is the virtue which enables man to give to each person what is his due. As St. Thomas in his brilliant and practical manner has stated: “Justice is a habit (*habitus*), whereby a man renders to each one his due with constant and perpetual will.”<sup>34</sup>

Thus, justice can be defined as the virtue which enables man to give to each one what is his due. But, the act of justice is preceded by the act whereby something becomes man’s due. Justice comes second. Right comes before justice. No obligation to do justice exists unless it has as its presupposition the idea of the due, the right, the *suum*. How does man come to have his due? Do men and women whose properties have been confiscated without compensation have the right—the *suum*—to be re-instated in their possession or compensated for their losses?

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30. Engels, *The Origins of the Family, Private Property and the State* in E.Burns (ed.), *Handbook of Marxism* (New York,1935, p.323). See also, Academia de Ciencias de la Unión Soviética, *Manual de Economía Política* (Mexico: Editorial Grijalbo, S.A.. Seguinda Edicion, 1957, pp. 1-8).

31. Ibid. p.330.

32. Marx and Engels, *The Communist Manifesto*, edited by Samuel H. Beer, (Arlington Heights, Illinois: Harlan Davidson Inc. 1955, p. 24).

33. After the uprising and slaughter of the Kronstadt rebellion and with the ravages of famine and disillusionment spreading throughout Russia, Lenin was ready to make concessions in order to salvage his regime. In 1921, he announced a new economic policy, better known as NEP, which restored private enterprise in agriculture and in small business. However, the government kept control of big industry, communications, banking and foreign trade. The “reforms” did not affect the total monopoly of political power. Nevertheless, as a result of the limited but resuscitated capitalism, agriculture recovered and by 1928 general living standards were back at their 1913-1914 levels. Stalin, after the banishment of Trotsky in 1928, decided to put an end to NEP and all economic life reverted to state monopoly. See: Lyons, Eugene, *Workers’ Paradise Lost* (New York: Paperback Library Inc. 1967. pp.57-58). The Russian experience with NEP should serve as a warning to all those who believe in the so-called “reforms” of marxist dictatorships. As long as total political power remains in the hands of the authorities, the “reforms” are used as a mere “facade” in order to salvage a bankrupt regime. Once the regime recovers, the “reforms” are quickly eliminated.

34. St. Thomas, *Summa Theologica*, II, II, 58, 1.

The traditional doctrine of justice is not only concerned with the declaration of human rights but also with the proclamation and establishment of the obligation to respect the inalienable rights of man. One of these rights is the right of every man and woman to possess private property. Can it be concluded that any violation of these rights is a violation against justice?<sup>35</sup>

There are three fundamental structures of communal life: *ordo partium ad partes*, (the relations of individuals to one another), *ordo totius ad partes* (the relations of the social whole to the individuals) and *ordo partium ad totum* (the relations of the individual to the social whole). They correspond to three basic types of justice: *iustitia commutativa* (orders the relationship between individuals) *iustitia distributiva* (orders the relationship between the community and the individuals) and *iustitia legalis, iustitia generalis* (orders the members' relations to the social whole).<sup>36</sup>

The question that needs to be raised is, when does justice prevail in a given nation? The proper answer can be reduced to the following; justice will prevail when the three basic relationships mentioned above are disposed in their proper order. As the late German philosopher Joseph Pieper states: "The hallmark of all three fundamental forms of justice is some kind of *indebtedness* different in character in each case. The obligation to pay the tax collector is different in kind from that of settling my book dealer's account. And the legal protection the state owes the individual is due to me, in principle, in quite different fashion than my neighbor owes me the return of a loan."<sup>37</sup>

In each of these three fundamental forms of justice a different subject is involved. It would be wrong to suggest that it is justice that orders the relations between two individuals. Men and women, the individ-

ual persons, are the ones who realize all three kinds of justice. But, the individual person is implicated in three different ways. As Pieper says: "The individual as associate of other individuals sustains commutative justice, whereas the subject of legal justice is, to be sure, once again the individual but now as the associate of the species, as it were, as a member of the community, as a 'subject.' So too, the 'social whole' cannot in any concrete sense make distributive justice a reality; again it is rather the individual man—if not the king, then the dictator, the chief of state, the civil servant or even, in a consistent democracy, the individual, insofar as he has a determining role in administering the common good."<sup>38</sup>

It is important to stress that the individual and the social whole cannot be represented as sharply distinctive realities because the individual who confronts the social whole is also included in it as a member. Individual persons have a reality of their own and cannot be reduced to the reality of the social whole. Neither the acts of the individuals are necessarily the acts of the whole nor the functioning of the whole necessarily identical with the functioning of the individual member. These distinctions are important to keep in mind if a sound judgement is to be reached on the question of collective guilt.<sup>39</sup>

A firm defender of individualism would claim that reality is composed of only individuals. Therefore, he would admit only one type of justice—commutative justice. For him the social whole is not a reality of a special order. It is simply composed of many individuals. The collectivist interpretation of justice, on the other hand, does not accept the fact that individuals are capable of entering into relationships in their own right. They do not accept private relations between individuals. According to this view: "Man's life has a totally public character because the individual is ade-

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35. For the explanation of the fundamental structures of communal life and their corresponding types of justice, we have relied heavily on the late German philosopher Joseph Pieper and, in particular, on his book on the virtue of justice. See: Pieper, Joseph, *Justice*, (New York: Pantheon Books, 1955).

36. Ibid., p. 50.

37. Ibid, pp. 50-51.

38. Ibid. p. 51.

39. Ibid. p. 52-53.

quately defined only through his membership in the social whole which is the only reality.”<sup>40</sup>

One of the great dangers of the collectivist interpretation of justice is that all relations between individuals can be considered as “official”. All human relations are reduced to the fulfillment of functions and can be terminated abruptly if they do not conform to the whims of the State. The abuses of such a collectivist interpretation of justice are so well known that there is no need to enumerate them. Cuba can offer ample examples of how a person can easily find himself no longer associated with his “friend” “spouse” or “parents” but with an anonymous co-worker who is simply a state functionary working for the “common cause”. As Pieper comments: “Needless to say that from this point of view the concept of commutative justice becomes meaningless; as, equally, the concept of distributive justice, which proclaims that an individual has rights not only in his relations with other individuals but with the social whole as well. And even the seemingly unaffected concept of *iustitia legalis*, which formulates the individual’s obligation toward the functions of the state, has in the last analysis become unthinkable. The notion of justice has ceased to be applicable in any sense whatsoever.”<sup>41</sup>

Any state, which denies the existence of any of these three fundamental and independent structures of communal life and, thus, any of the three basic forms of justice, threatens justice itself. For real justice to prevail, the threefold structure of communal life must be accepted. Otherwise, it will be very difficult, if not impossible, to do justice to the reality contained in the complex relationships between the individual and society. Justice must prevail in its threefold form if the road to totalitarianism is to be avoided.<sup>42</sup> Did the Castro government with its policy

of mass confiscations violate any or all of these three basic forms of justice or, on the contrary, can they be justified in terms of the common good?

### PRIVATE PROPERTY, JUSTICE AND THE COMMON GOOD

Is there, under the guise of “legality” or of any other interpretation of either *iustitia distributiva* or *iustitia generalis*, a justification for the forced expropriations without any type of compensation that took place in Cuba and other countries around the globe as a result of communist takeovers? If not, is there an obligation on the part of post-communist regimes to re-instate a person in the possession or dominion of those properties that were illegally confiscated during the early years of the revolution? If so, how is the reinstatement or compensation going to take place after the fall of communism?

There is no doubt that the right to property forms part of *iustitia commutativa*. It obliges man to respect the possessions of others and forbids him from appropriating goods that are not his. If a man appropriates something that is not his, he has transgressed a fundamental structure of communal life, the relations between one individual and another individual and, thus, violates *iustitia commutativa*. But, is the state entitled to expropriate privately owned properties under the banner of *iustitia distributiva*?

The state incorporates and administers the *bonum commune*. It is vested with authority and has the power to maintain the common good in its fullest sense. Given the relationship which is characteristic of *iustitia distributiva* and the priority of the common good, nothing is due to the individual which is exclusively his. This is due to the fact that distributive justice is of a higher order than commutative jus-

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40. Ibid. p.53.

41. Ibid. p.54.

42. Ibid. pp.54-55.

tice.<sup>43</sup> For example, in an emergency, public authority may have the legitimate right to deprive an individual of his freedom as in the case of a criminal action or of any other activity which endangers the social whole. The public authority, as administrator of the common good can also take measures that affect the individual's property under certain conditions.<sup>44</sup> The important thing to keep in mind is that "...in his relationship with public authority, a *suum* belongs to a private person in a fashion quite different from that applying to his relations to another private person. It is this peculiar structure in the actual fabric of communal life that we bring to light when we get to the roots of the distinction between commutative justice and distributive justice."<sup>45</sup> A private person's relationship with the public authority is not the same as his relationship with another private person. The former relationship falls under *iustitia distributiva* whilst the latter under *iustitia commutativa*. But, how can the authorities have the power to, for example, expropriate private property if, at the same time, the inalienability of the individual's rights vis-a-vis the state are to be fostered and maintained?

It cannot be stressed too strongly that the individual has inalienable rights that the State cannot suppress. As a part of the social whole, the individual has the right to expect justice from the public authorities and this applies not only to the distribution of goods but also to the sharing of burdens. There are definite limitations on the state's authority which the public authorities cannot overlook. In the last instance, the power of the state can only be wielded if the common good demands it.

But, what happens when a government passes laws that are unjust in the name of the common good? Communist regimes and totalitarian systems in general have the habit of dictating laws that run counter to the most basic inalienable rights of man, including the right to private property. The people in Cuba and other countries have suffered the consequences of such nefarious legislation.

When a government dictates decrees confiscating private property without due compensation, is there a violation of justice or can those decrees be justified in the name of *iustitia distributiva* or *iustitia legalis*? Can drastic measures be taken by the authorities against any individual or group simply because they belong to a particular race, religion or social class that needs to

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43. According to St. Thomas: "The scope of justice, as we have said, is to regulate men in their relations with others. Here there are two cases to be considered. Either when the reference is to others considered individually. Or when the reference is to others considered as a community: to the extent, that is, to which one who is a subject of a certain community is subject also to all the persons who go to form it. Justice, as such, enters in both cases. For it is evident that all those who make up the community, have to it the same relationship as that of parts to a whole. Now the part, as such, belongs to the whole: consequently any partial interest is subordinate to the good of the whole. From this point of view, whatever is good and virtuous, whether in respect of a man to himself or with respect to the relationship between men, can have reference to the common well-being which is the object of justice. In this sense all virtues may come within the province of justice, in so far as it orders men to the common welfare". St. Thomas, *Summa Theologica*, II, Secunda Secundae, Question 58, Art. 7, p.165.

44. The German philosopher-economist Anton Rauscher, when discussing the right of the state to expropriate, mentions the following conditions: "First, the measure must be limited and may not serve as a pretext to nationalize or 'socialize' important industries and in this way to eliminate ownership of the means of production or practically to abrogate the free power of disposal through an excess of state control and planning. Second, it must be a question of a measure that is urgently required by the common good. The burden of proof here lies with the state, and not with the citizen, that it 'is the only means to remedy an injustice and to ensure the coordinated use of the same forces to the benefit of the economic life of the nation, so that the normal and peaceful development of that economic life may open the gates to material prosperity for all' (Pius XII, *Catholic Mind* 45 1947:710). Third, there exists the duty of making appropriate recompense to the owner. We are familiar with expropriation measures, especially in the sphere of landed property, when an imperative need of the state or of the community exists. In a constitutionally governed state, the citizen has the possibility of lodging an appeal and of having examined whether the reasons advanced are really convincing or not. This is a protection against a too facile appeal to the 'common good'". See Rauscher, Anton, "Private Property, Its Importance for Personal Freedom and Social Order", *Ordo Socialis* (Koln, Deutschland: Vereinigung zur Forderung der christlichen Sozialwissenschaften, pp. 45-46).

45. Pieper, op.cit. p.71.

be eliminated? To whom must the plaintiff appeal in order to find justice if justice has been violated?

The argument could be held that, because the right to property must be distinguished from its use, the proper use of possessions does not fall exclusively under *iustitia commutativa*—which obliges man to respect the possessions of others and forbids him from appropriating goods that are not his—but also under other virtues and duties that are not enforced by the courts of justice.<sup>46</sup> This means that the right to property and its use are not subject to the same limits.

As indicated earlier, the common good may require under certain circumstances the establishment of certain limitations to the right of private property. The authorities correctly may appeal to *iustitia distributiva* in order to justify such an action. They may even try to use such an argument in order to justify expropriations without compensation when privately owned properties are mis-used or not used at all. However, such an argument is not valid. The misuse or non use of private ownership does not give ground to illegal government takeovers and the destruction or forfeiture of the right itself.

St Thomas in his *Summa* unequivocally states that man has a natural right to own private property. Man's rational nature permits him to use his intelligence to provide for the future, something that he could not do if he did not possess material goods as his own. In addition, in accordance with his social

nature, it would be very difficult for man to maintain a family if he did not have stable property.<sup>47</sup> This is the position that has been maintained by the Roman Pontiffs in all official documents of the Catholic Church.<sup>48</sup> They all agree that the right to private property is one of the inalienable rights of man and the public authorities have the duty to protect it from unjust expropriations that run counter to the common good. Consequently, there is no doubt that the mass confiscations that occurred in Cuba after 1959 constituted a direct violation of *iustitia commutativa*. But, neither can they be justified under the banner of a false interpretation of *iustitia distributiva*.

It is erroneous to even imply that the mass confiscations were done in accordance with the precepts of *iustitia distributiva* in order to bring about a more equalitarian and “just” society. The end does not justify the means; means which were blatantly unjust and violated the inalienable right that every citizen has to own private property. Thus, the public authorities cannot appeal to distributive justice in order to try to justify the systematic destruction of private property.

Society, explains St. Thomas, through positive law or *ius gentium* (the common rights of all peoples, or customs derived from natural law) can determine the different systems for distributing material goods. But this must be done always in accordance with the more basic right (natural law, different from positive law) that cannot be violated. Positive laws enacted by

46. Aristotle, a believer in the right to own property, also said that: “Each man has his own possessions, part of which he makes available for his friends’ use, part of which he uses in common with others. For example in Sparta they use each others’ slaves practically as if they were their own, and horses and dogs too; and if they need food on a journey, they get it in the country as they go. Clearly then it is better for property to remain in private hands; but we should make the use of it communal. It is a particular duty of a lawgiver to see that citizens are disposed to do this”. Aristotle, *The Politics*, Book II, v, 1263a30. St. Thomas, a firm defender of private property, distinguishes between the use (*usus*) and the management and administration of goods (*potestas procurandi et dispensandi*). With respect to the use of goods (consumption), man should not consider them as his own but as common. He should share them readily with others when they are in need. However, it should be pointed out that when St. Thomas is speaking of the *usus communis* he means that no one should use goods without consideration of the needs of others, especially of those who are in a distressed state. At the time St. Thomas was writing, almsgiving was of great social importance. Charity played a very significant role which went well beyond justice.

47. See: St. Thomas Aquinas, *Summa Theologica*, Quaestio LXVI, Art. 1 and Art. 2.

48. All papal documents and encyclicals from *Rerum Novarum* of Leo XIII to *Centesimus Anno* of John Paul II have maintained always that the right of possession is inviolable. For example Leo XIII stated that: “every man has by nature the right to possess property of his own. This is one of the *chief points of distinction* between man and the animal creation”. (*Rerum Novarum* #5). John Paul II strongly reaffirms the natural character of the right to private property and adds: “This right, which is fundamental for the autonomy and development of the person, has always been defended by the Church up to our own day”. (*Centesimus Anno* #30).

governments that run counter to natural law cannot be considered ethically valid even if it is claimed that they have as their objective the common good of society. It is preposterous even to think that natural law can be bypassed in the name of a badly interpreted *iustitia distributiva*.

Once it is recognized that the massive confiscations of private property, brought about by the socialist policies of the Castro government, were unequivocally illegal and unethical, the question still remains as to how *restitutio* is going to take place. In other words, how can man's *suum* be recognized and justice restored?

### THE RIGHT TO RESTITUTION OR COMPENSATION: AN ABSOLUTE OR A RELATIVE RIGHT?

It cannot be denied that the entire question of *restitutio* becomes rather complicated in the case of government confiscations of privately owned properties, especially if many years have elapsed since the time of their occurrence. This in no way means that there is no obligation on the part of the “debtor”—the social whole—to recognize the injustice committed and that there is no longer need for *restitutio*. It simply means that the obligation due to an individual in his relation to the social whole is “in principle different from his due as creditor towards debtor in a situation of commutative justice.”<sup>49</sup>

In cases of forced expropriations or outright confiscations by the public authorities, the individual is confronted by the social whole (i.e., the government). It is no longer a relation of individuals with one another. The two participants are not equal not only because the social whole represents many individuals but also because, as mentioned earlier, it is of a higher order than the good of the individual.<sup>50</sup> But, the fact that the social whole is of a higher order does not make an unjust act just. The injustice this time is suffered by the individual whose properties have been

unjustly confiscated as a result of an abuse of power by the public authorities.

In cases such as these (i.e., those that took place in Cuba and other totalitarian regimes), it is the individual who claims his due from the social whole. Hence the claim, as expressed in *iustitia distributiva* is directed at a government that, supposedly, is representing the social whole. The authorities cannot hide under the mantle of an abstract collective guilt and claim that they are not responsible for the confiscations that took place in the past. As Pieper correctly states: “Man, as administrator of the common weal, is brought to account and is obliged to give the individual members of the whole their due. The ideal image of distributive justice, however, does not authorize individuals to determine and assert on their own initiative what is due to them on the part of the social whole. But though they are not so authorized, this does not mean that such a premise would be impossible and intrinsically counter to justice.”<sup>51</sup>

When the public authorities are the perpetrators of blatant injustices, the norm “Thou shall be just” is applicable not to the claimant but to the government who is the one who has to grant the due. In accordance with *iustitia distributiva*, the claim or appeal would have to be directed to whoever represents the total whole. However, it is quite evident that, for all practical purposes, this is impossible under totalitarian regimes such as the one existing in Cuba. Under such circumstances, all appeals would have to be postponed until a new democratic government is installed. The claims will then have to be made to the newly appointed authorities.

It is important to re-emphasize that the obligation due to the individual in his relation to the social whole differs from his *suum* as creditor towards another individual debtor under commutative justice. Under commutative justice, the creditor has the right to receive the equivalent of the loss suffered. In the case of *iustitia distributiva*, the individual is not an

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49. Pieper. op.cit. p.64-65.

50. Pieper, op.cit. p.63.

51. Ibid. p.64.

independent, separate party to a contract with claims equal to those of his partner. The creditor (the person whose properties have been confiscated) will have to deal with the social whole (the new government) in order to receive his due. And, the partner with whom he has to deal under *iustitia distributiva* is of a higher rank; a rank of which he himself is a part as member of the social whole.

Under *iustitia commutativa* what is due can easily be calculated by mutual agreement of the interested parties. The party entitled to his *suum* can and has the right to determine the price. Justice and equity will be met in the *aequitas rei ad rem*.<sup>52</sup> This is not the case under *iustitia distributiva*. For example, if, as the result of war, damage has been inflicted upon someone's property, the person suffering the damage cannot determine independently what is rightfully his. It will be the responsibility of the representative of the social whole to establish what is his due in accordance with the common good.

Furthermore, in the case of *iustitia commutativa* a just price can be determined simply by taking into consideration the market price of the object under consideration. This is not so under *iustitia distributiva*. According to St. Thomas, justice is determined by "whatever corresponds to the thing's proportion to the person." In other words, the person who administers the common good can take into consideration other factors besides the object of the obligation alone. In the case of war account may have to be taken of such factors as whether the damage has impoverished the person, whether or not he had already made any other great sacrifice for the social whole etc. Something similar may occur in Cuba as a result of the mass confiscation that took place under Castro. Many innocent people suffered whilst, at the same time new "rights" were created that cannot be totally ignored by the new government. Thus, the compromise that has to be effected both in distributive justice and in commutative justice has a quite

distinct character in each instance. In the first case it is a 'proportional' equality (*aequalitas proportionis*), in the other a purely numerical 'quantitative' equality (*aequalitas quantitatis*). Aristotle, when explaining distributive justice says that "such justice is the mean between the two extremes of more and less of what is fair. In a word the just is the proportionate."<sup>53</sup>

The confiscations that took place in Cuba during the many years of the Castro dictatorship will, undoubtedly, create all sorts of conflicting claims affecting various people in many different ways. Thus, it will be necessary for the newly established authorities to take action in accordance with *iustitia distributiva*. It will no longer be a simple case of *iustitia commutativa* that can easily be solved by the individual parties. The social whole cannot avoid being involved in the many legal disputes that are going to occur in a free Cuba, as most of the properties confiscated are in government hands or, at least in theory, have been given to a new class of "owners". Consequently, any future solution of the property issue that pretends to be just will have to take into account the rights of the affected individual parties in the light of the common good and that involves directly the government who is the administrator of the *bonum commune*.

But what is the common good? How can it be defined in order for the public authorities to put it into effect?. In general terms the *bonum commune* represents "the good for the sake of which the community exists, and which it must attain and make a reality if it is to be said that all its potentialities have been brought to fruition".<sup>54</sup> A difficult task but a necessary one that those in authority must try to carry out if they want to respect the three fundamental structures of communal life and, thus, the three basic forms of justice. To deny or to ignore any of these three forms of justice will open the door to a new totalitarianism of either the left or the right.

In view of the above, it is highly probable that a strict applicability of compensatory or commutative justice

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52. St. Thomas Aquinas, *Summa Theologica*, II, II, 61,2.

53. Aristotle, *Ethics*, op. cit. Book V, Chapter Three, p 147.

54. Pieper, op. cit. pp.87-88.

may not be possible or even advisable. This is especially true, given the confusing circumstances that will prevail in Cuba in the wake of over thirty five years of a ruthless communist dictatorship. Revolutionary actions like the ones that occurred in Cuba, create situations which lend themselves to inevitable conflicts of interests—the result of unjust acts—that are not easily solved. Nevertheless, the new government must, in justice, realize that some type of compensation is due to the possessor whose right, the *suum cuique*, (what is his due) has been violated. The dilemma is that the *suum* of the affected party must be measured in terms of the common good.

The successors of Castro should always keep in mind the following words of the previously quoted German philosopher Joseph Pieper: "...the man who does not give a person what belongs to him, withholds it or deprives him of it, is really doing harm to himself; *he* is the one who actually loses something—indeed, in the most extreme case, he even destroys himself."<sup>55</sup> This applies just as well to a nation that does not meet its obligations in accordance with justice and the common good. An unjust act that takes away from man what is his due is not so much the loss of some possession but rather "the implicit threat to the entire order of community life affecting every member."<sup>56</sup> Thus, in justice, the forced and illegal expropriation of private property requires a recognition of the wrong performed and some type of restitution or compensation for the damage inflicted upon the victimized party.

### THE DEMANDS OF SOCIAL JUSTICE; THE LIMITS OF JUSTICE

It is the function of justice in general to regulate the entire economic order but, in a very special way, it is *iustitia generalis* or *iustitia legalis* the one that specifically relates the individual with the social whole and, thus, also with the common good. The more modern

term, social justice, has tended to replace the more classical one that was used by the scholastic doctors.

The concept of social justice, which appeared already in the encyclical *Quadragesimo Anno* of Pope Pius XI and is insistently reiterated by his successors, cannot be totally divorced from commutative justice and distributive justice. The three of them are intimately connected because it is proper for social justice to demand from the individuals what is necessary for the common good but, at the same time, it also falls within its area of competence to strive for a less unequal distribution of wealth.<sup>57</sup> Do capitalism and socialism fulfill the demands of social justice?

Capitalism, particularly in its early stages, paid little attention to the obligations that social justice entails. Economic liberalism was greatly influenced by utilitarianism which was inspired by the basic postulates of philosophical liberalism. The typical bourgeois mentality of early capitalism was frequently guided by purely selfish interests that were hardly ever concerned with the well-being of others. Pure individualism was the norm and *iustitia commutativa* the only type of justice accepted. As the German professor Anton Rauscher has stated: "The right to property was understood in thoroughly individualistic terms as the right of the individual to dispose of the goods in his possession to the exclusion of a third party, with full freedom, according to his own pleasure, and without any social limits, obligations or duties."<sup>58</sup>

As already stated, Adam Smith saw quite clearly the dangers of this type of unrestrained capitalism but found the solution to the selfish interests of the monied classes in the "invisible hand" of God (the market) who somehow would solve the problem to the best interests of society as a whole. The market system, if left to operate freely, would be instrumental in bringing about the desired results. Social justice

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55. Ibid. p.16.

56. Ibid. p.49.

57. Pius XI, *Divini Redemptoris*.

58. Rauscher, Anton, "Private Property, Its Importance for Personal Freedom and Social Order", *Ordo Socialis*, No.3, (Koln, Deutschland: Vereinigung zur Forderung der christlichen Sozialwissenschaften, p. 7).

would automatically follow as long as the market forces were permitted to operate freely.<sup>59</sup>

The free market system and the defense of the right to private property are to be lauded in capitalism. It has proven to be by far the most efficient economic system as its performance has demonstrated during the past two hundred years. To defend and foster the right to private property is not only legitimate but commendable. After all, it is an inalienable right of every man and woman to own property. But, this right belongs to every and each one, as Adam Smith himself often proclaimed. It can not be monopolized by the privileged few. The privileged few have to be genuinely concerned with the well-being of the less privileged many.

Capitalism correctly stresses the right to own private ownership but, at the same time, it should emphasize also that of its very nature private property has a social function which cannot be overlooked. John Paul II used the expression “the social mortgage of private property” in a speech he gave at Puebla, Mexico, the 29th of January of 1979. By that expression he meant the subordination of private property to the common good. But, this does not mean that the State has a *carte blanche* to do what it pleases. As indicated earlier, the State may, under certain conditions, have the right to nationalize and/or expropriate certain goods but always with the objective to better serve the common good.<sup>60</sup> Never to reduce the role or area of private property. It would violate the principle of subsidiarity. The State cannot convert itself in the common good.

The point that needs to be stressed is that God created the earth so that man could have dominion over it

and enjoy its fruits. He gave it to the whole human race for all men to enjoy it without exceptions. This is the foundation of the universal destination of the earth’s goods. Man’s dominion over the earth, through his work, the use of his intelligence and exercising his freedom, has permitted him to make part of the earth his own. This is the origin of man’s legitimate right to own private property but, at the same time, he has a responsibility not to hinder others from doing the same and acquiring also their own private property. In fact, man must cooperate with others so that they can all, in a spirit of solidarity, dominate the earth.<sup>61</sup> It is precisely this spirit of genuine solidarity (*affabilitas*) which is often missing in capitalism. Its technical dimension, as a creator of wealth, is unsurpassed but it is its human dimension that needs to be strengthened.

It is not enough for capitalism to claim that the right to private property is fundamental for the autonomy and development of man. It must not forget that the possession of material goods is not an absolute right and its limits are inscribed in its very nature as a human right. The possession of material goods cannot put the individual above the common good and disregard the obligations incurred under social justice.

It is not morally wrong to become rich; what is wrong and unjust is to use wealth exclusively in an egotistic manner, forgetting that there is a common good that cannot be ignored. This selfish attitude is what makes man fall into the iniquity of wealth (*mammona iniquitatis*) that is a grave moral evil. In other words, a Darwinian attitude based uniquely on a philosophy of the survival of the fittest or *sauve qui peut* is unacceptable.

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59. According to Milton Friedman: “The view has been gaining widespread acceptance that corporate officials and labor leaders have a ‘social responsibility’ that goes beyond serving the interests of their stockholders or their members. This view shows a fundamental misconception of the character and nature of a free economy. In such an economy, there is one and only one social responsibility of business—to use its resources and engage in activities designed to increase its profits so long as it stays within the rules of the game, which is to say, engages in open and free competition, without deception or fraud. It is the responsibility of the rest of us to establish a framework of law such that an individual in pursuing his own interest is, to quote Adam Smith again, ‘led by an invisible hand to promote an end which was no part of his intention’”. See Friedman, Milton, *Capitalism and Freedom*, (Chicago: The University of Chicago Press, 1962, p.133).

60. See footnote #44.

61. John Paul II, *Centesimus Anno*, #31.

The late German economist Wilhelm Roepke, with his accustomed clarity, sends the defenders of the free enterprise system a warning note when he says: “We move in a world of prices, markets, competition, wage rates, rates of interest, exchange rates, and other economic magnitudes. All of this is perfectly legitimate and fruitful as long as we keep in mind that we have narrowed our angle of vision and do not forget that the market economy is the economic order proper to a definite social structure and to a definite spiritual and moral setting. If we were to neglect the market economy’s characteristic of being merely a part of a spiritual and social total order, we would become guilty of an aberration which may be described as social rationalism.”<sup>62</sup> What is ailing modern society, insists Roepke, is the lack of human warmth and natural solidarity.<sup>63</sup>

The damaging preponderance that capitalism often gives to the individual’s interests and material profits must be counterbalanced by a set of moral standards which are necessary for the survival of the system and without which a nation will inevitably disintegrate. These include, respect for natural law, tradition, love of country and neighbour and all those things which anchor a community in the hearts of men.<sup>64</sup> But, for this to occur it will be necessary to instill in the minds and hearts of men and women the necessary human virtues that will induce them to respect the dignity of the human person. This way, the wealth created by the free market system will not be squandered through “loose” spending and, what is even worse, through corruptive practices that are vitiating the very foundations of a free society. It is not the technical dimension of capitalism or the free enterprise system that is at fault but, rather, the lack of a proper human dimension which places man at the centre of the universe and insists that man is the subject of economics and not merely its object.

Socialism tried to find a solution to the abuses of early capitalism and the resulting evils to society by the

transferring of property from private persons to the community. This way “social justice” would be attained. Individual possessions would become the common property of all and each citizen would have the right to have his equal share of whatever the authorities were able to distribute.

Such an objective proved to be not only futile, as past experience has shown, but also unjust. It robs the lawful possessor of what is rightfully his, causes total confusion in the community and deprives the worker of the liberty of disposing of his legitimately earned income in whatever way he deems more appropriate for his future well-being.

But, what is even worse is that the elimination of private property violates the right of every man to possess property of his own. It is the common opinion of mankind that the foundations of the division of property are in conformity with human nature. In fact, the principle of private property is not only in conformity with human nature but also has the sanction of Divine Law. Civil laws only confirm and enforce what is in accordance with natural law. Socialism rejects both natural and divine law.

The irony of socialism and, in particular, communism is that it used indiscriminate and totalitarian methods that violate individual’s rights in order to bring about a more “just” society. Socialism as well as most if not all “isms” forget that the State can only wield its power if the common good demands it. Otherwise it is pure tyranny disguised under the cloak of “freedom” and “justice.”

The collectivist and materialistic ideologies of socialism are a corruption of Christianity and all major religions. They substitute coercion for the freedom of men to share freely the superabundance of their rightfully acquired goods. The utopian aspect of socialism is precisely this willingness to do coercively what Christianity preaches through justice and charity. The reform of society has to come first and fore-

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62. Roepke, Wilhelm, *A Humane Economy*, (Chicago: Henry Regnery Company, 1960, p. 93).

63. *Ibid.* p. 7.

64. *Ibid.* p. 149.

most through a personal conversion. Not from above, through dictatorial decrees that totally disregard the rights of men.

True justice will only prevail when the three fundamental and independent structures of communal life and, thus, the three basic forms of justice are accepted and put into practice. Perhaps, the type of justice that the post-Castro era will need the most is *iustitia generalis* which goes beyond the limits of justice.

Cubans in and out of Cuba must realize that the island's present situation is such that full compensation, restitution and satisfaction for past unjust actions may not be possible. The fact that some debts may not be able to be paid will have to be accepted as a lesser evil if peace and harmony are to prevail. To maintain order and peaceful coexistence in a free Cuba something more than a strict application of justice will probably have to be required.

Hopefully, Cubans, unjustly deprived of their possessions, will come to the realization that love—in this particular case love of neighbour and country—is the greatest of all virtues. A society where man's dues are determined exclusively by pure calculations can very easily become inhuman, one of the main characteristics of the former Soviet Union and other communist dominated nations. A new spirit of *affabilitas* and understanding must permeate all sectors of Cuban society. But, this virtue, which St. Thomas relates to justice, is neither due nor can it be rightfully claimed and demanded. It cannot be forced upon people. It has to flow spontaneously from creditors, debtors and all Cubans of good will in order to reach a peaceful and equitable solution to the many problems that a free Cuba will have to face. Without this new spirit of solidarity which goes beyond the limits of justice, it will be very difficult for men and women to live together at peace and in harmony with each other.

Cubans must accept the fact that, given prevailing conditions, it will be very difficult if not impossible to restore a proper balance, through restitutions and/or compensations, for past unjust expropriations. Certain debts may not be able to be paid back. Thus, for the benefit of the *bonum commune*, solidarity

must become the guiding principle of the new Cuba if the island's communal life is to remain human. As, St Thomas, the greatest of all the scholastic doctors once said: "Charity without justice is the mother of dissolution", but "justice without charity is cruelty."

## CONCLUSIONS

It is a well known historical fact that among the first measures taken in 1959 by the newly established communist regime in Cuba was the elimination of private property. At the beginning, it was done in a sophisticated way; gradually and legally. Nevertheless, it was done systematically and according to Marxist-Leninist principles or, better still, following consciously or unconsciously, Gramschi's more "democratic" approach so as to make the Cuban people and the world at large believe that the government was not communist but merely pursuing "social justice". Unfortunately, many well intentioned people, but not well versed in communist tactics, did not come to realize the true colours of Castro and his planned objective to communize Cuba until it was too late. By then, private property, for all practical purposes, was non existent and the possibility of effective resistance to the government's arbitrary measures almost if not totally nil.

The flagrant injustice of Castro's actions cannot be denied. His predetermined decision to expropriate private property without compensation was a direct violation of the virtue of justice. No excuse can be found for the numerous government decrees that were approved by his cabinet in an indiscriminate way and without due respect for natural law and the most elementary concept of justice. Not only were there systematic violations of *iustitia commutativa* but also the sham that was made of both *iustitia distributiva* and *iustitia generalis*. The State has never the right to perform unjust acts under the pretext of the "common good." Under no circumstance can it violate natural law and the basic rights of the human person, including the right to own private property, as the Castro regime has done for many years. Once these fundamental truths are accepted, the only question that remains is as to how the new government can deal with the delicate problem of *restitutio* created by a "legal" system of forced expropriations with-

out compensation imposed unjustly by force on the will of the people and with a total disregard of natural law and the basic rights of man.

Most Cubans would tend to agree that, as a first step, the new government should recognize publicly the injustice of the confiscations enforced by Castro. But, how can this injustice be remedied after so many years have elapsed since the fateful take over of power by Castro's communist regime?. Here is precisely where the issue becomes extremely touchy and open to debate. A plurality of arguments seems to prevail with respect to how to deal with the problem, not only among the Cuban community in exile but particularly if the opinions of the Cubans residing on the island are also taken into account. The arguments run from total to partial compensation, not to mention other possible alternatives.

No one can deny the legitimate right of every Cuban to express his or her opinions and ideas on such an important subject that has so many implications for the future stability of the country. But care must be taken not to use those rights to foster personal or group interests that run counter to the common good and which will only contribute to further bitter conflicts and antagonisms within an already divided country. The only way to resolve this controversial problem is to recognize fully the notion of justice and its limits and how they can be applied in Cuba at the end of Castro's dictatorship.

Very few would deny that, if justice is to be carried out, restitution and/or compensation for past debts must be fulfilled. Once it is recognized officially that the massive destruction of private property, brought about by the socialist policies of Castro, were unequivocally unethical, the question still remains as to how to restore a just "equilibrium" between the affected parties to a society where a healthy equilibrium no longer exists. The unjustly expropriated have a perfectly legitimate right to claim restitution or compensation for their confiscated properties, but at the same time the "new" users of these same govern-

ment confiscated properties may not want to give up their "newly acquired rights"

Although it is true that man's communal life cannot be attained fully through *iustitia commutativa*, it is also true that it is its foundation. It is the corner stone of all social relations, "which even the higher forms of mutual agreements the irreducible core of social relations finds expression."<sup>65</sup> And this will continue to be true in the post-Castro era. Furthermore, the act of justice *iustitia commutativa* which orders the association of individuals with one another is *restitutio*, recompense, restoration. St. Thomas quite explicitly said that the recognition of the *suum* is correctly called "re-storation, re-stitution, re-compense, re-instatement to an original right."<sup>66</sup>

But, the world cannot be kept in order through strict justice alone. Conditions may be so that the proper balance between the creditor and the debtor cannot take place. The fact has to be accepted that the balance may not be totally restored through restitution and the paying of debts and dues. In fact, it is highly probable that some debts will never be paid.

The new government which will have to carry out the policy of *restitutio* will have to keep in mind the demands of the common good and act accordingly: a common good which represents the good for the sake of which the community exists and which must attain and make a reality if it is to be said that all its potentialities are fulfilled. A difficult task but one which the newly established authorities must carry out if the three basic types of justice are to be respected and the well-being of all Cubans protected.

Very often, and in the light of the common good, man will be willing to give up voluntarily something that rightfully belongs to him. He will be disposed to yield a right or part of a right to which he is entitled but that no one can compel him to do so. If justice and peace are to prevail in any given country, man should keep in mind that a spirit of solidarity should guide his actions and that he should try to place the

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65. Pieper, *ibid.* p. 59.

66. *Ibid.* p. 60.

common good above his own selfish interest. St. Thomas maintained that something more than justice is required, something over and above strict justice if communal life is to remain human. He calls this “something,” liberality (*affabilitas*), kindness. By this he means friendly relations in men’s everyday associations. But St. Thomas quickly adds that this virtue is neither due to another person nor can it be rightfully claimed and demanded.

It may be suggested that in the present world such an attitude is totally unrealistic if not utopian. Perhaps this is true but the reason for the lack of the virtue of *affabilitas* is due in large part to the fact that the men and women of the last decade of the XXth century have become so influenced by the prevailing atmosphere that they do not want to accept the fact that it is precisely the present day atmosphere which is “unrealistic”. They simply reject the traditional doctrine of justice and charity and prefer to fall prey to the whims of whatever is in vogue, to passing dictatorships, with their false promises of earthly paradises, or to egotistic doctrines which have as their only objective man’s material welfare.

Hopefully, Cuba will one day enter a new historical stage in which both political and economic freedoms will prevail. The free market system with its reliance and respect for private property seems to be the heir apparent to the disastrous collectivist policies of the Castro era. But Cubans should not fall into the error of believing that the market economy regulated by honest competition represents a cosmos in equilibrium, a natural order, that only needs to be defended from forces exogenous to the system.

It is naive to believe that the system is miraculously regulated by an invisible hand which the deist philosophers would call divine reason. The market economy is not totally autonomous. There are limits to economic freedom; limits that are not determined by the free play of the market forces. And these limits must be determined by a set of ethical norms which will serve as guidelines to man’s economic activity. If

man does not accept the reality of such ethical standards, the state will have to come in and impose by force what free men are not willing to accept voluntarily. This would be the first step toward a renewed type of totalitarianism of either the left or the right.

The successors of Castro must not rely on a rationalist philosophy, on which the free market system is largely based, which does not admit the need for a solid institutional and ethical framework without which the system would ultimately founder.<sup>67</sup> It did not believe that unrestrained self interest would ultimately and inevitably lead to all sorts of abuses and flagrant injustices; that pressure groups and powerful economic interests would use their influence to carry out their own personal goals to the detriment of society as a whole and, ironically, this would be done under the banner of a free economic order.

The new authorities must keep in mind that competition not subject to moral criteria can easily degenerate into monopoly and all sorts of corruptive practices. The wretched spirit of greed and monopoly (the phrase used by Adam Smith) has to be curtailed either voluntarily or by some external force. For the benefit of mankind, it is to be hoped that it will be done voluntarily. Economic liberalism, quoting again from Smith, is concerned with equal freedoms and rights for all men and not only for the few and privileged who can monopolize all the wealth and power. As an economy based on competition can undermine moral standards, it requires strong moral reserves coming from outside its particular subject matter.

For peace and harmony to prevail, the new Cuban authorities, must give the acquisition of wealth top priority in order to alleviate the suffering and scarcities of the average Cuban. The free market system is perfectly suited to reach such a goal. But the wealth created by the efficiency of the market system must not be permitted to be squandered by corruption and monopolistic practices which favour the rich and powerful to the detriment of the less fortunate sectors of society. It is not a question of coercion. It is simply

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67. For an excellent presentation of the ethical foundations of capitalism see: Novak, Michael. *The Catholic Ethic and the Spirit of Capitalism* (New York, The Free Press, 1993).

the realization that all Cubans, rich and poor, have the right to enjoy the benefits of an economic system that has proven to be the most productive in the world. A new spirit of solidarity and cooperation must permeate all sectors of Cuban society for the benefit of the entire country. The Cuban people cannot permit that the coming freedom, acquired at such a high cost, will be dissipated in internal conflicts and antagonism that will only contribute to retard the road to peace and prosperity.

Justice must be carried out. Past abuses were too many and too great. The need for *restitutio* cannot be ignored by any government that considers itself democratic, if Cuba is to be respected as a law abiding country within the concert of civilized nations. How this is to be done is a question that the experts, in view of past experiences in Germany and eastern Europe, have to determine after careful study but always taking account the common good of the country. Honest differences may and will exist and have to be respected but whatever has to be done has to be carried out in a spirit of solidarity and never in a vengeful manner. It is a difficult task but, as mentioned earlier, one that has to be done with justice and charity but never in a spirit of reprisal. As Abraham Lincoln once said: "With malice toward none; with charity for all."<sup>68</sup>

Cuba must recover from the nightmare of communism but let the Cubans beware of falling into the

temptation of building a totally materialistic society which weighs well-being exclusively in terms of wealth and power. There are other values besides wealth—spiritual, cultural etc.—without which man ceases to be human and simply becomes a brute being. In fact, wealth is the result of the search for excellence and the development of human virtue. It is to be hoped that all Cubans will remember the words of the Greek philosopher Socrates when, prior to his death, he said to his judges: "...I spend my whole life in going about and persuading you all to give your first and greatest care to the improvement of your souls, and not till you have done that to think of your bodies or your wealth. And I tell you that wealth does not bring excellence, but that wealth, and every other good thing which men have, whether in public or in private, comes from excellence"<sup>69</sup>

The new Cuba must be built upon the conviction that changes in the political and economic structures of the country—no matter how efficient and good they may be—are not sufficient to bring about the peace with justice that all Cubans so earnestly desire. First and foremost, it is the hearts and minds of all Cubans, both in and out of Cuba, that have to change so that the new Cuba will rise from the ashes of communism with a renewed spirit of solidarity that will place the common good above the tyranny of collectivism and/or the covetous interests of an unrestrained individualism.

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68. Lincoln, Abraham, Second Inaugural Address, March 4, 1865.

69. Plato, *Euthyphro, Apology, Crito;Phaedo The Death Scene*, (Indianapolis: The Bobbs-Merrill Company, 1975, Inc., p. 36