

I

Essence and limits of the right to property

Сущность и границы права собственности

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Church Fathers on Ownership

Who is the absolute owner of everything? According to Christian thought, which evolved with the Early Byzantine Empire, the answer is clear: God, and right after him his highest representative, the steward of the earthly kingdom – the emperor. The idea expressed so elaborately by St. Augustine in his *City of God* gave the emperor the moral grounds to extend his care over every piece of God's creation. It gave also him a potentially relevant title to the part of the earth that was not yet Christian. Clearly, the stewardship was not restricted only to the geographical borders of the empire and it had both ideological and political importance. We can observe the process of extension of the Christian realm as early as in the first half of the fourth century – Armenian historians from the fifth century, the anonymous author of *The epic histories* (in older literature called Pseudo-Faustus) and Agathangelos all gave us testimony of the conversion and christianisation of Armenia, in which the important role was played by bishops who came from or at some point traveled to meet the emperor or attend an ecumenical council¹. Those visits, even if it remains a matter of dispute whether they actually happened or not, evidently seemed probable and even suitable for fifth century authors. The religious primacy of the *Rhomaioi* in the fifth century from this point of view seemed obvious.

The neighbouring countries which were pioneers of Christianity in that region were also placed between the great players of that time – between the Roman/Byzantine empire and the Persian *basileia*. This could suggest that the reasons for conversion could have been both ideological and political.

¹ Cf. Agathangelos, *History of the Armenians*, transl. by R.W. Thomson, Albany 1976, Prologue 4: St. Gregory and bishops Aristakes and Albanos meet emperor Constantine, Aristakes travels to the council in Nicea; *The epic histories attributed to P'awstos Buzand* (Buzandaran Patmut'iwnk'), transl. by N.G. Garsoïan, Cambridge, Mass. 1989, III.10: Jacob of Nisibis at council in Nicea, present also bishop Aristakes.

The care of some Christian prisoners that the Persian king of kings refused to provide was (at least in the opinion of the fifth century Church historian Socrates Scholasticus) the cause of the Persian-Roman war in the year 421². It seems that in the light of religious differences, the religious and political protection of refugees was important for both the Roman and the Persian emperor – in the following centuries Persia became the main place of escape for every religious outsider and a refuge for leaders and supporters of the most important heresies.

It seems that the process of creating the Christian *oikumene* in its ideological and physical shape must have influenced the understanding of some legal and economic terms, for example property ownership. Questions of whether the Church should possess anything and whether it could be wealthy became a conundrum soon after Christianity gained the status of the official religion of the empire. The question of a wealthy Church appeared easier to answer, at least on the grounds of the New Testament's teachings and more generally on the grounds of the philosophical and religious views of the early Christian era. The common suspicion that surrounded wealth and wealthy people was certainly not limited to Christian thought, even though the proverb of the eye of a needle and a rich man became a synonym for the apology for poverty in early Christianity. Apart from the ancient concept that very rich men are not good men, adapted first by Plato in the 5th book of *Laws*³, then by stoics, Evangelists and Fathers of the Church, some significance in late antique and early Byzantine treatises was gained by the deeply rooted maxims of the authors of New Comedy, who were skilled observers of some universal behaviours. The most well-known came from Menander and illustrated suspiciousness towards those who quickly enriched themselves. The proverb states: Οὐδέεις ἐπλούτησε ταχέως δίκαιος ὢν (*Wealth never comes quickly to an honest man*)⁴. The same mistrust towards the sources of sudden fortunes appeared in the Roman context in the age of great political changes – the criticism of extravagant richmen is found in many satirical writings of the first centuries of the Roman Empire – the leading example is a description of the nouveau riche excesses of Trimalchio by Petronius. But condemnation of certain behaviour is one thing and the condemnation of property ownership or richness itself is another.

Constantine and his followers not only gave Christians some tax privileges but also the title to certain possessions – gardens, churches and the land they stood on. But the rights to those possessions could not be permanent as in the next decades we hear about them, being taken back from certain heresies. The process could be reverted, sometimes

2 Cf. *Sokrates: Kirchengeschichte: Griechischen christlichen Schriftsteller der ersten Jahrhunderte*, ed. G.C. Hansen, M. Širinjan, n.F., Bd. 1, Berlin 1995.

3 Cf. Plato, *Leges*, ed. J. Burnet, *Platonis opera*, vol. 5, Oxford 1907.

4 Cf. Colax 43, *Menandri reliquiae selectae*, ed. F. H. Sandbach, Oxford 1972. The proverb was known at the times of Stobaeus, who cites it in his *Florilegium* 10, 21.

more than once – Thodosius II gave back the churches to the Novatians that had previously been taken from them⁵. If the emperor gives and takes christian possessions – is the Church (that means God) the owner or is it the emperor? Are sacred places a matter of *res privata* or *res publica*? Papyri fragments have left us with examples of sales agreements between monasteries and citizens in the matter of property ownership, but even in those agreements certain goods (like minerals) could be excluded from the sale⁶. It was not an unknown phenomenon for some possessions, even those placed on private property, to have exceptional status – this was the case with some species of plants which were especially valuable for the emperor, like certain species of vine or rare kinds of trees useful for boatbuilding⁷. In the papyri collections there are examples of fourth century formal oaths of the owners of properties on which (or next to which) the crucial plants were growing – the owners had to swear on paper that the trees would be looked after⁸.

Those privileges of the emperor are not a matter of dispute and the fathers of the Church did not try to undermine them. An interesting innovation of Christian thought is the view that some goods, even those placed on private, not public property, should belong to all. The grounds for this change provided a new understanding of justice and community.

For Ambrose from Milan *iustitia*, justice, was the main rule of social life which should also govern political and diplomatic relations between countries⁹. *Iustitia* was not, therefore, a purely juridical category. It became, at the same time, a religious category, because the social order resulted from the anthropological similarity of humans to God. Since God acts according to justice, humans should follow in his foot-steps. Thus, *Iustitia* is

5 The constitution of 428 forbade the Novatians from build new churches, but according to a previous regulation included in the Theodosian Code they could still possess the churches and cemeteries that were rightfully theirs: cf. *CTb* 16,5,65; 16,5,2. K.L. Noethlichs, *Revolution from the top? Orthodoxy and the persecution of heretics in imperial legislation from Constantine to Justinian*, [in:] *Religion and Law in Classical and Christian Rome*, ed. C. Ando, J. Rüpke, Potsdamer Altertumswissenschaftliche Beiträg, Bd. 15, Stuttgart 2006, p. 115–125, makes a reasonable assumption that there must have been a previous edict that deprived the Novatians of their property, now handed back to them.

6 Written accounts confirm that Egyptian monks often entered into contracts with other monks or members of civil society. Monks appear in numerous deeds of sale, loans, or leases of every kind of property. Monasteries, sometimes founded by private citizens on their own land and thus considered *private* (eg. inherited by the heirs of a founder), could be also sold to lay people. Cf. the will of Abraham of Hermonthis, P. Lond 177, or SB I 5174–5175, the papyri from the sixth century, reporting the selling of some cells within the Melitian monastery of Labla (Hawwarah) by a monk who joined another community.

7 Cf. Forthcoming article M. Chmielarz, *Ochrona drzew w Egipcie bizantyńskim*, considering protected trees used in boatbuilding.

8 Cf. P.Oxy. XLI 2969, 2993, 2994.

9 On the concept of justice in Ambrose's thought cf. K. Iłski, *Idea jedności politycznej, społecznej i religijnej w świetle pism Ambrożego z Mediolanu*, Poznań 2001, p. 244–255.

a general rule. Ambrose demanded that this should be applied in every situation of social life, so it would become the rule establishing the community of the human race (*societas generis humani*):

Iustitia igitur ad societatem generis humani et ad communitatem refertur. [...] communitatem ad societatem nostram adiuvat, excelsitatem tenet, ut suo iudicio omnia subiecta habeat opem aliis ferat, pecuniam conferat, officia non abnuat, pericula suscipiat aliena¹⁰.

When Ambrose speaks about *societas generis humani*, the community of human kind, not about *societas civium*, the community of citizens, he defines a much wider circle of possible integration than the one defined by the formal aspects of Roman citizenship. Of course, the claim that this wider understanding of community should also apply to the requirements of *iustitia* had to be based on more general premises than Roman law. For that reason, the divine law appeared more appropriate. The view that the virtue of justice is a rule of social life was so demanding that Ambrose suggested it could only come from God, i.e., in Church. In Ambrose's writings we can find the first known ideological connection between baptism and the concept of justice¹¹. He also asserted that the Church is the best space for shaping *iustitia*. Sources of justice were seen in Christ, the founder of the Church. Even though the circulation between two spaces, earthly and heavenly, became the destiny of the Church, one cannot doubt that the real dimension of social life should come under the declared rules of justice, at least as a postulate of common life and the work of Christians. The visible and invisible quality of the Church, its temporal and eternal character, were by no means mutually exclusive, they were a natural, necessary and inevitable outcome.

Any virtue based only on law-terms could prove insufficient when the limits of Romanitas were exceeded. The christian *iustitia* exceeded all limitations: territorial, ethnic, social and psychological. It became the basic rule of the whole human community¹², because a human could only expect help from another human¹³. This postulate contained a clear aspect of social help, because Ambrose, when defining the laws of nature, pointed at common ownership of property¹⁴. Possession of common goods established not only the foundation for social welfare and redistribution of goods, but also gave some sense of community. People are obligated to *utilitas communis*: the mutual possession of goods.

10 Ambrose, *De off.* I, 130.

11 *De sacramentis* I, 5, 15: *Vide, quia omnis iustitia in baptisate constituta est.*

12 Ambrose, *De off.* I, 118: *Iustus communia pro suis habet, sua pro communibus, iustus ipsum prius quam alios accusat*; correction of Cicero's *Ut communibus pro communibus utatur, privatis ut suis*, *off.* I, 20.

13 Cf. Ambrose, *De off.* I, 134.

14 Cf. Ambrose, *De off.* I, 132.

This ought to relate to both: *res publicae* and *res privatae*, but – it should be stressed – Ambrose’s concept of *iustitia* does not question the laws of private property, it only changes the way of thinking from individualistic to social. Members of *communio* had to be useful to all. If, in Ambrose, we can notice such an understanding of the laws of nature that is based on divine laws, or even that those two are constantly intermingling, it should be considered as reminiscent of the stoic views represented by Cicero.

Cicero presumed that some cosmic creative forces (in Ambrose’s view – divine forces) gave people all kinds of goods to use, at least as long as people remain people (*quae in terris gignantur, ad usus hominum omnia creari*). Ambrose points out that the divine law is often broken by *usurpatio* – the contrary to nature attachment to the property itself. This term opposes Cicero’s *vetus occupatio*¹⁵. Both authors had an unquestionably high regard for common goods and the feeling of community they create, but Ambrose underlines more the criticism of individualistic behaviour in the narrow sense of ownership of persons or families and in the much broader sense of redistribution, considering the whole world (*terra, mundus, commune omnibus*).

The Fathers of the Church saw at least two reasons for establishing the human community. The first one, the natural one, followed the unity of human kind and resulted from the common beginning of everyone, as *the same nature is mother for all people, therefore we are all brothers, because we were born from the same mother and by the same law we became kindred*¹⁶. This view is clearly of stoic origin, even though christian argumentation traces it back to the common provenance of Adam and Eve. The second reason is supernatural – the solidarity of the human race as the consequence of redemption, which did not stem from the laws of nature nor from human will. Every virtue is given to humans in order to serve others. Ambrose reminds us of a common duty to support each other and criticises tendencies to create closed social circles, visible also in the attempts of members of the Church to isolate themselves from the rest of society.

By the laws of nature, a human is called to be a member of a community. The prosperity of an individual is therefore dependent on the prosperity of all. Ambrose refers to Cicero and his view of *iustitia* as most important for the community, but he postulates at the same time, that Christians keeping the old classical definition of private property should give everything at their disposal to all members of the community. It does not necessarily mean giving away one’s goods or obtained products but only those common in commercial exchange or mutual help. Thus *iustitia* was not an individual virtue – it

15 Cf. Cicero, *off* I, 21: *Sunt autem privata nulla natura, sed aut vetere occupatione, ut qui quondam in vacua venerunt, aut victoria, ut qui bello potiti sunt, aut lege, pactione, condicione, sorte; ex quo fit, ut ager Arpinas Arpinatium dicatur, Tusculanus Tusculanorum; similisque est privatarum possessionum discriptio. Ex quo, quia suum cuiusque fit eorum, quae natura fuerant communia, quod cuique optigit, id quisque teneat; e quo si quis sibi appetet, violabit ius humanae societatis.*

16 Ambrose, *De Noe* 26, 94.

was a quality of the society. Citizens should live in unity with the laws of nature, because these create, according to Ambrose, some model of balance in social relations.

Most of the Fathers of the Church, with Ambrose in the foreground, believed that the world was created for everyone and the earth should be of use for all humans (*in commune omnibus [...] terra fundata est*). This idea could leave the impression of disregard or even violation of private property, but it was certainly not an expression of any negative attitude of the Church to private property itself.

This can undoubtedly be seen in the fourth century synodical acts, especially the synod held in Gangra in around 340 which excommunicated the followers of the monk Eustathios from Sebaste. The extant synodical letter proves that his heresy, popular with some ascetics in the Syriac speaking part of the empire, undermined the social order in many ways: the monks did not obey the officially approved calendar of fasts, did not eat meat at all, did not participate in liturgy in churches, at the same time performing some liturgical activities in cloisters without an assigned presbyter and omitting the bishop's mediation in the distribution of offers, therefore usurping the space, duties, and maintenance of the Church's hierarchs. Indeed, the concern for the fixed order, both clerical and civil, caused the bishops to excommunicate Eustathios. The danger to the known and well-established social order was seen in his condemnation of marriage (especially the marriage of clergymen) as an institution of lesser value than virginity or celibacy. His ascetic followers walked out on their husbands and wives, abandoned their children and – in the case of slaves – their masters, and tried to differ from the rest of the priesthood by dressing differently in the foreign manner, which was heavily criticised in the synodical letter and in some of the extant canons. The important part of the bishops' testimony also considered another view of Eustathios that influenced social relations – the contempt for private property and total rejection of wealth. He declared a rather radical form of ascetics that involved resigning from every form of social relation and leaving every earthly possession behind under threat of eternal damnation. It seems that his followers' livelihood came from offers usually reserved for the Church. The bishops assembled in Gangra, in an epilogue to the canons, concluded that the Church does not discard nor condemn ascetics – it rejects only those who were driven to an ascetic life by pride and tried to elevate themselves above the rest, and did not exercise ascesis by the rules of the Sacred Script. However, they stressed at the same time that while respecting resignation from mundane goods, the Church does not hold ownership nor wealth in contempt, as long as possessions go hand in hand with justice and charity¹⁷.

Of course, the relation to wealth, at least in canonical law, had to be expressed carefully and considering the continuous post-stoic tradition, subjected to some moral conditions, such as, for example, good will. One can observe this phenomenon in the acts of synod

¹⁷ *Acta Synodalia ann. 50–381*. Dokumenty synodów od 50 do 381 roku, t. I, ed. A. Baron, H. Pietras, Kraków 2006, p. 122–128.

held in Sardica at the turn of the years 343 and 344. During this assembly, bishop Hosius proposed a rule concerning the election of bishops¹⁸. If a rich man applied, he should neither receive approval nor promotion if he had not previously fulfilled the function of lector, diacon and presbyter. Every stage of his career should last a certain period, so he could prove his character, his endurance, nobility, respectability in manners and true faith. One cannot elect a bishop precipitously and irresponsibly – the test of time will reveal everyone's true character and way of life. Only two groups of people were treated with such suspicion by members of this synod: the wealthy and lawyers. The proposition of bishop Hosius was approved without any objection.

It seems that the possible connection between wealth and immorality was a common opinion in the fourth century and the obvious relationship between those two qualities could also be a political argument – the opponents of St. Atanasius at the synod held in Alexandria swore that the bishop was a man of wealth and capable of anything. The view of rich men as being immoral found its culmination in the acts of the synod in Carthage in 401, which declared:

On account of the afflictions to the poor by whose troubles the Church is worn out without any intermission, it seemed good to all the Emperors be asked to allow defenders for them against the power of the rich to be chosen under the supervision of the bishops¹⁹.

Of all the Fathers of the Church, the most critical stand on wealth owners was taken by St. Jerome, who, in his commentary on Jeremiah 2.6 admitted the truthfulness of the old saying of the philosophers: *Omnis dives aut iniquus, aut haeres iniqui (every rich man is unjust or the heir of an unjust one)*²⁰. It is by no means an isolated assertion – the same statement with some additional epithets, like *the tabernacle of demons* – for those who work for honors or riches²¹, appears in others commentaries and treatises of Jerome. His criticism comes from the concept of iniquity as an attribute of every possession. It is not only the common belief that the rich *fill their houses through the plunder and losses of others (Et aliorum damnis atque spendiis suas complent domos [...])*, it is a more complex

18 *Ibid*, *The Synod of Sardica*, canon II.10.

19 *Canon X of Carthage: Nicene and Post-Nicene Fathers*, transl. by P. Schaff, [in:] *The Seven Ecumenical Councils*, New York 2007, p. 479.

20 Jerome, *Commentary on Jeremiah 2.6*, ed. PL vol. 24, col. 747 B-C.

21 Jerome, *Commentary on Habakkuk 2.3*, ed. PL vol. 25, col. 1316 C: *Daemones intelliguntur, quorum fit tabernaculum quicumque in hoc saeculo propter honores et divitias laborarit: quod significanter sub uno verbo iniquitatis ostenditur, Omnis enim dives, aut iniquus, aut haeres iniqui est*, transl. by J.A. Ryan, *Alleged Socialism of the Church Fathers*, St. Louis 1913, p. 78: *Those who work for honors or riches in this world become the tabernacles of demons; this is significantly shown by the one word iniquity, for every rich man is either unjust or the heir of an unjust one.*

idea, traces of which were already present in Platonics, that *all riches come from iniquity*. For Jerome and many after him, it was obvious that *unless one was the loser another could not be the gainer*²². Those two features – the fear of depravation that wealth carries and the belief that wealth is generally built on the unhappiness of others and is somehow connected to injustice – became characteristic of the christian ascetic throughout the following centuries.

One should notice that the views of Ambrose, so closely connected to stoicism and the general criticism of wealth, were not universally accepted. Shortly after, St. Augustine noted the following concerning Donatists' claims on Church property:

Look, there are the villas. By what right do you protect those villas? By divine or human right? Let them reply: Divine right we have in the Scriptures; human right in the laws of the king. On what basis does anyone possess what he possesses? Is it not by human right? By divine right, The earth and its fullness belong to the Lord (Ps. 24,1). God made the poor and the rich from the one clay, and the one earth supports both the poor and the rich. Nevertheless, by human right one says, This villa is mine; this house is mine; this servant is mine. Thus, by human right, by the right of the emperors. Why? Because God has distributed these same human rights through the emperors and kings of the world²³.

For Augustine, as for stoics, property itself had no moral value and wealth could not be a reason for condemnation. Every law regulating private ownership was sanctioned by the emperor, and thus could not be not understood as a 'natural' right, even though it could be traced back to God's creation and universal values as for moderation and the ability to recognise the proper use of everything that Augustine strongly believed in²⁴.

In Augustine's writings and his concept of *iustitia* we can also find some universal, higher order owing to the distribution of goods, for justice issues from the proper and just sharing of those things necessary for life, as God freely distributes air, water, and light. The right order of things, and its consequence – true peace – is an attribute of the City of Heaven – the ultimate goal of human existence. But just sharing should not be understood too literally – St. Augustine, who came from a rich family himself, never questions that there are those who have more than others and never condemns them *a priori*:

22 Jerome, *ep.* 120.1, col. 984: [...] *omnes enim divitiae de iniquitate descendunt et nisi alter perierit, alter non potest invenire*, transl. by J.A. Ryan.

23 *Tractate VI on the Gospel of John. Cit. per:* R.J. Dougherty, *Catholicism and the Economy: Augustine and Aquinas on Property Ownership*, *Journal of Markets & Morality* No. 6, 2, 2003, p. 479–495, who gives also a detailed analyse of this passage at p. 481–483.

24 *Ibidem*, p. 483.

Do not take what I have said, brethren, in such a way, as if God does not hear those who have gold and silver, and a household, and farms, if they happen to be born into this estate, or hold such a rank in the world: Only let them remember the Apostle's words: Charge those who are rich in this world, that they be not highminded (1 Tim. 6:17). For those that are not highminded are poor in God, and to the poor and needy and those in want he inclines his ear²⁵.

The main difference between the rich and the poor is that every good deed concerning possession *can be done by a rich man in will and deed, but by a poor man only in will*²⁶. The existence of private property was never undermined, even by such fiery statements urging almsgiving as the one of St. Basil of Caesarea, who said:

The bread in your cupboard belongs to the hungry man; the coat hanging in your closet belongs to the man who needs it; the shoes rotting in your closet belong to the man who has no shoes; the money which you put into the bank belongs to the poor. You do wrong to everyone you could help but fail to help²⁷.

Of course, the Fathers of the Church had to find some compromise between the New Testament's calling to leave everything and follow Jesus and the right to possess and to use God's creations according to their purpose. The renouncement of earthly possessions became highly praised but voluntary. Ownership itself became morally neutral. Even someone as critical towards wealth as St. Jerome during his studies of Scripture was supported by wealthy widows and saw nothing wrong in the contribution of private fortunes to the prosperity of the Church.

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²⁵ Augustine, *Enarrationes in Psalmos* 5.3, [in:] *Augustine: Expositions on the Book of Psalms, Nicene and Post-Nicene Fathers*, trans. A.C. Cox, Masstricht 1995, p. 410.

²⁶ R.J. Dougherty, *op. cit.*, p. 484.

²⁷ Basil of Caesarea, *Homilia in illud dictum evangelii secundum Lucam: Destruam horrea mea, et majora edificabo: itemque de avaritia* 7, col. 276B-277A. Cf. also *Sermon to the Rich*, col. 277C-304C.

SUMMARY

Church Fathers on ownership

The study aims at an analysis on the concept of ownership in the selected Church Fathers' works. The authors focus on the work of Saint Jerome Saint Basil of Caesarea , Ambrose and Augustine, presenting the concept of ownership in the middle ages.

KEYWORDS: Church Fathers, ownership, middle ages