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INTERNATIONAL PROPERTY RIGHTS INDEX

Case Study: Dominion and Property Rights in Judaism



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Abstract

Jewish economics is derived from its theology and its legal system – the Halakha. According to its theology, man was created “in God’s image” with a Godly portion within him. Jewish tradition insists that man can, and should, have a powerful impact upon the material world, to have dominion and to accumulate wealth. This insistence plays itself out in a vastly different view of property rights. Ownership does not generate only pleasure, but also responsibility towards the needy, and through this responsibility it expresses the Godly portion within man. Ownership, or property rights, in Judaism, are not given to the individual from the state and they are not respected because of their contribution to society. According to the Jewish legal system, the Halakha, property rights are perceived as a just right, and they are generated from the divine law, as prohibitions and obligations of every person towards his fellow's dominion over his property.

I. Introduction

In this paper, I wish to present the concept of ownership in Judaism as dominion. Dominion, I claim, is a judicial value of that which law is protecting, and since Judaism is a juristic religion, it is dominion that stands as the core of its perception of ownership. The right of ownership is among the most important rights, but like any other right, it does not stand by itself. The area of which property rights may be qualified are theology and ethics. In the world of theology, property rights are qualified against God's dominion, and in the world of ethics, property rights are qualified against the rights of the needy. As I am going to show, ownership generates responsibility towards the needy and through this responsibility it expresses the Godly portion within man. That is why in Judaism is never regarded as a sin.

Property rights in Judaism, are not given to the individual from the state, and they are not respected because of their contribution to society. They are perceived as a just right, and they are generated from the divine law, as prohibitions and obligations of every person towards his fellow's dominion over his property. In many ways, the state stems from the property right of every individual and not the reverse.

Jewish tradition takes a very positive view of both the institution of ownership and the accumulation of wealth. It respects economic success, seeing it as both a blessing and the basis of normative life on earth—so long, that is, as it is obtained honestly, and proper respect is shown for the social responsibility that accompanies it. In what follows, I will explore the basic tenets of a Jewish economics, and will make in this context the following three arguments: (i) As opposed to the classical Christian view, which extols self-denial and opposes the excessive accumulation of private wealth, Judaism presents an ideal according to which man must exert control over the material in order to realize his divine potential as having been created “in God’s image”; (ii) this view is reflected in the Jewish approach to property, according to which the

right of individual ownership and the accumulation of wealth is seen as a means of fulfilling man's responsibility in the world.

In order to appreciate the gulf that separates the Jewish economic understanding from the common misperceptions of it, we must first take a look at the ideas which guided the Catholic traditions of property, wealth, and charity for many centuries before the Protestant Reformation and the rise of the modern era.

II. Divine Image, Creativity and Dominion

In Jewish tradition as well as in Christianity we find quotes that direct all property to God and leave man as a safeguard.¹ We even find a Talmudic source that perceives true ownership only in common property.² Yet, I contend that this sort of rhetoric does not re-define ownership and qualify it for the purpose of use only. These sources did not intend to reject the idea of dominion, but to demand from the owner responsibility. By being an owner, one is demanded to care for his fellow human being, to be charitable, and help the needy.

Jewish tradition insists that man can, and should, have a powerful impact upon the material world. This insistence plays itself out in a vastly different view of property rights. Like Christianity, Judaism begins with the idea that man was created "in God's image." In Judaism, however, these words are read in a somewhat different light. Thus, in the Jewish view, the body and soul of every person are rooted in the material world. The fact of his alone having been created in God's image, however, elevates his material existence. His inherent godliness sets man apart from all other creatures on Earth: He is not merely flesh and blood, but rather a "portion from God above,"³ an earthly being who contains an element of the divine essence. This unique combination of the human and divine does not mean that man should cut himself off from the material world or direct all his actions toward God; on the contrary, man's place is here, in this world, as an integral part of material existence. Man is obligated to express his dominion over creation, to channel his efforts towards worldly action, and in the process to elevate the material world to a higher level.

Man's dominion finds expression, first of all, through his enjoyment of the good of creation. Whereas the Christian view permits man to derive benefit only for practical needs, the Jewish sources teach that man is entitled, even obligated, to take pleasure in the world. This is not an endorsement of hedonism; rather, the aim is to enable man to actualize the potential hidden in creation, and thereby to bring the work of creation to completion. By benefiting from the world, man infuses it with spiritual content, which serves as a link between the Creator and creation. "If one sees beautiful creatures and beautiful trees," the Talmud teaches, "he says: 'Blessed is he who has such in his world.'"⁴ This is not simply an expression of gratitude, but an act of elevation of the mundane. This is why, the rabbis taught that "man will have to account for all that he sees with his eyes and does not partake of."⁵ When we deny ourselves the experiences

¹ R. Yaakov B. Asher, Tur, Yoreh Dea, 247.

² BT, Baba Kama 50b.

³ Job 31:2.

⁴ Brachot 58b.

⁵ Jerusalem Kidushin 4:12. See also Nedarim 10a: "If one who afflicted himself only with respect to wine is called a sinner, how much more so one who afflicts himself in many respects."

of this world, even the simplest of pleasures, we cut creation of God off from its higher source, and condemn it to a crude, brutish existence. Judaism insists that man not limit himself to his bare necessities, but instead delight in the goodness of the world as an expression of his dominion over it.

Beyond benefiting from the world, however, dominion means that man is also obligated to take responsibility for protecting and preserving it. The rabbis put it most succinctly in the following parable:

In the hour that God created man, he stood him before all the trees of the Garden of Eden and said, “See the works of my hands, how beautiful and wondrous they are. All that I created, I created for you. Yet take care not to spoil or destroy my world, for if you do, no one will repair it.”⁶

Man is called upon to take care of his world because it is given to him as a responsible being. When God created Adam and Eve, he commanded them to “have dominion over the fish of the sea, and over the birds of the air.”⁷ Indeed, the Jewish tradition makes clear that man’s authority over all other creatures is unequivocal. Yet, at the same time, he is enjoined to act responsibly in the material realm. When God placed man in the Garden of Eden, he commanded him “to work it and to keep it”—to derive benefit from it, but also to protect it for future generations.⁸

Man’s sense of dominion, however, is most vividly expressed not in the benefit he derives from the world or his protection of it, but in his unique ability as a *creator*—the most important manifestation of his having been created in God’s image. The Church Fathers held that the world belongs to God, and man in his state of sinfulness has no right to exercise absolute dominion over it. Judaism, however, insists that man is required not only to be involved in the world, but also to perfect it through creative acts. According to Judaism, man’s creative development of the world is the ultimate expression of his unique status. Man is obligated, to use the idiom of the rabbis, to “create worlds”:

So said the Holy One to the righteous, “You are like me... I create worlds and revive the dead, and so do you.”⁹

The power of mankind, according to the rabbinic view, is nearly unlimited. Like God, who “renews creation each and every day,”¹⁰ man, too, is invested with the supreme power to create worlds. As such, he reshapes reality in accordance with his human spirit—a spirit which in its godliness brings the material world to fulfillment through its elevation. In this way, man plays an integral part in the process of creation, a process that cannot be brought to completion without human intervention. “All that was created during the six days that God created the world,” says the Midrash, “still requires work.”

⁶ Ecclesiastes Rabba, 7:13.

⁷ Genesis 1:28. This commandment was given to man while he was still in the Garden of Eden, and was not altered after he sinned. See also Yevamot 65b; Kidushin 35a.

⁸ Genesis 2:15.

⁹ Midrash Tehilim on Psalms 116; see also Genesis Rabba 99: “The Holy One creates worlds, and so, too, your father creates worlds.” Moreover, according to the sages, since man was created in the image of God, his first duty is to create a God-like man—a being in which soul and body merge: “Elazar ben Azaria says that whoever is not engaged in fertility and propagation sheds blood and negates the character according to which man was created in the image of God.” Tosefta Yevamot 8:7.

¹⁰ Traditional weekday morning prayer, *Yotzer Or*.

Even the smallest, seemingly trivial things require man's contribution for their completion. "Even mustard seed must be sweetened, and wheat must be ground."¹¹ The ultimate act of creation, however, is undoubtedly that of human procreation: man and woman bring another creative soul into the world, the ultimate expression of human godliness. In this way, they, like God, "create worlds and revive the dead," and become true partners in the act of creation.¹²

Man's role, according to Judaism, is thus distinctly informed by the notion that he, having been created in God's image, is to have dominion over the world—a dominion that expresses itself through his obligation to benefit from it, to take responsibility for it, and to perfect it through creative acts.

Judaism, however, does not restrict itself to establishing the role of men as individuals. One of Judaism's central aims is to create a certain kind of society, one that is best suited to man's unique role. This means that the idea of human dominion will express itself not just through theory and parable, but also through law. Perhaps the most important legal institution in this regard, which forms the very foundation of society from the Jewish perspective, is the institution of private property.

III. The Biblical Roots of Private Property

The creation of man in God's image, and his consequent duty to exercise dominion over the world, are the foundations upon which the Jewish concept of property rests. The right to private property in Judaism is a highly protected value, and can be restricted only in extreme circumstances. In accordance with man's role in the world, it is only through the protection of the individual's property that human beings will be able to actualize the divine image within them and act as full partners in creation. Evidence of the high regard in which Judaism holds private property can be found in the punishments which are meted out in the Bible to those who undermine the social order through their flagrant disregard for it. Such, for example, is the attitude taken by the prophet Elijah against King Ahab for his mistreatment of Naboth the Jezreelite in the book of Kings. Ahab is cited repeatedly in the text for his worship of the pagan gods Baal and the Ashera, but his most important sin, for which he is stripped of his kingdom, is the murder of Naboth for the sake of stealing his vineyard. Here, the theft is seen as an atrocity, equal in weight to the murder itself:

And the word of the Eternal came to Elijah the Tishbi, saying: "Arise, go down to meet Ahab King of Israel, who is in the Shomron, in the vineyard of Naboth, where he has gone to possess it. And you will speak to him, saying, 'Thus says the Eternal: Have you murdered, and also taken possession?' And you shall speak to him, saying, 'Thus says the Eternal: In the place where the dogs licked the blood of Naboth shall the dogs lick your blood, even yours.'"¹³

The rabbinic tradition, as well, emphasized the gravity of acts that violate another's property, equating them with the destruction of the foundations of society. The flood in the time of Noah, for example, was depicted as punishment for the sins of his generation against the property of others: "Come and see how great is the power of

¹¹ Genesis Rabba 11:6.

¹² Cf. Joseph Isaac Lifshitz, "Secret of the Sabbath," *AZURE* 10, Winter 2001, pp. 85-117.

¹³ I Kings 21:17-19.

thievery,” the Talmud teaches, “for behold, the generation of the flood transgressed all, and yet they were not doomed until they stretched out their hands to steal.”¹⁴ Talmudic sages equate elsewhere theft and fraud to idolatry as the three worst sins.¹⁵

But it is not only the high regard in which Judaism holds private property. Property, understood as full dominion over an object, is a central pillar of Jewish law, and its protection is a recurring theme in the Bible and the rabbinic teachings. The significance with which the Torah invests the right of dominion over property is evident in the numerous prohibitions pertaining to the property of others: the commandment, “You shall not remove your neighbor’s boundary mark”¹⁶ establishes the prohibition against stealing land; “You shall not have in your pocket different weights, large or small. You shall not have in your house different grain weights, large or small.... All who do such things... are an abomination to the Eternal your God,”¹⁷ prohibits the acquisition of property through fraud; “You shall not see your brother’s ox or his sheep go astray, and hide yourself from them: You shall surely bring them back to your brother”¹⁸ prohibits the neglect of other people’s property even when it is not in your care, and obligates the return of lost items. By declaring as criminal anything that results in the loss of other people’s property, the Torah emphasizes the importance accorded to the institution of private property. This is expressed as a general principle in a number of verses in the Torah, such as: “You shall not steal” and “You shall not defraud your neighbor, nor rob him.”¹⁹ The length to which the Torah goes to encourage a respect for private possessions, however, is demonstrated most sharply in the Tenth Commandment: “You shall not covet your neighbor’s house... or his ox, or his ass, or anything that belongs to your neighbor.”²⁰ Here the prohibition goes beyond the unlawful acquisition of property to include even the “coveting” of another’s possessions.²¹ A study of Talmudic law reveals that everything turns on the owner’s will with regard to the object, including the right to destroy it. Thus, ownership is understood to be so complete as to include even the right to destroy one’s own property.²²

¹⁴ BT Sanhedrin 108a.

¹⁵ BT Baba Metzia 59a.

¹⁶ Deuteronomy 19:14.

¹⁷ Deuteronomy 25:13-16.

¹⁸ Deuteronomy 22:1.

¹⁹ Leviticus 19:13.

²⁰ Exodus 20:14.

²¹ According to the rabbinic tradition, “You shall not covet” does not apply to thought alone, but rather to the act of bringing unreasonable pressure to bear on one’s neighbor in an effort to persuade him to hand over his property, even for monetary compensation. See, for example, Maimonides, *Mishneh Torah*, Laws of Robbery and Loss 1:9. However, even according to this interpretation, it is an extremely significant extension of the principle of private property.

²² On the strength of this law, Rashi offered an interpretation of the rule cited in Bava Kama 26b, which exempts a man from punishment if he uses a stick to break a vessel that someone has thrown from a roof, while it is still in flight. Rabbi Yosef Dov Halevi Soloveichik, author of *Beit Halevi*, explained: “As has previously been said, if someone threw a vessel from the roof and someone comes along and breaks it with a stick, he is not liable. Why so? He broke that which was already broken.” Rashi adds on this case: “The owner of the vessel threw the vessel,” he and no other. Rashi’s insistence on this point is difficult to understand, since if the vessel is thrown by its owner from the top of the roof then it must be considered to have been abandoned, and there is no liability for damaging an abandoned object. The most likely answer is that by throwing the vessel, the owner demonstrated his ownership by doing with it as he pleased. Ownership in this case is shown not by the use of the vessel but by its deliberate willful destruction. Rabbi Yosef Dov Halevi Soloveichik, *Responsa of the Beit Halevi* (Vilna: Yosef Rubin, 1863), 1:24, 2:7. [Hebrew]

Notice that the Torah doesn't prohibit pertaining to the property right of others, but pertaining to the dominion of their property. Ownership, or property rights, are a result of just such a prohibition. The Torah establishes ethics of dominion, and through doing so it generates the law, and hence the right to property. The commandments of the Torah are not meant to establish property rights. Their aim is to protect a proto-legal value – dominion, the liberty to act as a one wishes with the property he dominates. The Torah acts here as an ethical system that protects peoples' complete dominion, and it is this protection that enables dominion to become a right – a property right.

The definition of ownership as complete dominion is a fundamental principle of Jewish law, the aim of which is to preserve the individual's dignity and sovereignty, and to prevent any encroachment on his dominion over his small portion of the material world. The rabbis of the Talmud, indeed, pushed the matter to the point of hyperbole: "To rob a fellow man even of the value of a *peruta*," the Talmud asserts, "is like taking away his life from him."²³ Indeed, the right to private property is protected even in the most extreme cases. For example, the rabbinic legend tells the story of King David's deliberations over whether he should set fire to another man's field in order to drive out the Philistines who were hiding there.²⁴ The rabbis answer that in all cases in which a person "saves himself through his friend's wealth"—that is, destroys someone else's property in order to save his own life—he must nonetheless pay damages. In other words, even in the case of saving a life, which in Jewish law is understood to override nearly every law, one is not exempt from paying damages that result from the actions taken.²⁵

IV. Accumulation of wealth

Judaism's affirmation of ownership does not end with the protection of property; in many places it also encourages the accumulation of wealth. Economic success is considered a worthy aim, so long as one achieves it through honest means.²⁶ In the Jewish view, however, man's obligation to exercise dominion over the world, as a function of his having been created in God's image, brings him to the exact opposite position—to an affirmation not of poverty, but of wealth. For wealth that is gained through hard work and honest means is, in Judaism, a positive expression of man's efforts as a godly being. "One who benefits from his own labor is greater," says the

²³ Bava Kama 119a.

²⁴ Bava Kama 60b.

²⁵ The single exception to this rule is the king, who is granted a special dispensation to confiscate or damage private property during an emergency without having to make restitution, insofar as he is acting for the public good. See Maimonides, *Mishneh Torah*, Laws of Damage, 8:2 R. Joseph Karo, *Shulhan Aruch*, *Hosben Mishpat*, 388. According to Rashi, moreover, one man must sacrifice his life rather than damage someone else's property. See Rashi on Bava Kama 60b, s.v. *vayatzileha*: "He may not burn it [even in order to pay afterwards] since it is forbidden to extricate himself by paying for it to be reinstated." In contrast, see *Responsa of Rabbi Solomon ben Aderet* (Jerusalem: Or Hamizrach Institute, 1998), 4:17 [Hebrew]: "He may certainly save himself in order to pay." See also Yoma 83b: "I deprived the shepherd and you deprived the entire city."

²⁶ As opposed to the classical Christian view, where the accumulation of wealth is rejected and the wealthy are held in contempt. "It is easier for a camel to go through the eye of a needle," Jesus says in the book of Matthew, "than for a rich man to enter into the Kingdom of God." Matthew 19:24. See also Vernon Bartlet, "The Biblical and Early Christian Idea of Property," in *Property, Its Duties and Rights: Historically, Philosophically, and Religiously Regarded*, ed. Charles Gore (New York: Macmillan, 1922).

Talmud, “than one who fears heaven.”²⁷ This stunning assertion is not meant to denigrate the fear of heaven, but rather to affirm the principle that one who turns his talents into achievements is greater than one who neglects his own capacity to strive and create in the world. In the Jewish view, wealth that is derived from hard and honest work is considered a sign of virtue rather than vice; in the rabbinic teachings, such wealth is the lot of the righteous. Thus the legend says of Jacob, who risked his life to save his property: “Said Rabbi Elazar.... ‘For the righteous, their property is dearer to them than their own body. Why so? Because they do not stretch out their hands to steal.’”²⁸ Worldly wealth, despite having no obvious spiritual content, is even said to contribute to the indwelling of the Divine Presence: “The Divine Presence rests only on one who is wise, strong, wealthy, and of great stature.”²⁹

Judaism’s affirmation of wealth becomes even more striking when one considers its attitude towards poverty. In rabbinic teachings poverty is first of all considered a form of pointless suffering. “There is nothing worse than poverty,” we find in Exodus Rabba. “One who must weigh every penny—it is as though he bears all the suffering of the world upon his shoulders, and as though all the curses from Deuteronomy have descended upon him.”³⁰ For this reason, Jewish law calls upon man to do everything in his power to avoid becoming dependent on his community for his welfare. “There shall be no needy among you” (Deuteronomy 15:4) is understood as an obligation upon man to avoid becoming poor, and not as understood by some, as a divine promise to negate poverty.³¹ That is why Rabbi Akiva taught his son: “It is better to profane your Sabbath than to become dependent on others.”³² From his perspective, man is never excused from taking responsibility for himself, and is never allowed to make himself a burden on others. I must add that at the same time, poverty does have a value. The sages said, for instance, that “Poverty is good for the Jews”.³³

To that end, the sages exhort all men to earn their living through work. Under no circumstances are the poor to be absolved of this responsibility through the redistribution of wealth. The property of the wealthy in Judaism is entirely theirs, to do with as they wish. Even in a society of significant income differences between the wealthy and the poor, the poor have no legal claim against the wealthy. Judaism’s concern for the poor, which will be discussed at length further on, does not extend to the juridical realm; judges are admonished in the Torah not only never to skew justice in favor of the wealthy, but likewise never to favor the poor.³⁴ Even in a case of voluntary giving, Jewish law cautions against excessive generosity, and forbids a person from donating more than one-fifth of his assets, so as not to become poor himself.³⁵ This was expressed powerfully in the ruling of Maimonides in his code, *Mishneh Torah*:

²⁷ BT Brachot 8a.

²⁸ BT Hulin 91a.

²⁹ Shabbat 92a.

³⁰ Exodus Rabba 31:14.

³¹ BT Baba Mezia, 30a; ibid 33a; Sanhedrin 64b; Rashi Sanhedrin 64b Sanhedrin 64b.

³² BT Pesachim 112b.

³³ BT Hagiga, 9b.

³⁴ Leviticus 19:15.

³⁵ Cf. BT Ketubot 50a: “One who donates should not donate more than one-fifth lest it should be needed for others; and there is a story about one who wanted to donate [more than one-fifth] and his friend did not let him.” See also Karo, *Shulhan Aruch, Yoreh De’u* 249:1.

One should never dedicate or consecrate all of his possessions. He who does so acts contrary to the intention of Scripture.... Such an act is not piety but folly, since he forfeits all his wealth and will become dependent on other people, who may show no pity towards him. Of such, and those like him, the rabbis have said, "The pious fool is one of those who cause the world to perish." Rather, one who wishes to spend his money on good deeds should spend no more than one-fifth, so that he may be, as the prophets commanded, "One who orders his affairs rightly,"³⁶ whether in matters of Torah or in the affairs of the world.³⁷

The prohibition against giving too much to the poor is an expression of the Jewish view that there never was, nor will there ever be, an ideal state of economic equality among all men. The sages emphasized that each man is created different from his fellow, and that this difference is an expression of every individual's uniqueness, of every man having been created in the image of God.

According to the Jewish approach to property, then, economic equality is not only impossible, but even undesirable: such a condition negates the uniqueness of the individual, and therefore negates the image of God within him. Thus, the Bible says, "For the poor shall never cease out of the land."³⁸ Economic disparity does not demonstrate the moral corruption of society, but the fundamental differences among the individuals whom it comprises.

V. Conclusion

Ownership in Judaism is indeed legalization of dominion. Despite some rhetoric, man is not left as a safeguard of property, while directing all to God. The Godly portion within man enables him to have the same sort of status as God regarding the world. Man is obligated to have responsibility towards the world, and he is left "to till it and tend it."³⁹ Man is at the same time part of the world as any other creature, and at the same time a sovereign of the world. Property is an expression of man's sovereignty, his capacity to rule over the material world, so that he may benefit from it, care for it, and perfect it through creative acts. It is the most apparent means through which "God's image" is expressed in human life. It is the necessary and inevitable outcome of man's uniqueness among all God's creatures.

In Judaism, the fact that God is the sovereign of the world does not reduce man's ownership to use his property for himself, but instead bestows a responsibility towards his fellow man. Sovereign control over one's property is not conditional upon giving to charity. The opposite is true: The ability to give charity is conditional upon private wealth. This is reflected in Jewish civil law, which, as we have seen, forcefully defends individual property rights. This does not mean, of course, that Judaism's view of a good society is based solely on the institution of private property, or that it disregards the plight of the poor. On the contrary, Jewish law insists that man takes responsibility for his fellow man, show compassion, and give to charity. This is only possible, however, when man has full control over his property and is free to accumulate wealth through

³⁶ Psalms 112:5.

³⁷ Maimonides, *Mishneh Torah*, Laws of Oaths and Vows 8:13.

³⁸ Deuteronomy 15:11.

³⁹ Genesis 2:15.

honest means. Man's responsibility for his fellow man does not impinge upon his legal right of ownership, but is a powerful moral demand. Charity is a deed that flows from strength of character rather than the weakness of one's claim to property. It is a mark of responsibility, and as such it can only have meaning when one has the legal freedom to do with one's property as he wishes.