

Property Rights in the History of Economic Thought: From Locke to J. S. Mill

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This paper¹ is designed to acquaint the reader with the historical background of the concept of property rights and several surrounding controversies by reviewing early work on property by economists and philosophers (with the main emphasis on the former). The survey focuses on significant contributions from the seventeenth to the nineteenth centuries, setting the stage for the following chapters that reflect more recent thinking. The first section offers a critical assessment of the seventeenth-century work of John Locke which, to this day, has provoked the most intensive discussion and controversy.ⁱⁱ The second section attempts to detect Lockean natural law or natural rights components in the influential writings of Adam Smith, the eighteenth-century father of economics. The third section analyzes Jeremy Bentham's hostile criticism of the Locke and Smith views on property and his preference for his own philosophy of "utilitarianism," which can be summed up as the principle of the "pursuit of the greatest happiness." In addition, the third section examines the practical attempt of Bentham's disciple, Edwin Chadwick, to achieve egalitarian legislation. The fourth section is reserved for the remarkably influential utilitarian (and egalitarian) writer, John Stuart Mill, and explores the connection between him and the "scientific socialists," including Marx and Engels. The fifth section considers David Hume's concentration on the initial tendencies to conflict among men and the prospects for ultimate mutual improvement and practical coexistence through market exchange. The final section offers the main conclusions.

¹ Please note that the paper has derived from my contribution to a symposium, which explains frequent references to "this symposium" etc.

John Locke

When John Locke's *Two Treatises of Government* first appeared in 1690, nothing could have shocked the ruling classes more. Property had been viewed, hitherto, as exclusively something created by government. Locke maintained that it was instead the source of government. As a consequence, "Government has no other end but the preservation of property" (Locke [1690] 1991, 329). The message, in other words, was that property and property rights existed prior to government. To what extent Locke's proclamation was in support of the English Revolution of 1688 is a matter of debate. In his preface, he expressed the hope "to establish the throne of our great restorer, our present King William . . . , to justify to the world the people of England, whose love of their first and natural rights with their resolution to preserve them, saved the nation, when it was on the very brink of slavery and ruin" (Locke [1690] 1991, 46)

Locke's reference to "natural rights" so early in his treatise symbolized his central thrust. But to understand fully Lockean natural rights, it is first necessary to examine the arguments of his chief adversaries, the supporters of absolute monarchy. Their position was represented in Sir Robert Filmer's celebrated *Patriarcha*, published in 1680. As Filmer believed that the relation between King and subject was the same as that between father and child, it followed logically that individual property could be granted only by the crown. It was this argument that Locke firmly rejected. God, he insisted, had not bestowed property rights on the monarchy exclusively. Not only was private property already in existence previous to government, but it was also upheld by natural law and the doctrine of natural rights.

Locke's pregovernment "state of nature" was not a "state of war" (in striking contrast with the position of earlier philosopher, Thomas Hobbes (1651)), and men became acquainted with the law of nature through their reason. Mistakes could certainly be made, especially since it was potentially rancorous for each and all individuals to do their own separate policing of their individual property rights. It was dangerous, in Locke's words, that "every Man hath a right to punish the Offender, and be Executioner" of this law (Locke [1690] 1991, 272). Men will

consequently find it practical to consent to a social contract to form a government that is primarily a trustee for its citizens. At the same time, there was also the possibility that governments might run into error so that, on occasion, they too should be subject to appropriate discipline. “If government is bound by the Law of Nature, then deviation by the rulers from the tenets of this law was sufficient grounds for their overthrow” (Valcke 1989, 943). This right of revolution in Locke was justified because, to repeat, private property was antecedent to, or independent of, government.

Locke’s moral philosophy sees man’s evolution in terms of conquering his surrounding nature. At first, his appropriation of land stems from his need for basic subsistence and survival. Eventually, however, private property also expresses man’s ability to reason and to develop his personality. But Locke places such a heavy emphasis on economic production that one is tempted to look for some connection with the mercantilism of his time. Mercantilism urged the encouragement of exports and discouragement of imports, with the purpose of increasing relative economic power over one’s neighbors.

In his section *Of Property*, Locke ([1690] 1991, 286) maintains that “God . . . has given the Earth to the Children of Men, given it to mankind in common.” The use of the phrase “in common” might at first sight suggest elements of collectivism, what today would be called commonly owned or communally owned property. But some interpreters understand Locke’s common ownership to mean simply the absence of ownership, or open access property owned by no one or thing. “That which is common is not ownership” (Valcke 1989, 957). As for Locke’s natural rights, these range from the broad and philosophical, to the narrow and materialistic. Among the former are the rights to one’s own life and liberty. The latter relate to rights to produce not only useful consumer goods but also to any concomitant producer-good. The main example of a producer-good was improved land, as explained in section 27 of Locke’s *Second Treatise* ([1690] 1991, 287):

Though the earth, and all inferior Creatures be common to all Men, yet every Man has a Property in his own Person. This no body has any Right to but himself. The Labour of his Body, and the Work of his Hands, we may say, are properly his. Whatsoever then, he removes out of the State that Nature hath provided, and left it in, he hath mixed his Labour with, and joyned to it something that is his own, and thereby makes it his Property. It being by him removed from the common state Nature placed it in, hath by this labour something annexed to it, that excludes the common right of other men.

Here, some writers interpret Locke as saying that mixing a man's labor with an external object results in an extension of his personality, moving one step further toward human self-realization. Two centuries later, Karl Marx would extend this proposition radically to claim that capitalism "alienates" and dehumanizes its workers because markets obliged them to part with their output, output that was a revered extension of their personalities. Locke would obviously not have approved of this interpretation of his argument.ⁱⁱⁱ

In the passage quoted above, Locke offers a normative theory of the creation of property rights. Also in section 27 of his *Second Treatise* ([1690] 1991, 288), he amplifies and qualifies his theory of appropriation, or creation of property, as follows, "For this labour being the unquestionable Property of the Labourer, no Man but he can have a right to what that is once joyned to, *at least where there is enough, and as good left in common for others*" [Emphasis added]. For several scholars, this so-called Lockean "proviso" has somewhat obscured his general argument, and much has subsequently been written in attempts to fully understand it. One common and obvious question has been whether unqualified appropriation of a resource by one worker interferes with the liberty of others. Nozick (1974, 174) for instance observes: "A process normally giving rise to a permanent bequeathable property right in a previously unowned thing will not do so if the position of others no longer at liberty to use the thing is thereby

worsened.” It has been this last word, “worsened,” that has been the main focus of attention in the appropriation debate.

Narveson (1991, 3) raises the query, “worsened compared with what?” He goes on to review what he finds to be at least five interpretations of Locke’s proviso, and contends that those who interpret it to mean that the individual worker-appropriator is thereby causing others to have less, in the sense of depriving others of something, are wrong on two counts. First, there is an implicit assumption that there is a fixed or finite quantity of a potential resource such as land. This static view is erroneous, however, because when people own territory, they proceed to land clearance, ditching, fertilizing, and irrigating. More dynamically then, ownership results in expanded resources for everyone: “they [owners] transform what is less useful into what is more so, thus increasing resources . . . And secondly, what he ‘deprives’ others of isn’t a ‘good’. It is merely a chunk of the material world, awaiting someone who will turn it to good use” (Narveson 1991, 13).

Much of the Lockean discussion relates to normative (as distinct from positive) analysis. Locke was particularly absorbed with morality and “justice issues.” The focus of much modern deliberation, in contrast, is on positive analysis such as the question of how property rights *emerge* in practice, regardless of the reasoning of moral philosophy. The chapters that follow in this volume are essentially positive. Nevertheless, justice remains important. As Lueck (this volume, **XXX**) observes, “Locke’s theory of property remains a powerful defense of individual rights.” More particularly, Locke’s defense of rights “remains more or less consistent with real-world application of the rule of first possession” (Lueck, this volume, **XXX**)

Adam Smith

Adam Smith’s *The Wealth of Nations* was, and remains, a powerful work of economic science, rather than philosophy. Nevertheless, there has been considerable debate about how much of Smith’s work is infused with Locke’s Natural Law/Natural Rights Tradition.^{iv} It is certainly easy

to point to Smithian quotations that are very reminiscent of Lockean language. Consider, for instance, Locke's opposition to idleness in society and his belief that active production is conducive to human development. This is also suggested in Smith's statement that "Man was made for action, that he may call forth the whole vigor on his soul, and strain every nerve in order to produce those ends which it is the purpose of his being to advance. Nature has taught him that neither himself nor mankind can be fully satisfied with his conduct . . . unless he actually produced them" (Smith [1759] 1976b, 106).

A more striking Lockean sentiment appears in Smith's moral championship of the rights of employees and employers to produce mutually agreed upon labor contracts. To hinder a man from employing his labor howsoever he desires without injury to his neighbor, Smith insists, is a violation of the "most sacred property." Indeed, "The property which every man has in his own labour, as it is the original foundation of all other property, so it is the most sacred and inviolable" (Smith [1776] 1976a, I. xc, 12, 138).

In his "Lecture on Justice," Smith made one important distinction in Locke's reasoning: natural rights he confined to the rights to liberty and life, whereas the right to property was an acquired right depending on the current disposition of society. "The rights which a man has to the preservation of his body and reputation from injury are called natural" (Smith 1896, 401). Smith's separation of natural rights from the rights to property are further expressed in the following quotation from his Glasgow lectures:

The origin of natural rights is quite evident. That a person has a right to have his body free from injury, and his liberty free from infringement unless there be a proper cause, nobody doubts. But acquired rights such as property require more explanation. Property and civil government very much depend on one another. The preservation of property and the inequality of possession first formed it, and the state of property must always vary with the form of government. (Smith 1896, 401)

Smith's placement of liberty in the category of natural rights is interesting and significant because what he calls "natural liberty" pervades the whole political economy of *The Wealth of Nations*. Thus he condemns all legislation that interfered with free individual trading. But such freedom to trade affected the incentive to create and maintain property. Because of the existence of continuous markets, prices were being kept reasonably stable and thus incentives to further capital (or property) accumulation, were emerging. Capital accumulation, in turn, was encouraging further divisions of labor (specializations) and these were resulting in sustained technological progress.

So far it seems that several of Smith's arguments echo John Locke's reasoning, although Smith's separation of natural rights from property rights was a substantial modification. The duties of government reported by both writers also reveal striking similarities. Just as Locke argued that "Government has no other end but the preservation of property" (Locke [1690] 1991, 329), Smith maintained that "Till there be property there can be no government, the very end of which is to secure wealth and to defend the rich from the poor" (Smith 1896, 291).

Economists now attempt a full rationale of Smith's position as follows. Even where property rights exist independently of government, there are significant costs of defining and protecting them. Anderson and Hill (Chapter 5) call these transaction costs and provide illuminating examples. McChesney (Chapter 9) identifies the role for government as justified by its lower costs of defining and defending rights. Adam Smith observed that property rights always require the ability to exclude others (nonowners): "It is only under the shelter of the civil magistrate that the owner of that valuable property, which is acquired by the labour of many years ... can sleep a single night in security" (Smith [1776] 1976a, 710). Several other contributors to this volume, however, would qualify Smith's argument that property can survive only via the protection of government.

Beyond this, others would point out that government can typically lower the costs of defining private rights only because of its monopoly on the use of force. This being so, it may be naïve to believe that such government monopoly is always used for the public good

(McChesney, this volume). Ultimately the justification of government is an empirical matter, a point that is repeatedly made by Smith's historical case studies. Consider, for instance, his empirical analysis of slow economic growth in China. In Smith's words:

In a country too, where, though the rich or the owners of large capitals enjoy a good deal of security, the poor or the owners of small capitals enjoy scarce any, but are liable, under the pretence of justice, to be pillaged and plundered at any time by the inferior mandarines, the quantity of stock employed in all the different branches of business transacted within it, can never be equal to what the nature and extent of that business might admit. In every different branch, the oppression of the poor must establish the monopoly of the rich, who, by engrossing the whole trade to themselves, will be able to make very large profits. (Smith [1776] 1976a, 112)

Smith's view that a central duty of the sovereign was the preservation of property via a proper legal framework is also emphasized in the following:

When the law does not enforce the performance of contracts, it puts all borrowers nearly upon the same footing with bankrupts or people of doubtful credit in better regulated countries. The uncertainty of recovering his money makes the lender exact the same usurious interest which is usually required from bankrupts. Among the barbarous nations who over-ran the western provinces of the Roman Empire, the performance of contracts was left for many ages to the faith of the contracting parties. The courts of justice of their kings seldom intermeddled in it. The high rate of interest, which took place in those ancient times, may perhaps be partly accounted for from this cause. (Smith [1776] 1976a, 112)

In all, there were three duties of the sovereign according to Smith:

- (1) Protection against invasion by other countries;
- (2) The duty of protecting as far as possible every member of society from the injustice and oppression of every other member, that is, the duty of establishing an exact administration of justice;
- (3) The duty of erecting and maintaining certain public works and certain public institutions, “which it can never be for the interest of any individual, or small number of individuals to maintain because the profit could never repay the expense to any individual or small number of individuals . . .” (Smith [1776] 1976a, 688).

The natural law (rights) tradition is located most clearly in the second of these three duties. As for the third, Smith has been criticized by libertarians for outlining a positive (public works) role for government that went further than upholding justice and protecting property. Duty number 3, in fact, has been described as representing the philosophy, not of natural law/rights, but of Benthamite utilitarianism (reviewed below) which instructs government to supersede the market in many areas. Such criticism, however, is somewhat off-target. Smith’s argument with respect to the third duty is commonly misunderstood and must be evaluated in its eighteenth-century context. In particular, the arguments involve the role of government in allowing large-scale stockholder-owned firms to exist. Smith’s discussion of the third duty clearly shows his increasing awareness of the advantages of the extension of limited liability. There was a growing need at the beginning of the industrial revolution for “instrumentality” in carrying on a large business. There was, in other words, a general demand for much more legal variety in the structure of property rights. To merchants and entrepreneurs, the commercial advantages from incorporation were becoming obvious: continuity of existence, management independent of that of members, ease of suit against third parties or against members, transferable shares, unlimited divisibility of the equities, and the distinct limitation of liability for a company’s debts and for those of its shareholders.

Traditionally, the major ways that a corporation (company) could be created were (a) by judicial interpretations of the common law, or (b) by the king’s charter. This area of royal (and

later parliamentary) discretion to create new property rights, substantially explains Smith's discussion of public works under the head of the "third duty of the sovereign"; and indeed, it was traditionally the sovereign's responsibility long before that of legislatures. Most of the corporations formed from 1485 to 1700 were created exclusively by royal charter. The Russia Company (1555), the East India Company (1600), and the Hudson's Bay Company (1670) were originally chartered directly by the crown without benefit of Parliament. Charters, or equivalent letters patent, were granted by the crown in pursuance of special statutory authority, for instance, as in the case of the Bank of England (1694) and the London Assurance Company (1720).

Later on, the additional sanction of the legislature was demanded more and more to accompany privileges created by the crown. In the latter half of the eighteenth century, incorporation by special act became increasingly common for utilities such as canal and water companies. Charters and private acts of incorporation usually included special provisions regulating the activities of the organization in question. It is arguable that the nature of the complex procedure necessary to secure incorporation would have been viewed by Smith as another hindrance to private business freedom. His third duty of the sovereign, therefore, could have been seen by him, not as an instruction to government to undertake discretionary and utilitarian economic intervention, but rather as another demand for the enlargement of the whole legal framework and therefore the area of natural liberty, a demand that was, of course, consistent with natural law tradition.

In the late eighteenth century, special deliberation was called for in deciding how to satisfy the increasing needs of new projects that required large sums of capital. And it was in such a context that Smith expounded the sovereign's third duty. This was a time when the joint-stock organization was very widely suspect after the calamity of the South Sea Bubble of 1720. We now know that the great shortcoming in that period lay not so much in the joint-stock system itself as in the way it was then applied and the need for more experience with it. In any case, the disaster had more to do with government failure than market failure. Holders of government

bonds were allowed to exchange them for stock in the new South Sea Company. The Company, moreover, had been given a monopoly of British trade with islands of the South Seas.

Before 1720, there was certainly insufficient appreciation of the dangers of ambitiously selling new bonds to raise financial capital beyond the amount necessary for the operation of any given undertaking. The collapse of the South Sea Boom led promptly to the Bubble Act of 1720. It was a restrictive piece of legislation that was passed by a government showing all the signs of panic, many members of government having themselves been ruined by the collapse of the bubble. Writing fifty-six years later, Smith, in effect, was requesting the authorities to now relax their attitude somewhat. The most appropriate policy was, to begin to “clear the decks” for the exercise of much more business liberty, especially in the sense of allowing the creation and spread of new legal instruments.^v

There is an interesting parallel between Smith and Frank Knight (1924) on the subject of incentives. Harold Demsetz’ essay (Chapter 11) usefully reminds us of the famous article by Knight criticizing Pigou’s contention that the existence of external costs demands government imposition of a corrective tax. The context of the debate was a scenario containing two roads, one of which is superior and the other inferior (in terms of congestion, road surface, etc.). Pigou argued that drivers would make excessive use of the superior road and ignore the consequent additional congestion cost (i.e. the external cost). This situation then allegedly calls for a government tax on the use of the superior road that is large enough to optimally reduce the congestion on it. Knight, however, argued that Pigou had neglected the issue of ownership of the road. “Once this is done, decisions made by resource owners are clearly shown to eliminate potential externalities” (Demsetz, this volume, **XXX**). In other words, the private owner of the superior road can charge for its use an appropriate toll. Because ordinary economic reasoning shows that such a toll will exactly equal Pigou’s ideal government tax, the latter then becomes quite superfluous.

Adam Smith very much anticipated Knight’s analysis. He treats roads under “the third duty of the sovereign,” based on the need for what Smith called “public works.” When it came to

the issue of who should pay for them, Smith insisted that the greater part of the public works can be self-financing. “A highway, a bridge, a navigable canal, for example, may in most cases be both made and maintained by a small toll upon the carriages which make use of them . . .” (Smith [1776] 1976a, 724). In the same way, other public works were already being supplied by joint-stock firms in the areas of banking, insurance, canals, and bridges. Although Smith classified public works as those which it “would not profit an individual or small number of individuals” (Smith [1776] 1976a, 723), eventually, he argues explicitly, it would profit a *large* number of individuals, organized in for-profit joint-stock enterprises. It is clear, therefore, that, like Frank Knight, Smith did not neglect the issue of resource ownership and the incentives it creates. If he had done so, it is likely that, like Pigou, he would have simply assumed central government was the only route to the supply of public works.^{vi}

It is useful, finally, to refer to a common belief that Smith disliked large joint-stock enterprises. What he was mainly critical of was the frequent habit of governments in attaching a monopoly of trade to the grant of joint-stock status. The South Seas Company was one example, but there were several others. In contrast, those enterprises such as the Hudson Bay Company (without the monopoly privilege), met his unqualified approval. And as just seen, his opinion of joint-stock companies in domestic activities was also favorable, as was his whole discussion of the need for “public works” (the sovereign’s third duty), properly understood. Indeed, this led to Adam Smith’s recommendations for allowing joint-stock enterprises in the “public works” of banking, canals, water supply, roads, and bridges. Such enterprises would not only have much needed access to large capital markets but would also be able to avoid ambiguous title to their property.

Adam Smith was influenced in natural law thinking by writers other than, and somewhat different from, Locke. He was introduced to two of these by his mentor, Francis Hutcheson; they were the Dutch jurist Hugo Grotius (1583–1645) and the German legal specialist Samuel Pufendorf (1632–1694). Smith and Hume agreed with them on several matters, but especially on the conviction that man could not live without society. This meant, in practice, that individuals

could not survive without a commonly-agreed system of law. Man indeed was now seen primarily as a “legal or juristick person rather than the citizen-warrior of the civil humanist tradition” (Teichgraeber III 1986, 21).

Grotius asserted himself most strongly against views on property that had been inspired by Aristotle and repeated by his followers in the Middle Ages. Aristotle had conflated exchange justice (also known as commutative justice) with distributive justice. The latter was connected with the notion that there had once been a common ownership of all things and that equity demanded that individuals enjoy a natural right to a potential share of them even if they do not yet possess them. Grotius seems to have opposed this concept without compromise. There was, in fact, he insisted no such category as distributive rights (Teichgraeber III 1986, 23).

It is interesting that the fullest respect for individual property rights, according to both Grotius and Pufendorf, required the absolute power of one ruler. Pufendorf went so far as to call for a social contract. But both Smith and Hume objected to this inference as they also did to Locke’s social contract argument. They believed that such a project was too rational and would threaten or delay the emergence of spontaneous (naturalistic) liberty.

The Benthamite Revolution

John Locke’s natural law/rights system of thought and his conviction that private property existed prior to law received hostile criticism from Jeremy Bentham in his *Theory of Legislation* which was first published in 1795, five years after the demise of Smith. He protested that the advocates of natural law and natural rights, such as John Locke and his followers, had advanced no proof. Their systems, moreover, varied unpredictably in content. Natural rights, in fact, were dangerous metaphors (“nonsense on stilts”) based on capricious and subjective feelings. The only true conception of right, Bentham insisted, was one that was based on “real laws.” Property, which involves a guarantee of security of possession into the future, cannot exist without government: “Property and law are born together and die together” (Frankel Paul 1979, 50). And

property in the real world can change following alterations in law. To assert dogmatically a natural right in property would be to claim that government had no freedom to tax it without the consent of the owners.

Lockean followers would probably answer that Bentham was confusing the concept of right with the concept of power. Accordingly, Jonathan Macey observes:

Merely because the government or some other organization has the raw power to take away my wealth, or my ability to earn wealth, does not mean that it has the right to do so ... Thus, a state's mere exercise of its power to deprive citizens of their property rights does not mean that these rights do not exist. The idea of natural rights refers to those rights that human beings possess by virtue of their status as human beings. (Macey 1994, 186)

This response again brings into focus the idea that natural law is based on some version of morality.

Despite his dismissal of the nature theory of government and property, Bentham was not averse to interjecting his own system of morality, a system that describes not only what we in fact do, but also asserts what we ought to do. In Bentham's words:

Nature has placed mankind under the governance of two sovereign masters, pain and pleasure. It is for them alone to point out what we ought to do, as well as to determine what we shall do. On the one hand the standard of right and wrong, on the other the chain of causes and effects are fastened to this throne. (Bentham 1948, quoted in Frankel Paul 1979, 52)

Bentham's ultimate principle: the pursuit of the greatest happiness, implied the need for equality of material possessions, an objective that Bentham himself tried initially to keep within

bounds, but which in the hands of followers such as J. S. Mill, eventually inspired an intellectual, if not political, revolution. The predictability of enjoyment of property into the future that Adam Smith had urged, on behalf of his free market vision, consequently faced a frontal challenge.

Bentham's happiness principle spawned a substantial catalogue of what he called his "agenda" for government intervention. His list was in effect based on cost-benefit analysis of each individual issue. If the expected increase in benefit (happiness) was greater than the expected increase in cost (pain), then government should undertake the project; and not otherwise. On this principle, he approved of government aid in the construction of canals, railways, hospitals, and public workhouses. Meanwhile, despite Bentham's complaint that the doctrine of natural law (rights) advanced no method of proof, his own principle of utility (greatest happiness) failed also in this respect. He was defensive as well on the question of how the legislators were to be selected. And once selected, from where were they to obtain the precise information concerning the propensities of given projects to bring happiness or pain? These questions will be addressed in more detail when we examine further property implications of Benthamite Utilitarianism.

The fuller fruition of utilitarianism can best be seen in the hands of Bentham's disciples, Edwin Chadwick and John Stuart Mill (the latter of whom warrants a separate section below). Chadwick was Bentham's last secretary and became one of the most influential utilitarian policy maker in nineteenth-century England, covering such areas as poor law revision (1834), health and sanitation (1840–50), and railway regulation (1860s). He introduced his own principle of competition, and it provided a major clue to his penchant for sweeping regulations. There are, Chadwick insisted, "conditions of competition which create inevitable waste and insecurity of property, which raise prices and check improvement, which engender fraud and violence, and subject the public to irresponsible monopolies of the worst sort" (quoted in Crain and Ekelund 1976, 152).

The waste that Chadwick was out to eradicate appeared at first to be mostly associated with what we call natural monopoly. This market structure, however, was often assumed rather

than demonstrated. His typical “reform” plan was to allow competition “for the field,” with a government-run auction for the right to produce, and the winning bidder agreeing to undertake centralized contract management of the whole industry or service. One of Chadwick’s immediate examples was the postal service. Efficiency improvements, he argued, stemmed from the successful bidder being awarded an exclusive contract, an arrangement that, he argued, reduced transaction costs, excess capacity, and uneconomic overlapping (or duplication). The reformed, nationalized undertaking would not be run by government personnel, however, because, Chadwick insisted, government was utterly incapable of direct management. The alternative he favored was public ownership together with a “special executive commission” to run things.

As shown, on the subject of efficient resource allocation, Adam Smith focused on private resource ownership and the useful incentives that accompanied it. Bentham, in contrast, asserts that public, i.e. government ownership, is more desirable. But public ownership was a vague concept and rarely did it receive full definition or analytic rigor. Within a collectivity, one’s share of public assets is not likely to be exactly the same as that of other individual citizens. Even if such shares are initially equal, the question arises about the rules of collective decision making. Does public ownership mean that priority is to be given to the preferences of the median voter, bearing in mind that individual preferences will vary across the population of voters?

More important is the question of the influence of government employees. De Alessi (this volume, XXX) emphasizes that “Government employees with authority to manage government-owned resources . . . do not bear the economic consequences of their decisions. Accordingly, they have incentive to take them into account only in so far as they generate political pressures, bribes, or personal utility.” None of those considerations accompanied Chadwick’s recommendations of public ownership and “special executive commissions.” As Buchanan (1978, 3) has observed, Britain’s nineteenth-century Benthamite utilitarianism “provided idealized objectives for government policy to the neglect of institutional structure.”

One example affords a particularly graphic insight into Chadwick’s general policy approach. The London Cab Market, he declared, displayed wasteful excess capacity because, at

any one time, at least one-third of the cabs were unemployed. Therefore, instead of continuing to allow inordinate competition within the field, London needed competition for the whole field (i.e., the whole cab market). Central contract management would again be appropriate as would another “special executive commission.” It has since been shown, however, that unoccupied cabs actually lower the full costs of operation. They do this by reducing waiting time (Crain and Ekelund 1976, fn 19). Chadwick’s recommended competition for the whole field was, therefore, misplaced. No less important, and more pertinent to the present essay, was the expected damage from Chadwick’s policy to the property rights of individual cab owners, a subject that did not figure very much in his deliberations. To be fair to Chadwick, his concept of competition for the whole field has subsequently attracted serious attention by economists (see Demsetz 1968). Dominant firms will be prevented from earning great monopoly profits whenever there is a constant threat of “competition for the whole field” from outsiders.

John Stuart Mill

In contrast to Smith’s rejection of a large redistribution function of government, John Stuart Mill gave it pride of place. In so doing, he attacked, in effect, the whole foundation of Smithian political economy, including the role of property. Focusing on economic methodology, Mill drew a sharp distinction between positive and normative issues. The laws of production (such as the law of diminishing returns), Mill emphasized, were inexorable (positive economics), whereas, in strong contrast, the laws of distribution were malleable according to society’s disposition (normative economics). Prevailing divisions of the national produce should accordingly be subjected to the Utilitarian tests for maximum happiness. The latter objective was now considerably clarified by the belief that the true Utilitarian creed implied, not simply the greatest happiness, but “the greatest happiness of the greatest number.” Since each individual had an equal claim to happiness, he had an equal claim to the means of happiness. This same assertion, of course, implied the need for the collectivization of property and income of all kinds.

One new element in the writings of the Utilitarians was an enthusiasm for the contemporary spread of a democracy based on simple majority voting. This too, of course, had profound implications for property rights. It was well known, even in Mill's time, that democracy often encouraged transfers to special interests. Since, in effect, these interests are given the right to determine the disposition of wealth created by others, property rights are correspondingly attenuated. In contrast, Adam Smith's efficiency generating "invisible hand" system depended crucially upon the existence of private property rights that were stable and well defined. In addition, Smith assumes the natural liberty of all individual participants to choose what they believed were the best suppliers, employers, and employees.

Utilitarianism seriously ignored these crucial Smithian conditions. In several instances, the emergence of Benthamite government suppliers resulted in the crowding out of private suppliers via unfair competition. This result, of course, was to the detriment of the latter's property rights. Consider, for example, Mill's argument ([1848] 1969, 953) that government can provide better education than that supplied in private schools that were freely selected by parents.

Now any well-intentioned and tolerably civilized government may think, without presumption, that it does or ought to possess a degree of cultivation above the average of the community which it rules, and that it should therefore be capable of offering better education and better instruction to the people, than the great number of them would spontaneously demand. Education, therefore, is one of those things which it is admissible in principle that a government should provide for the people.

In the above quotation the words "well-intentioned" and "tolerably civilized" to describe government is illustrative of the increasing faith in reformed democracy that Mill hoped was arriving by the mid-nineteenth century.

It must be said that of all the economists discussed herein, none seem to have exceeded Mill in the intellectual energy devoted to the question of property and in the search for various possible and reasonable social policies towards it.^{vii} Among all the classical writers, Mill was the first to include in his major work two whole chapters on the subject of private property. Chapter 2 of Book 2 in Mill's *Principles of Political Economy* ([1848] 1969) suggests the strong influence and guidance of his wife, Harriet Taylor. The chapter starts with a noncontroversial Lockean approach that recognizes in each person a right to the exclusive disposal of what he or she has "produced by their own exertions, or received either by gift or by fair agreement, without force or fraud, from those who produced it" (Mill [1848] 1969, 218). Each person, however, is not entitled to the whole produce because capital as well as labor has contributed to production; and capital, Mill makes clear, is the consequence of saving and abstinence.

In his fuller definition of property, Mill contended that, although it involves, among other things, a legitimate right of bequest, or gift after death, "the right of inheritance, as distinguished from bequest, does not" (Mill [1848] 1969, 221). Mill here began to inject his Utilitarian value judgements as to how the wealth of recently deceased persons should be disposed of. The two chief beneficiaries, he contended, were (a) relatives, even distant ones, and (b) the state. Mill insisted that "in a majority of instances the good not only of society but of the individuals would be better consulted by bequeathing to them a moderate, than a large provision" (Mill [1848] 1969, 224). To the extent moderate bequests meant there was money left over, the state should take the residue. The confidence with which Mill expressed his implicit claim to know the "good" of society plus that of individuals, and to determine what is a desirably "moderate" bequest to children in individual cases, is striking. It seems relatively easy to conclude that his position was colored by the new enthusiasm for governments run by persons well-versed in, and motivated by, Bentham's maximum happiness doctrine.

Mill conceded that bequest is one of the attributes of property. "All the reasons, which recommend that private property should exist, recommend *pro tanto* this extension of it. *But property is only a means to an end, not in itself an end* (Mill [1848] 1969, 226, emphasis added).

Mill personally preferred a restriction, not on what one might bequeath, but on what any one should be permitted to acquire, by bequest or inheritance (Mill [1848] 1969, 227). Bequests should not be allowed to enrich one individual, beyond a certain maximum, “which should be fixed sufficiently high to afford the means of comfortable independence” (Mill [1848] 1969, 228).

Mill ends his chapter with some searching questions concerning the justification of property in land.

When the ‘sacredness of property’ is talked of, it should always be remembered, that any such sacredness does not belong in the same degree to landed property. No man made the land. It is the original inheritance of the whole species. Its appropriation is wholly a question of general expediency. When private property in land is not expedient, it is unjust. (Mill [1848] 1969, 233)

It is of course important to remember that Mill was writing in 1848 when the Irish Potato Famine was fresh in his mind. Ownership of land had caused suffering, he complained, not only because of the incompetence of some landlords but also due to an improper legal framework. The main example of the latter was the continuation of primogeniture (the legal requirement that the eldest son inherit his father’s estate), a practice against which, like Adam Smith, Mill strongly objected. The system of landownership had reduced welfare, Mill protested, because many proprietors were not improvers of the land. Moreover, they frequently granted the liberty of cultivation “on such terms as to prevent improvements from being made by any one else” (Mill [1848] 1969, 231). Again, much of this inefficiency was due to the institution of primogeniture. “When the land goes wholly to the heir, it generally goes to him severed from the pecuniary resources which would enable him to improve it, the personal property being absorbed by the provision for younger children, and the land itself often heavily burthened by the same purpose” (Mill [1848] 1969, 231).

The logic of such argument would suggest a solution, not in the crude form of land nationalization, but in amending the constitution to reduce or end the practice of primogeniture. This was the strategy of Adam Smith. While Mill might be seen as arguing implicitly in the same direction, he nevertheless proceeds to spend much time in condemning the character of existing landlords. “The community has too much at stake in the proper cultivation of the land ... to leave these things to the discretion of a class of persons called landlords, when they have shown themselves unfit for the trust” (Mill [1848] 1969, 234). But if Mill was intimating that there was another class of persons more suitable to the task, he did not follow up with fully explicit suggestions.

It is interesting to consider Mill’s approach as it relates to John Locke’s “proviso” discussed earlier. Locke had claimed, “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” (Locke [1690] 1991, *Second Treatise*, Section 27, 288). Narveson’s 1991 interpretation of Locke, it will be recalled, includes the assumption that when individuals obtain pieces of land, they improve it and so actually expand resources. In this way, others benefit, at least in the long run. Mill would not have accepted this claim. From the very nature of the case, he insisted, “whoever owns land, keeps others out of the enjoyment of it.” Whereas the Narveson interpretation of Locke takes it for granted that those who “join their labour” with the land will then proceed to improve it, Mill was not convinced and demanded advance proof. To him it seemed almost an axiom “that property in land should be interpreted strictly, and that the balance in all cases of doubt should incline against the proprietor” (Mill [1848] 1969, 234). In the case of land, he emphasized, “no exclusive right should be permitted in any individual, which cannot be shown to be productive of positive good” (Mill [1848] 1969, 235). Notice too that Mill was automatically adopting non-Lockean language in his Benthamite assumption (in the previous sentence) that rights to land had to be “permitted” by government.

As for the postulated leading causes of the overwhelming Irish famine, several do not stand up.^{viii} But Mill's explanation does not stand up, either. Why were Irish farmers incompetent, as Mill claimed?

In his book *Why Ireland Starved* (1983), Joel Mokyr restates the issue as "Why was Ireland Poor?" In emergencies, the poorest have no cushion of modest savings to help them purchase other foods (imported or otherwise). This is not an academic point. It is true that the disease, caused by the fungus *Phytophthora Infestans*, spread alarmingly beginning in 1845, and savagely reduced the crucial potato crop. Yet the same blight also "struck Belgium, the Netherlands and Scotland with little demographic effect. The underlying problem, whatever it was had already driven Ireland to an extremity of poverty. Therefore why indeed was it so poor?" (Bethell 1998, 243–44). It is noteworthy that conditions in Ireland had deteriorated so much, even prior to the famine period, that some landlords as well as tenants had already become impoverished.

Having first attributed Ireland's problem to overpopulation, economist Thomas Malthus identified another and more important clue following a visit to Ireland in the 1830s: "There is indeed a fatal deficiency in one of the greatest sources of prosperity, the perfect security of property; and till this defect is remedied, it is not so easy to pronounce upon the degree in which the redundant capital of England would flow into Ireland with the best effect" (Malthus [1836] 1951, 349–500). The lack of "security of property" had several causes. One was "the chronic guerrilla war between tenants and landlords" (Bethell 1998, 252). Added to that violence and resulting lack of secure property rights was the profound and continuous religious hostility between Catholics and Protestants.

Another and even more important factor was the stifling restrictions on manufacturing imposed by a protectionist English government that prevented the Irish from realizing the full value of their property. Adam Smith had already warned about this in a letter to Henry Dundas in November, 1779. The letter is quoted in full by Viner (1965, 350–52). Speculating on what the Irish Parliament had meant when speaking of a "free trade," Smith observed:

They may perhaps understand by it no more than the power of exporting their own produce to the foreign country where they can find the best market. Nothing can be more just and reasonable than this demand, nor can anything be more unjust and unreasonable than some of the restraints which their Industry in this respect at present labours under. They are prohibited under the heaviest penalties to export Glass to any Country. Wool they can export only to Great Britain. Woolen goods they can export only from certain Ports in their own Country and to certain Ports in Great Britain.

They may mean to demand the Power of importing such goods as they have occasion for from any Country where they can find them cheapest, subject to no other duties and restraints than such as may be imposed by their own Parliament. This freedom, tho' in my opinion perfectly reasonable, will interfere a little with some of our paltry monopolies. Glass, Hops, Foreign Sugars, several sorts of East Indian goods can at present be imported only from Great Britain.

They may mean to demand a free trade to our American and African Plantations, free from the restraints which the 18th of the present King imposed upon it, or at least from some of those restraints, such as the prohibition of exporting thither their own Woolen and Cotton manufactures, Glass, Hatts, Hops, Gunpowder, etc. This freedom, tho' it would interfere with some of our monopolies, I am convinced, would do no harm to Great Britain. It would be reasonable, indeed, that whatever goods were exported from Ireland to these Plantations should be subject to the like duties as those of the same kind exported from England in the terms of the 18th of the present King.

They may mean to demand a free trade to Great Britain, their manufactures and produce when Imported into this country being subjected to no other duties than the like manufactures and produce of our own. Nothing, in my

opinion, would be more highly advantageous to both countries than this mutual freedom of trade. It would help to break down that absurd monopoly which we have most absurdly established against ourselves in favour of almost all the different Classes of our own manufactures.

Whatever the Irish mean to demand in this way, in the present situation of our affairs I should think it madness not to grant it.

The fact that Smith's warnings were not heeded, and that Ireland was left to flounder economically with severely emasculated property rights, thus substantially answers the question: Why was Ireland poor? In turn, it helps explain why it compared so badly with other countries that were stricken with the same blight. In short, "the country was already destitute and on the brink of starvation, needing only the potato blight to trigger the catastrophe" (Bethell 1998, 256). Smith died in 1790. After that year, hopes for improvement rested on the planned Act of Union and it led to the hope that the discrimination hitherto practiced by England against Irish industry would cease. "The reality, however, was very different" (Woodham-Smith 1968, 15).

Understanding the true, property-based reasons for the Irish famine is important, for many have drawn incorrect conclusions from the episode. Mokyr (1983, 294) observes:

Ireland was a principal reason why the young science of economics abandoned its steadfast adherence to the sanctity of private property and free enterprise and realized that under certain circumstances, Adam Smith's invisible hand transformed itself into a claw capable of holding the economy in a deadly grip of poverty.

The facts above show, on the contrary, that in Ireland at the time of the famine, property rights were not observed with sanctity. The conditions of Adam Smith's free enterprise model were not allowed to operate for political reasons.

Mill wrote at a time when different varieties of socialism were appearing throughout Europe. Indeed, his *Principles* were published in the same year, 1848, as Marx and Engels' *Communist Manifesto*. The *Manifesto* contained the radical pronouncement that "the theory of the Communists may be summed up in a single sentence: Abolition of private property" (Marx and Engels 1962, 47). But probably the most incendiary of all declarations was that of Proudhon ([1840] 1994, 211) who protested: "What is property? It is theft."^{ix} Marx and Engels denounced private property as exclusively a product of capitalism, claiming their analysis to be "scientific socialism." In diametric opposition to John Locke, they asserted that prior to capitalism, mankind had known no private property in land. According to Pipes (1999), however, Marx and Engels simply constructed to their own satisfaction a theoretical model of early society and then described--with minimal recourse to either anthropology or history, of which they were largely ignorant--how property might have evolved. The scheme was abstract, although the injection of a vocabulary drawn from economics, sociology, and psychology gave it the appearance of being more scientific than previous theories. The Marx-Engels view was rooted not in empirical evidence, but in the Romantic vision of the "brotherhood of mankind . . ." (Pipes 1999, 52). Such a vision contemplates the nonexistence of private property and therefore the public ownership of land and other assets. But when one adds the political structure that fosters the "dictatorship of the proletariat" espoused by Marx and Engels, in a framework that is supposed to be democratic, it is difficult to obtain a clear and convincing picture of how the alternative to private property would function.

David Hume

To understand the Scottish philosopher and economist, David Hume, it is helpful initially to compare him with others, and especially with Jean Jacques Rousseau. Rousseau believed primarily in what he called "social property." Distribution was to be left to the "general will" of collective society. Locke had maintained, in contrast, that the initial distribution of property was,

in the words of Waldron (1994, 85), “determined in large part by morally legitimate acts of unilateral acquisition.”

Hume was convinced that it was better to avoid being obsessed with a search for the appropriate code of ethics that would govern issues concerning property because there were several to choose from and they were subject to constant disagreement. Among the many, potentially discordant value systems were altruistic ethics, egoistic ethics, Christian ethics, and utilitarian ethics. Even if agreement could be reached among the participants, there remained the question whether government was stable enough to fulfill the distributional objective. Government corruption, for instance, had to decrease before appropriate progress could be made.

Like Smith, Hume looked to decentralized commercial acts in a developing free market as the best agency for attainable harmony. The focus was upon the process of trading with the help of increasingly efficient contracts. And such a scenario, of course, implies increasing respect for property rights. Smith observes in *The Wealth of Nations* that Hume was the only writer so far to have noticed the connection between the market and order and good government. The improvement in the latter, Hume believed, was a function of the growth of contractual commerce and per capita economic output. Unlike the romantic Rousseauesque philosopher, Hume based his conclusions on substantial empirical evidence located largely in his numerous wide-ranging historical surveys.

CONCLUSION

Ryan (1989, 229) observes that “a crucial question to be asked of any system of property rights is whether it favors political stability and political liberty.” To a large extent this question looks for answers that are sociological. In our review of the treatment of property and property rights in the history of economic thought, it is Smith and Hume who stand out as having emphasized most the relationship between freedom and property (capital) accumulation. To Smith, both items together constituted a necessary condition for new divisions of labor that resulted not only in

lower prices, but also in technological progress via invention and innovation. The mercantilist system that Smith was attacking was one of politically imposed preferences that slowed productivity by robbing property rights of much of their proper (undistorted) functions. In contrast, well-respected property rights placed in a clear and secure legal setting, together with guaranteed liberty, were sufficient to set the wealth of nations on a course for almost perpetual growth. In Smith's words ([1776] 1976a, 42):

All systems either of preference or of restraint, therefore, being thus completely taken away, the obvious and simple system of natural liberty establishes itself of its own accord. Every man, as long as he does not violate the laws of justice, is left perfectly free to pursue his own interest in his own way, and to bring both his industry and capital into competition with those of any other man, or order of men. The sovereign is completely discharged from a duty, in the attempting to perform which he must always be exposed to innumerable delusions and for the proper performance of which no human wisdom or knowledge could ever be sufficient; the duty of superintending the industry of private people, and of directing it towards the employments most suitable to the interest of the society.

Some relationship between property rights and liberty is also to be found in John Locke, although it is not as definite as in Smith. This is partly because Locke's perspective was more that of moral philosophy than political economy or sociology. Locke certainly wished to defend the liberty of citizens against the despotism of absolute monarchy. He aimed also to elevate liberty to a natural right, and the latter stemmed from natural law which, in turn, is based on the reasoning of free people. True, quotations from Adam Smith strongly suggest the natural law approach of Locke, especially Smith's reference to labor as the "most sacred property." But this appears to be in addition to Smith's main preoccupation with the history, political economy, and sociology of property and property rights.

With the utilitarians of the nineteenth century, the emphasis and reasoning changed almost completely. They seem undisturbed that taxation beyond some minimum was a strong potential eroder of the value of property owned by those taxed. The revolutionary change in sentiment was expressed clearly in John Stuart Mill's separation of the laws of production from the laws of distribution. The distribution of wealth via taxation, Mill asserted, was a matter of discretionary human institution. "The things once there, mankind, individually or collectively can do with them as they like" (Mill [1848] 1969, 200). The flaw in this statement, of course, is that the political distribution of "the things once there" will be a serious brake on the things being there in the future. Investment, after all, is a function of its expected net (after tax) proceeds.

With Mill, connections between property rights and liberty became ambiguous. Instruction to voters to use taxation to do as they wished with the fruits of other people's investments would have been seen by Locke and Smith primarily as an invasion of others' rights. The same can be said of Chadwick's arbitrarily appointed "special executive commissions" to run his nationalized undertakings. Crowning the whole utilitarian program was its liberty-threatening subjection of all individuals to instructions about how to achieve maximum happiness. In presenting his education bill to Parliament in 1833, the Utilitarian J. A. Roebuck claimed that people could not be happy by themselves; they had to be taught how to be happy.

It is true that the natural law tradition that the Benthamites attacked was itself based on some deep notions of human equality. Natural law equality was not, however, the equality of wealth or income that Mill had in mind. To John Locke, it was mainly equal natural rights to appropriate, and so ultimately benefit from, natural resources. To Adam Smith, it was the equality of all to enter the market system. Both Locke and Smith thus saw equality in terms of opportunity to prosper, not in terms of the final prosperity people achieve. The implication in both Locke and Smith is that some eventual inequality would ensue, at least for a time. And if this was a problem, what was the solution? For Smith, the constant incentive of workers to

improve their property (i.e., their labor power) could, to a large extent, be relied on to improve things much more than government intervention.

Griswold (1999) concludes that Smith (unlike the utilitarians) was very skeptical about the ability of the state to organize a plan of redistribution that would be fair and efficient. In part, he saw the problem partly as one of the state's inadequate knowledge of the particular circumstances that determine each person's opportunities. Because one family, for instance, will be more responsible than another in preparing its offspring for the labor market, some inequality is unavoidable. And with regard to the state's possible efforts to redistribute in favor of the deserving, Griswold (1999, 252) interprets Smith as emphasizing: "Assessing in a consistent manner who the deserving are, and just what they are due, lies beyond the ken of the legislator or statesman." But in any case, the self-interest of the bureaucrat in siphoning off to himself much of the income that is intended for redistribution would itself block suitable action to achieve equity or precise commutative justice.

Some admirers of Adam Smith may be sensitive to the presence of religious language and concepts in his work, and especially in his adoption of the theocentric principles of natural law. Pufendorf, one of Smith's mentors on this subject, started with the proposition that reason alone shows us that man may live in society successfully only if basic rules are observed and that these included protection of property rights. But to go further than reason alone, Pufendorf urged, the question of what determines whether actions are right or wrong can only be settled by law, and the basic natural law presupposes the will of a superior. "Natural law binds by virtue of the divine will . . . Since God created our nature and fitted us with the capacities that make social life possible, it must be his will that we should live in society and observe those rules that are necessary for the existence of social life" (Simmons 1989, 225).

The part of natural law that obliged individuals to do good things for society allowed it more and more to take on the appearance of a basically utilitarian society. Smith's friend, David Hume, went as far as to remove God from his whole conception of natural law. He then offered a justification for rules of justice and property based on convenience or utility. This could well

have opened the door for the Benthamites, although Hume's position was ultimately not compatible with theirs. It is easy to conjecture, nevertheless, that Adam Smith, who seemed less in haste to remove God from his total view of society, would have been disturbed by the Utilitarians' confident replacement of God's will by Bentham's will, i.e., secular salvation via the simple principle of maximum happiness.

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Notes

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ⁱⁱ Modern developments of the Lockean argument are reviewed by Dean Lueck (this volume, **XXX**)

ⁱⁱⁱ And neither, of course, would Adam Smith for whom mankind has a natural propensity to “truck, barter and exchange.”

^{iv} Lord Robbins (1952) expressed the contrary view that Smith’s *Wealth of Nations* was instead largely in the mold of utilitarianism (a subject reviewed below).

^v Although the issue of limited liability drew most attention in the middle of the nineteenth century, Smith was ahead of his time in his comments on the central principal. He discusses it thoroughly, for instance, when comparing joint-stock companies with private partnerships (copartneries in Smithian language). Apart from the nontransferability of shares in a partnership, Smith explains, it differed from the joint-stock company in that “each partner is bound for the debts contracted by the company to the whole extent of his fortune. In a joint-stock company, on the contrary, each partner is bound only to the extent of his share” (Smith [1776] 1976a, 740). Smith also acknowledged the principle of limited liability in his observation that the greater part of the proprietors of the joint-stock companies received annual dividends and enjoyed “total exemption from trouble and from risk, beyond a limited sum” (Smith [1776] 1976a, 741). This facility encouraged many people to become adventurers in joint-stock companies who would not otherwise hazard their fortunes in a private partnership.

^{vi} Note that Smith’s public works are not what economists call public goods because the price system does not break down and exclusion is possible.

^{vii} It is true that the results of Mill’s lengthy deliberations were often blurred by his adherence to doctrinaire Utilitarianism. There seems no doubt, however, about the genuineness of his overall

quest for the truth. His was a wide-ranging multidisciplinary approach that referred not only to economics but also to sociology, history, and recorded custom.

^{viii} *The Times* believed that “the Celt is less energetic, less independent, less industrious than the Saxon” (quoted in Bethell 1998, 245). Others were convinced that overpopulation was the root of the problem, a proposition that has been subsequently discredited (Bethell 1998, 246). J. S. Mill’s position of course, reflected the classical economists’ “laws” of population and rent. Finally there was the conviction that the main cause was Ireland’s lack of natural resources.

^{ix} It should be noted, however, that Marx and Proudhon were vehemently opposed to each other (Bethell, 1998, 114).