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Radicalism or Radicalisms?:

Radicals' ideas of property in eighteenth-century Britain

Defining the radical position in the eighteenth century has become something of a problem. One major reason for this is that after 1688, and more especially after 1714, "radical" could have at least two meanings. It could mean opposition to the newly emerging Whig establishment in one of two directions: in terms of sympathy for the pretender, the Stuart line, and the old ideal of kingship, or in terms of an aspiration for a more limited republican or even democratic constitutional settlement than had in fact been obtained.

However it is impossible to characterise adequately either "radical" or its antonym (whatever that might be) in purely political terms. Each group borrowed ideological clothes from the other.[1] At least some "Tories" adopted the social analysis and historiography of the erstwhile opposition. Whigs, as they consolidated power, adopted both the devices, and a justification of the means until recently used by the Stuarts to maintain stability. The consolidation of the whig position involved, as John Brewer has recently emphasised (and contrary to traditional views of England as a "weak state"), the considerable strengthening of the state apparatus, and the consequent endorsement of certain characteristics of the modern economy: National Bank, and a national debt, a market in credit and stocks, a swelling military establishment and government sector, the growth and acceptance of empire, and the use of crown patronage to influence and control the House of Commons. All of this was financed by a taxation system which by the end of the early 1780s had

[1] See in particular I. KRAMNICK, The Politics of Nostalgia, Bolingbroke and his Circle, Cambridge, Mass. 1968.

reached 23 % of per-capita income, and was to rise, during the Napoleonic wars, to a staggering 35 %.[2] This had given rise to an extraordinary debate about the nature, course and morality of modern political economy magisterially explored by John Pocock and others.[3] Not surprisingly radicals' attitudes to all of these developments bear on the political implications of that key term: "property".

It was perhaps once possible naively to believe (whether we were marxists or liberals), that Tory and radical were polar opposites situated at either end of an axis, the centre of which was occupied by the Whigs - the one a nostalgic residue, the other as yet a promise for the future. But most scholars are now agreed that the dominant vehicle of radicalism in the first half of the eighteenth-century was in fact Toryism.[4]

Being tainted with jacobitism, after 1714, Tories were excluded from the network of government influence and patronage. As a result they were increasingly driven to seek election in the more open, democratically franchised seats. In the process they not only adopted much of the ideology of the radical whigs, they also inherited their constituencies. The freemen of the City of London for example switched allegiance from Whigs to Tories: although

> this reversal actually represented a popular reaffirmation of the libertarian principles which were abandoned by the London Whig Leaders after they became entrenched in power in the Corporation.[5]

Ironically, it was increasingly the Tories who sought, from positions of despairing self-interest it is true, to expand the popular base of politics. They tried to widen corporation franchises where they could. They pioneered at-

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[2] J. BREWER, The Sinews of Power, London/Boston 1989, p. 91.

[3] See sections xiii and xiv of part III of The Machiavellian Moment, Princeton 1975, and Virtue Commerce and History, Cambridge 1985.

[4] L. COLLEY, In Defiance of All Oligarchy. The Tory Party 1714-60, Cambridge 1982; see G. DE KREY, Political Radicalism in London after the Glorious Revolution, in: JMH 55 (1983), Fn 1.

[5] DE KREY, Political Radicalism, p. 590, my emphasis.

tempts at constituency control of Members of Parliament and the establishment of extra-parliamentary political organisations.[6]

It has plausibly been suggested that a direct line exists between tory jacobites such as Thomas Carte, who in the 1740s drew up a scheme "for the setting up in all Market towns or larger Parishes, clubs of Independent Electors", through James Burgh's idea of a representative national association mooted early in 1770s, and the County Association Movement of the 1780s through to the Society for Constitutional Information and John Jebb's national association, and to the undoubtedly subversive National Conventions of the 1790s.[7]

Property

Whereas radical is a category, which, for most of our period, is imposed by the historian, property, on the other hand, is a category which was not only familar, but central to historical actors' conceptions of themselves and of their political positions. It was embedded in their discourse and it is upon these discourses, their inter-relationships and their transformations that I want to focus.

Much of the revival of interest in eighteenth-century political thought has focussed on the identification of traditions or theorising, modes of discourse, or political "languages". However no simple identity can be established between any of these and radicalism, for radicalism had no clearly defined language of its own, whether nostalgic or progressive, it was structured and articulated within conventional and even conservative patterns of morality and language, as writers as far apart politically as J. C. D. Clarke and E. P. Thompson agree.[8] The argument here is that what makes radicals radical is

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[6] L. COLLEY, Eighteenth-Century Radicalism before Wilkes, in: Tr. Royal Historical Society, 5th series, 31 (1981), pp. 1-19.

[7] T. M. PARSSINEN, Association, Convention and Anti-Parliament in British Radical Politics, in: EHR 88 (1973), pp. 504-533.

[8] CLARK writes, in a chapter tellingly entitled "The survival of the Dynastic Idiom", 1688-1760, that [even] the divine right of kings "survived, embedded in the popular

not the language they use, but the way they use it, and I shall try to show how a variety of radicals sought to exploit the logic of various of these languages in surprising and subversive ways, and moreover how, in each case their conception of property was central to this subversion.

Indeed it has become important to show this, for we cannot otherwise explain the origins and development of the progressive radicalism that undoubtedly existed at the end of the eighteenth-century. We have been so impressed with demonstrating where individuals' ideas have come *from*, that we are in danger of losing sight of the need to show how and where they were going *too*. In a perhaps unfashionably whiggish way I want to attend not only to the sources of radicals' language, and to the way those sources imposed limitations on what could be said, but also to where those who used those languages thought they were going and how they sought to overcome those limitations.

The languages of Politics

At the start of the eighteenth century property occupies a central position within two influential and, at this stage, largely distinctive discourses, the discourse of natural jurisprudence and the discourse of republican virtue. John Pocock in particular has, at least until very recently, been most insistent on the distinctive nature of the two: "'virtue'" he writes, "cannot be satisfactorily reduced to the status of a right or assimilated to the vocabulary of jurisprudence." The reason given is that republican virtue saw the problem of political stability in terms of constructing circumstances in which the political natures of the citizens could be realised and supported. By contrast,

> the overwhelming preoccupation of the jurist is with that which can be distributed: with things and rights; if in *suum cuique* we read *suum* as an adjective, the unstated nouns are *res* and *ius*...nature may be

consciousness, in that great grey area where folklore and popular religion joined". English Society, 1688-1832, Cambridge 1985, p. 162. E. P. THOMPSON famously argued the inhibiting role played by customary morality even in riot situations in The moral economy of the English crowd in the eighteenth century, in: PaP 50 (1971), pp. 76-136.

> developed, but it cannot be distributed; you cannot distribute a *telos*, only a means to it; virtue cannot therefore *be reduced to matter of right*.[9]

The role of property in each tradition exemplifies this difference. In the language of republican virtue, property existed to assist in the promotion and sustaining of the citizen's virtue on which, alone, ultimately the political community could survive. Property guaranteed moral independence, which was a precondition for political virtue. Only those with the appropriate property, therefore, could participate in politics if the state was to survive. Radical moves within this language involved showing how a reformulated conception of property might still perform the required function of safeguarding virtue. Within the language of natural jurisprudence, however, property was not an instrument at all (at least, not an instrument of anything political) it was one, if not the actual reason for political association itself: as Locke famously put it "The great and *chief end* therefore, of Mens uniting into Commonwealths, and putting themselves under Government, *is the Preservation of their Property*."[10] Those we call radicals conceived their task to be the reformulation of what that property was that the society was supposed to be protecting. (One might add that those we call revolutionaries conceived their's to be to deny that it needed or merited protecting at all). Each position requires characterising further before looking at the radical's exploitation of it.

Republican Virtue

The British reception of the language of republicanism stresses two themes: the maintenance of the mixed or balanced constitution, and the stress on propertied independence as a guarantee of political independence or virtue. Political stability depended on achieving a virtuous circle in which balanced institutions engendered a civic morality capable of the self-denial required to

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[9] J. POCOCK, Virtue Rights and Manners. A model for historians of political thought, in: Virtue Commerce and History, pp. 41, 43.

[10] JOHN LOCKE, Two Treatises of Government, ed. P. LASLETT, Cambridge 1967, II, 124.

sustain the institutions. There was thus an intimate relationship between the two.

In institutional terms the English feudal estates of King, Lords and Commons could be identified with the idealised mixed constitution of classical and revived republicanism. Thus, although England was a monarchy, because it was a "mixed" regime with representative institutions balancing the office of the King, the by-now elaborate republican literature on the relationship between civic morality and institutional structures could be applied to England.[11]

Central to republican thinking on the "mixed constitution" was the notion that constitutional stability depended on sustaining the balance between the elements of the constitution, and this in turn depended on their mutual independence. This meant, in particular, guarding the independence of the Commons from the Crown, and the ultimate guarantee of this was the virtue and independence of electors in resisting bribery, and ensuring the Crown did not have the resources to effect it. In this civic tradition - and perhaps more widely - moral independence was seen as inseparable from economic independence.[12] The possession, on the part of both representatives and electors, of independant property was therefore a condition of the virtue of both and of the balance of the constitution. This balance was clearly threatened by the growth of government patronage and the accumulation of private economic wealth. Many thinkers looked nostalgically back from an increasingly commercialised eighteenth-century to an England populated by freeholding,

[11] The authorities cited by these thinkers were republican, but the actual term, because of the civil war and interregnum 1642-1660, had unfortunate connotations in England, and was not used by contemporaries, except to discredit opponents. In America too "republican" was a smear-word until the very eve of independence. W. P. ADAMS, Republicanism in Political Rhetoric before 1776, in: PSQ 85 (1970), pp. 397-421.

[12] In the Putney debates between the radical Levellers and Cromwell's army officers of 1647, Ireton argued and the Leveller Spokesman made the classic concession that the vote might be withheld from the poor "because they depend upon the will of other men and should be afraid to displease [them]." W. PETTY, in: A. S. P. WOODHOUSE, Puritanism and Liberty, London 1966, p. 83. No-one seriosuly suggests this entailed a full-blown commitment to the civic-republican analysis by either of these speakers. For a fuller discussion see I. W. HAMPSHER-MONK, Putney Property and Professor Macpherson, in: PolSt XXIV, 4 (1976), pp. 397-422.

longbow-wielding yeomen soldiers, straw-hatted and besmocked versions of Macchiavelli's own idealised republican citizens. Virtue was increasingly identified with independence from government, rather than from (rich) citizens.

On this theory then property was a central, if nevertheless highly mediated concept: just what kind of property was necessary to render a man independent, or his political institutions uncorrupt? Tories traditionally regarded land - or perhaps corporation membership (as in the case of London) as the crucial index of economic independence. However, the belief that not only the existing parliament, but the electorate too were irredeemably corrupted, logically led opposition thinkers to attempts to extend the electorate, either to those who would supposedly resist the corruption, or to make it so large that it would be too expensive to bribe.

Natural Rights discourse

The discourse of virtue promoted by the civic tradition saw political rights, and consequently property, as a function of the need to sustain those psychological-moral qualities necessary to maintain the state, or the balance of its constitution. By contrast the tradition of natural rights that emerged from the Leveller writings of the 1640s and Locke's revolutionary writing of the 1670s saw certain rights due to men as individuals by virtue of their right, and sometimes their duty to God, of self preservation. It was the duty of the state to safeguard these.[13] Somewhat ambivalently included in the first, radical natural rights theories was the right to property; often characterised, as it was by Locke, as prepolitical, personal and subjective.[14] In the

[13] This contrasted with an earlier tradition stemming from Grotius,and, in England, Selden and Hobbes which regarded the virtually wholesale transfer of natural rights to the polity, as a means of explaining the possibility of political absolutism. This is well explained in TUCK, Natural Rights Theories, Cambridge 1979, pp. 154-155, although in my view, he underestimates the extent to which the Levellers anticipated Locke's position.

[14] The Levellers normally responded to claims that their natural rights arguments would undermine property - and so "level" all estates - by pointing out that property was guaranteed by the law of God in the Ten Commandments. But a late tract al-

context of incipient Stuart absolutism the assertion of such personal right was indeed radical. The feudal and patriarchal assumption was that since all right, including all property right, derived from the King, he could revoke such rights at will, and the denial of this was a cornerstone of the works of Sidney (for which he was executed), Locke and Tyrrell. But in the context of the Hanoverian settlement the inviolability of property could, by contrast, be invoked to resist even quite moderate reforms, such as the redistribution of unpopulated parliamentary constituencies - themselves commonly defended as private property by the franchise-holders.

Locke's theory of property, derived a right to private property from the labour which individuals exerted on that which was naturally common to all. Such an argument was needed on the one hand against the claims of absolutists that no individual natural right to property existed. But it was also needed against radical communards. At least, it was devised by Locke to meet the unhelpful claims of Grotius and Pufendorff, gleefully taken up as a *reductio ad absurdum* by Filmer, that only universal consent could have established private right out of the common. Locke was clearly aware of the need to show, not only "how men might come to have a property in several parts of that which God gave to men in common"[15] but also that more complex and unequal forms of property could be justified by their greater productivity, under the general rubric of the law of nature that "man is to be preserved." Critics of Locke as a bourgeois apologist have stressed, following Macpherson, how his defence of economic development and aggregate increases in productivity, ignored or lost sight of the individual's right to labour and subsistence on which the original right to property was based. But it is no longer clear either that this was Locke's intention, or that it was how he was read. The distinctive role accorded to labour in the *Second Treatise*

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lowed that property could legitimately be communalised by common consent of all members of a community. A Manifestation...J. LILBURNE et al. (1649).

[15] JOHN LOCKE, Two Treatises of Government, p. 304. Filmer's challenge was to argue that defenders of private propeerty had either to accept communal ownership of all property, or demonstrate that a unanimous agreement to partition what had been given to all in common had taken place. See Sir ROBERT FILMER, Patriarcha and other Political Works, ed. P. LASLETT, Oxford 1949, pp. 63-66.

may, it has been suggested, have been intended to carry an important political message to labourers which was more than rhetorical.[16]

Although both Locke's radicalism and his influence have at times in the past thirty years been called into question, recent scholarship now suggests not only that Locke moved in very radical circles indeed, but that as well as becoming a cited if unread establishment figure, his actual text also circulated, edited in popular and extremely demotic form, in some of the most popular pamphlets of the century.[17] Locke indeed, far from being the definitive spokesman for the emerging Whig establishment, can be read as something of a radical trojan horse.

In the aftermath of the French Revolution this aspect of his thought was bitterly pointed out by several conservatives. For example the Rev. John Bowles complained that both the French Revolution and its would be imitators in Great Britain were the inevitable consequences of

> A sect of philosophers with Mr Locke at their head, who inculcated these principles [of natural right] as a system...unsettled the minds of men respecting their social duties, and their obligations of respect, submission and allegiance by teaching them that the whole frame of society originated in the individual exercise of natural and unalienable rights.[18]

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[16] R. ASHCRAFT, Revolutionary Politics and Locke's Two Treatises of Government, Princeton, N.J. 1986, pp. 257-272.

[17] Ashraft's work has shown just how radical Locke's position was in the 1670s. See R. ASHCRAFT, Revolutionary politics and Locke's Two Treatises of Government, in: Political Theory VII (1980), and his magisterial book of the same name (Princeton 1986). ASHCRAFT and M. GOLDSMITH have also shown that one of the most reprinted pamphlets of the century consisted of substantial excerpts from the Second Treatise and other revolution pamphlets: Locke, Revolution Principles and the formation of Whig Ideology, in: HistJ 26, 4 (1983).

[18] JOHN BOWLES, The Retrospect...tracts published at various period of the war including some reflections on the influence of Mr. Locke's theories of Government in producing that combination of anarchy and oppression, which has assumed the name of jacobinism. (1798), pp. 300-301. See also JOHN WHITAKER, B.D., The Real Origin of Government, London 1795, which reasserts a Filmerian, Adamite Patriachalism against the heathen John Locke and the "forgers of such fantastical polities based on the self-contradictory notion of consent (p. 17 and ff.). For a recent discussion based on religous responses to the radicalism of the 1790s see R. W. HOLE, Politics and the Pulpit, Cambridge 1989.

As such responses suggest, the theory of natural rights, including that to property, was an ambivalent ally of the establishment, and as we shall see, its ambivalence was to be fully exposed in the radicals' cause.

However, before we move to a consideration of the radicals' treatment of these ideas, I want to mention a third language in which the concept of property became embedded, that of philosophical psychology.

Philosophical Psychology

The emergence of a reflective, empiricist philosophy pioneered by Locke, and developed in the writings of Hutcheson and more especially Hume, enabled a different account of the nature of property to be developed. This account concerned itself with how the human mind came to form a conception of property and sustain it as an institution.

How we come to have rules of property

In Hume's account, the existence of rules of property is explained as a consequence of certain natural facts about human nature and the world. We have desires that exceed what nature makes freely available to each of us, and human benevolence, which might otherwise make up the shortfall, is limited. Enjoyment of possessions is thereby rendered very unstable,[19] which is a universally undesirable state of affairs. A general rule prescribing stable possession is simply an emergent expedient for overcoming this disadvantage. It was not a rational expedient, devised, *ex ante*, rather its origin could be explained by any extended experience of, and reflection on, the benefits of stable possession. Both the origins of such a rule, therefore, and the justification for it, could be explained in virtue of its utility, or appeal to our self-interest, although some further explanation was necessary to show how the

[19] DAVID HUME, Treatise of Human Nature, ed. Selby-Bigge, Oxford 1888, Bk III, p. 495.

mind came to regard some, and not other circumstances as giving rise to property rights.

How we come to assign property rights as we do

Hume's account of these circumstances stresses that although utility may play a role these "are principally fix'd by the imagination, or the more frivolous properties of our thought."[20] The relationship of property has its origin - like so much else in Hume - in the ubiquitous mental principle of association. Repeatedly seeing a particular object in connection with a particular person would eventually come to raise expectations of seeing it with them, which, reenforced by our own desire to keep what we own, could, on reflection, be formalised into the rule that people should be secure in the possession of those things they had, which is the first principle of property. Further conventions relating to the acquisition of property are explained by variations of the same or similar mental operations.

(1) The claim of occupation, in the sense of first possession, lies simply in the (psychological) fact that the first possession somehow "engages the attention most".[21] In general, occupancy or possession involves control or power over something, the relation between the owner and object is one of cause to effect. This kind of association is the one that operates here. Hume is particularly dismissive of Locke's theory of "mixing our labour", showing that it reduces to a number of different arguments. We do not, except figuratively "mix our labour", rather we alter something by our labour. This establishes a relation in the mind between the thing and the person, sufficient, on the principle of cause and effect, to generate the idea of property. Mere occupancy does not involve labour; and titles generated by the labour of others belonging to me (as in Locke's famous "Grass my Horse has bit; the Turfs my Servant has cut:" passage[22]) are really examples of accession. This dismissive attitude to Locke reveals the gulf that had opened up between the

[20] Treatise III, p. 504.

[21] Treatise III, p. 505.

[22] LOCKE, Second Treatise, 28.

naturalism of Hume, and Locke's basic assumption of human personality as *essentially* the locus of (theologically derived) rights and duties.

Similar psychological explanations account for (2) accession: the fruits of trees, the young of animals we possess and the work of slaves, anything produced by what is already ours, becomes ours because the offspring are associated with their origins in the imagination.[23]

Finally, (3) succession or inheritance derives again from the nearness of the relationship. On the death of the proprietor, the mind, which already associates the property indirectly with the offspring via the dead parent "is apt to connect them still further by the relation of property".[24] This relationship is reenforced by what Hume claims is a utilitarian rule derived from an observable fact, namely that "men's possessions shou'd pass to those, who are dearest to them, in order to render them more industrious and frugal."[25]

Hume does not pretend that all and every existing rule of property can be shown to be *the* one that best fits the operation of the mind, let alone to be best justified by utility. What he argues is that they can all be shown to have *some* basis in associationist psychology - and in this way their origin can be explained independently of rational invention. Moreover, since any rule is better than none, and there are rarely non- experiential grounds for demonstrating the superiority of one over another, any rule embodied in practice and habit is to be preferred to another not so embodied. Although this is a conservative conclusion, it was a tenuous and even "fantastic" basis on which to put property rights.[26] Moreover, basing all property in the operations of the mind had political implications. It was still commonplace in the eighteenth century to regard rights in land as somehow different from, and

[23] Where such objects are "connected together in the imagination, they are apt to be put togeher on the same footing, and are commonly suppos'd to be endow'd with the same qualities. We readily pass from the one to the other, and make no diffeence between them." HUME, Treatise III, p. 509.

[24] Treatise III, p. 513.

[25] Treatise III, p. 511.

[26] Hume's denial that descriptions (of origins or of anything else) could never produce obligations, it is quite clear that Hume regarded his account as, at least in part, a vindication, as well as an explanation of property rights. The famous denial is at Treatise III, p. 469.

(particularly for Tories) superior to, rights in other kinds of property. Landed property was somehow more real - as Doctor Johnson had shown, you could kick it! Hume's argument about the nature of property was anti-partisan in that it made landed property, as much as property in money or shares, alike a consequence of the associative operations of the mind.[27] Yet this very equalisation of the status of different kinds of property favoured - albeit for scientific rather than vulgar or partisan reasons - the modern Whig view over that of the more nostalgic Tories.

Resting property right on the shaky grounds of convention and the "frivolous" qualities of human psychology, could paradoxically, provide ammunition for the conservative. As Pitt, for one, urged: the adventitious and conventional nature of private property could be read as implying its fragility, rendering it even more important for politicians to be assiduous in its defence.

Radical responses to the prevailing paradigms: The impact of Scottish historical sociology on the three patterns of argument and their implications for radicals.

The development of the Scottish school of historical sociology, and in particular its sociology of moral belief and knowledge, had wide-ranging implications for each of these views, of the way in which political life was seen to be structured, and the role of property within it. This historical sociology drew on elements of each of our three languages and to some extent synthesised them into a single whole.

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[27] The notion that certain kinds of wealth - especially since the advent of credit - were based on fantasy, or men's imaginations, had a well established literary pedigree before Hume daringly enshrined it in philosophy. Defoe had personified Credit as Fortuna - the fickle pagan goddess - who was most demanding "if you will entertain this Virgin, you must act apon nice principles of Honour, and Justice; you must preserve Sacred all the Foundations, and build regular structures upon them; you must answer all Demands, with respect to the solemnity and Value of the Engagement; with respect to Justice, and Honour; and without any respect to Parties - If this should not be observed, Credit will not come; No, tho' the Queen should call; tho' the Parliament should call, or tho' the whole Nation should call". DANIEL DEFOE, A Review vol.vii, no.116, p. 463, cited J. G. A. POCOCK, The Machiavellian Moment , p. 455.

From republicanism they drew on the notion that morality is a product of politico-economic circumstance, and changed in response to that circumstance; although many of them (not all) developed a much more optimistic view of the process of historical change than the cycle of decay implicit in the etiologies of constitutional change of Polybius and Machiavelli. From natural law they took the notion that successful politics must be based on an understanding of regularities and constancies discoverable in human nature; although unlike the case with traditional natural law theories, these regularities were to be empirically established and not based on some moral deontology.[28] The tradition of philosophical psychology was deployed as an intermediate level theory to identify and explain how (and why) our mental processes produced the moral responses they did from the politico-economic experiences to which we were exposed. Thus, for example, the increased taste and sophistication of the commercial age was seen as a response to the more lively intellect resulting from the greater demands made on our faculties by trade and manufacture, compared with agriculture.[29]

The chief accomplishment of this historical sociology, associated primarily with the name of Adam Smith was of course to develop a theory about the success of a wealthy, even a luxurious, commercial society. Wealth, luxury and commerce were developments to which each of our traditions originally expressed, at the very least, a considerable degree of equivocation. It was on this equivocation that radicals often drew. The development of an increasingly inegalitarian commercial and financially sophisticated economy, often with the collusion or involvement of government office-holders, naturally led those who were excluded from government and its benefits, or who were thelosers in the growth of inequality, to be critical of the process. To the extent that radicals accepted any of these languages - and scholars are agreed

[28] The pioneer is Hume, whose empiricism goes well beyond that of Hutcheson whom he criticises for retaining a doctrine of "final causes". Hume sought to "anatomise" moral belief in purely empirical terms. Not to "paint" it in such a way as to win the reader over to it. See his exchange of letters to Hutcheson, The Letters of David Hume, ed. J. Y. T. GREIG, Oxford 1932, vol 1, pp. 33, 40, and the discussion in D. FORBES, Hume's Philosophical Politics, Cambridge 1975, Chapter 2, A modern theory of Natural Law.

[29] See, in particular Hume's Essays, Moral, Political and Literary, Oxford 1963, Of Refinement in the Arts, and Of Commerce.

that this was considerable - and to the extent that developments in these languages rendered them supportive of the modern economy, radicals had to accommodate, or provide grounds for rejecting these implications. But in doing so they tended to revert to earlier formulations of these languages, and in doing so invariably seemed trapped into a nostalgic pursuit of a more primitive, and bygone era.

Republicanism's problem was that the classic ideal of propertied independence was land tenure, a form of property increasingly undermined by the new financial, commercial and manufacturing economy. Were financiers, stock-owners, creditors or wage-earners "independent"? Secondly, the ideal of the balanced constitution, relied, as we have seen, on the independence of the House of Commons from the executive. And the independence of the electorate was crucial in maintaining the independence of the Commons. The growth of government and military operations led to the employment of an increasing number of excisemen to collect for, civil servants to administer to, and contractors to supply government needs. Such people, being in the employ of the government were not classically "independent", yet they were politically influential, and it was believed they could be manipulated by their paymasters to the point of threatening the independence of the Commons. Both taxes on external commerce and imperial expansion posed threats to the independence of the Commons because it enabled the government to raise money no longer dependent - as was the old land tax - on popular grant.[30]

Far worse, in England the sophistication and government involvement in the credit market seemed to hold out the threat not only of sources of revenue completely irresponsible of popular control but of ultimate national bankruptcy.[31]

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[30] This was no mere opposition canard - it was true. During theeighteenth century, first excise, and then customs overtook and far outstripped land tax as a source of government revenue. See BREWER, The Sinews of Power, pp. 96-97.

[31] Even the normally phlegmatic Hume wrote that "It would scarcely be more imprudent to give a prodigal son a credit in every banker's shop in London, than to empower a statesman to draw bills in this manner, upon posterity." Of Public Credit, in: HUME, Essays.

In the early 1780s the independence of the House of Commons was widely believed to be under threat from the influence of government. A group of reformers, organised initially around "County Meetings", and in the 1790s as the "Society of the Friends of the People", saw the problem in precisely this way. They believed that the British Constitution was a constitutional balance between the Crown the Lords and the Commons. The Lords and Commons

> If they acted without controul would form either a despotic monarchy, or a dangerous Oligarchy,...the wisdom of our ancestors hath contrived that these authorities be rendered beneficial in the introduction of a third estate, distinct from, and a check upon the other two branches of the legislature; created by representing, and responsible to, the people themselves.[32]

The problem was that the existing electorate were manifestly failing to maintain the necessary independence of the Commons. The web of government had increased the number of those "employed in a subordinate capacity...influenced by a corrupt spirit, which tempts them to prefer the particular interests of that class or profession to which they belong to the general welfare of the country."[33] Widening the franchise was an obvious countermeasure. An enlarged electorate made the corruptor's job more difficult, or at the very least more expensive, as even Edmund Burke acknowledged in 1769-70. Extension of the franchise here was not, of course, an appeal to some prepolitical individual right. It was a claim about how property needed to be construed more widely in order for it to perform its traditional role in safeguarding the independence and therefore moral autonomy of the electorate and, in consequence, the House of Commons. But extending the franchise brought in many individuals who were not, in any traditional sense "independent". The reformers compared themselves unfavourably with America which possessed enough land to allow to everyone those "simple manners and a general equality of property admitted to a Republican form of Government".[34] By contrast England was an old,

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[32] Petition of the Friends of the People, 1792, in: C. WYVILL, Political Papers, 6 vols., London, 1794-1804, vol. III, pp. 269-270.

[33] WYVILL: A defence of Dr Price and the Reformers of England, in: Political Papers, vol. III (appendix), p. 25-26.

[34] Thoughts on the Causes of the Present Discontents, Works, ed. BOHN, 6 vols., London 1886, vol. 1, pp. 368-369.

unequal, and corrupt society, and "the evil habits which are the consequences of an extremely unequal distribution of property form the principal objection to Universal Suffrage." If this were to be instituted it would undoubtedly "be ill exercised by the ignorant and unprincipled part of the poor, it would be detested by the proud and timorous part of the rich; and it would at last be surrendered by the profligate corruption of the former, or forcibly suppressed by the no-less profligate ambition of the latter."[35]

The language of republican virtue placed its proponents in an impossible series of dilemmas. Because they believed virtue required property-ownership, the pursuit of a virtuous, independent electorate could not go so far as enfranchising the unpropertied. Because it rested on the propertied neither could it pursue the alternative, of distributing property to the unenfranchised. Not only would the result be social panic, the abrogation of property-rights would itself undermine the independence which property was supposed to confer. On the one hand property was the guarantee of virtuous independence, and had itself to be sacrosanct; on the other hand it was the very distribution of property that was itself destroying independence, political virtue, and the separation of the Commons from the Crown.[36]

The Society of the Friends of the People eventually advocated extending the franchise to "Householders not receiving alms...[which] manifests a due regard to property united with the necessary security to freedom."[37] The reasons they gave for choosing household property as the basis of citizenship were revealing of the new role for citizens in the changed economic circumstances:

> He is necessarily the master, and probably the father of a family. [Has] credit and respect to maintain, [and has] given hostages to Society...He is the natural guardian and virtual Representative not only of his family and servants, but of all those who depend on him for support, protection or employment. Such a situation deserves confidence, and should be made respectable, that all men may be

[35] WYVILL, A Defence, p. 35.

[36] See the discussion of the Society's problems in my: Civic Humanism and Parliamentary Reform, in: Journal of British Studies, esp. pp. 84-86.

[37] WYVILL, A Letter, Papers, IV, p. 562, and The Plan for a Reform of the Election of the House of Commons in Papers, V, p. xix.

> prompted and encouraged to rise to it. The relations and duties that belong to it, are antecedant to positive institutions and constitute at once the basis and security of civil society.[38]

Both the new citizen's context and his property were primarily domestic, but he was also an employer and needed creditworthyness, a crucial feature of the new economy. These citizens virtue was guaranteed not by their autonomy, but through their interest in their family and their dependence on a good financial reputation. Together these were enough to ensure a commitment to what was after all a credit based polity. Moreover, it was a position sufficiently close to universal manhood suffrage that "there was no condition of life in which it may not be acquired by labour, by industry or by talents." No-one could complain of being excluded "for whom a place is reserved, which he may occupy at any time on easy terms".[39]

The language of Natural Rights

In the later-eighteenth century, natural rights arguments, although still a prevalent and evidently effective form of radical rhetoric, had become vulnerable to problems which arose from the increasingly accepted story of the historical sociologists. The emergence of a history of political economy tied to a historical sociology of knowledge and morality called into question both the possibility of trans-historical "natural" rights and their relationship to a civilised, i.e. commercial society. This was because natural jurisprudence presupposed ultimately universal moral standards by which social institutions could be measured, whereas the Scottish thinkers, because they saw moral belief as a response to changes in the forms of economic activity, ultimately relativised and historicised moral standards.[40]

Accepting the new history of political economy raised the problem of steering a course between primitivism and irrelevance. For if natural rights

[38] The Plan for a Reform, WYVILL, Papers, V, p. xx.

[39] The Plan, WYVILL, Papers, V, p. xix.

[40] The discussion which brings out the issues most clearly is John Dunn, From Applied Theology to Social Analysis, in: Wealth and Virtue, The Shaping of Political Economy in the Scottish Enlightment, ed. I. HONT/M. IGNATIEF, Cambridge 1983.

were identified with some particular set of rights obtaining in - or worse still, constitutive of - a primitive or "rude" pre-social state, those who advocated such rights were open to the criticism that they sought a return to a society which was also culturally and economically aboriginal, and if they denied this, that the rights they claimed were inoperable in an advanced society.

The radical pamphleteer, Thomas Spence, once told the story of how, in 1770 he was gathering wild nuts in the Duke of Portland's woods when he was stopped by a forester and accused of trespassing and stealing the Duke's nuts. Spence replied that he supposed the squirrels were allowed to gather nuts and he was not inferior to the squirrels. When the gamekeeper cautioned him further Spence pointed out that since the Duke had not laboured on, or cultivated the woods he had no better claim to their produce than anyone else, in nature he said, "the rule is first come, first served, so the Duke of Portland must look sharp if he wants any nuts."[41] This amusing piece of rural street-theatre illustrates both the radical potential of Locke's labour theory of value, and the potentially primitivist limitations which it ran up against when used in this way. For a general return to such a concept of property rights implied a gathering economy which was primitivist, and Spence's claim that all individuals (men and women) have an equal "continual and inalienable" right to the land itself (to be administered collectively by the parish) and to the product of their own labour was only one stage on from that. It was quite self-consciously aimed at supporting an agrarian peasant subsistence economy.[42] The reassertion of natural right in this form would return all to a

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[41] Cited in O. D. RUDKIN, Thomas Spence and his Connections, London 1927; repr. N.Y. 1966. Further on Spence see T. M. PARSSINEN, Thomas Spence and the Spenceans: A Study of Revolutionary Utopianism in the England of George III, Brandeis University Ph.D., 1968; P. M. ASHRAF, The Life and Times of Thomas Spence, Newcastle 1983; Pig's Meat, the selected writings of Thomas Spence, radical and pioneer land reformer, ed. and intr. I. G. GALLOP, Nottingham 1982; H. T. DICKINSON, The Political Works of Thomas Spence, Newcastle 1982.

[42] The right is reiterated throughout Spence's career. See his first publication, The Rights of Man (1775) reprinted and revised many times by Spence, and "The Constitution of Spenconia" (1803) Art 3. "All human beings are equal by nature and before the law, and have a continual and inalienable property in the Earth, and its natural productions." pp. 59-60, 166, in: GALLOP. In the preface to The Rights of Infants (1797) Spence takes Paine's Agrarian Justice to task for accepting a "poor, beggarly stipend...in lieu of our lordly and just pretensions to the soil of our birth." GALLOP, p. 112.

state of Spartan simplicity.[43] On the other hand if it was acknowledged that natural rights were given up or exchanged in the course of history, or developed, or even identified with certain institutions, such as conventional property rights (as Locke's argument was taken to assert) then the reassertion of rights in their "natural", primitive form was an irrelevance.[44]

It is with this question that Edmund Burke faces the radical. "How", he had asked in his *Reflections*..."can any man claim, under the conventions of civil society, rights which do not so much as suppose its existence? Rights which are absolutely repugnant to it?"[45] Far from denying natural rights, Burke insists with devastating effect on their historicity: like Hobbes he argues that it is only the utter alienation of natural rights that can establish society and government, and not the Lockean conditional entrusting of them that sets limits to government.[46] The successfull reassertion of natural rights threw men back into that "state of rude nature (where) there is no such thing as a

[43] Thomas Spence's ideal society was based on peasant-proprietor cultivation, which, he claimed could support far more than was thought if people obeyed Lockean provisos about appropriation. When the population of the island eventually outstrips available land, so that the towns fill up with "Merchants, and Robinson Crusoe's [sic], Jack-of-all-trade's Disciples, the Mechanics, etc.", then the mainland opposite is colonised and settled with similar sized plots: "as much as just to serve themselves and Families without wasting it , and leaving the Rest for others." See the History of Crusonia, reprinted in Essays in Honour of W. Gallacher, E. Berlin 1966, pp. 302-303.

[44] Burke, following Selden and Hobbes, argued that natural rights were given up on entry to society, and there on ceased to be relevant [see following note]. Rousseau of course argues that rights are transformed in the course of social development, and Locke's argument was widely taken to mean that natural property rights were transformed into positive property right. That he may not have meant this, as is argued by J. TULLY, A Discourse on Property, John Locke and his Adversaries Cambridge 1980 - an intepretation reenforced by the much more radical context that has been provided for reading Locke by R. ASHCRAFT, Revolutionary Politics and Locke's Two Treatises of Government, Princeton 1986. This is, of course strictly irrelevant to the question of how he was read by the orthodox in the 1790s.

[45] EDMUND BURKE, Works of the Rt. Hon. Edmund Burke, VI vols. London, Bohns Standard Library Edition 1880, vol II, p. 332.

[46] Historically, we have tended to regard Lockean natural rights as the paradigm; in fact, as Richard Tuck has most recently shown, Locke is distinctly anomolous. Prior to him, and with the exception of the Levellers, natural right theory was used to explain how government gained its authority, not how citizens might retain some. See R. TUCK, Natural Rights Theories, Cambridge 1979. Burke is in this tradition following Selden (whom he cites), and Hobbes (with whom he expresses familiarity: "old Hobbes" in arguing that natural rights are given up on entering society, and are thereon irrelevant).

people." When this happens, all social ties and civilised institutions are destroyed:

> they are a number of loose individuals, and nothing more...all is to begin again. Alas! they little know how many a weary step is to be taken before they can form themselves into a mass which has a true, politic personality.[47]

Burke identified a crucial weakness in any radical natural rights argument which took the new history of moral institutions seriously, when he insisted that men could not at once enjoy the rights of a natural, primitive, and of a civilised, developed state. The problem of the relationship between natural right and history had become a crucial one for all thinkers wishing to retain that mode of argument.

Perhaps the most extended theoretical treatment of this issue in eighteenth century Britain, prior to the 1790s, was that of William Ogilvie, Professor at the University of Aberdeen. His *Essay on the Right of Property in Land* was in no sense a radicals' tract, although it provided plenty of ammunition for them. It was "a free and speculative disquisition" directed to "the attention of learned, the ingenious and the friends of all mankind." [48] Ogilvie's argument was that there was, and remained, even in society, under "Natural Law, a right to an equal share with others in the land."[49] This right was superior to, and to be sharply distinguished from, any conventional property rights which arose as a result of social agreements, explicit or otherwise. Ogilvie's authority for this is Locke, whose original proviso that appropriated land must not be held uncultivated, justifies, he claims, the more extended claim that land cannot at any time justly remain private and under-cultivated, whilst there are those without it.[50] Each state ought to guarantee to every citizen "as much as would fall to his share in an equal

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[47] BURKE, An Appeal from the New to the Old Whigs, in: Works, vol. III, pp. 95, 82.

[48] OGILVIE, p. 30, Introduction, in: The Pioneers of Land Reform, ed. M. BEER, London 1920.

[49] OGILVIE, pp. 38,3; 41,9.

[50] This interestingly fits Jim Tully's interpretation of Locke's theory of property as intending to sustain, into the civil and developed condition of mankind, the spirit of the natural law provisos on appropriation that obtained in the state of nature. TULLY, A Discourse on Property, esp. ch. 7.

partition of the territory of the state among the citizens."[51] This, plus whatever rights the value his own labour creates in that or in other property, is strictly his. But the right to any further land itself is imperfect, and subject to community control.[52] In fact, as he recognised, it was only "rude" primitive states that guarantee this through agrarian laws. As states advanced and became more sophisticated the rights accumulating from others' labour were given greater force than those of occupancy, whereas good policy consisted in balancing these two principles.[53] Ogilvie, despite his awareness of the various problems this raises, claims that he seeks if possible, to combine natural right and some form of utility ("the best interests of the greatest number") and to unite the essential qualities of a rude state, with the order, refinements, and accommodations of cultivated ages.[54]

But if a radical at all, Ogilvie is an economically nostalgic one. He is convinced that the claim "that every field should be cultivated by its proprietor is most favourable to agriculture and cultivation."[55] Moreover, agricultural work is most conducive to virtue: "men employed in cultivating the soil, if suffered to enjoy a reasonable independence, and a just share of the produce of their toil, are of simpler manners, and more honest, virtuous dispositions, than any other class of men...Their industry...excludes idleness without imposing excessive drudgery, and its reward consists in abundance of necessary accommodations without luxury and refinement.[56] The exclusion of luxury and refinement, one suspects, was, in this Scotsman's view, no bad thing. Ogilvie's radicalism was backward looking, towards the subsistence farmer, towards cultural and economic simplicity and towards an austere notion of virtue.

It is hard to see how things could be otherwise as long as the natural right to property was taken literally to mean a share in the soil equal to what we would have had in a literal state of nature: at the start, as it were, of econ-

[51] OGILVIE, p. 44,13.
[52] OGILVIE, p. 44.
[53] OGILVIE, p. 42, 9-19.
[54] OGILVIE, natural right and utility, p. 52, 23; rude state and refinement, p. 77,43.
[55] Ogilvie, p. 54, 26.
[56] Ogilvie, pp. 49-50.

omic history. But in the last decade of the century two radicals began to consider how to apply this criterion in a more sophisticated way, a way which took into account, and indeed embraced, the notion of economic development. They were John Thelwall and Thomas Paine. Thomas Paine is well known as a radical pamphleteer. Thelwall less well known, but he was a leading figure in the London Corresponding Society of the 1790s, and a defendant in the famous treason trials of 1794.

Natural rights were not, for Thelwall, located in a primitive and individualistic, nor even a golden, age:

> the world is known to us only as a populous world and man as a gregarious animal. How he originated, and what was his solitary condition (if solitary it ever was) are questions that may amuse our fancy, or excercise our faith; but with political enquiry they have nothing to do.

Like Locke, he regards what actually took place in history as morally equivocal: "precedents of wrong cannot alter the nature of right. It is more important to discover what the objects of association ought to have been than to be informed what they were."[57] The idea of natural right could nevertheless be used, he thought, to distinguish in our minds between what the individual should possess in strict justice, and what has been conferred, or abrogated by civil society.

Like Paine, he denies that entry into society must involve any sacrifice of natural rights, rather, society should guarantee pre-existing rights. Whilst society may establish conventional rights, these can never overcome, and must be compatible with, natural rights. Thelwall's account allows both labour and first occupancy as legitimate claims: The earth is: "the unquestioned right of the individual whose fortune or whose assiduity secures the first possession"; but all further property rights except those emerging from labour, remain, for Thelwall, purely conventional, susceptible of revocation

[57] The Rights of Nature against the Usurpations of Establishments in a Series of Letters to the Right Honourable Edmund Burke, London 1796, (Letters II-IV pagination continuous), Letter II, pp. 33-34. On Thelwall see my John Thelwall and the Eighteenth-Century Radical Response to Political Economy, in: HistJ 34 (1991), pp. 1-20.

if they clash with natural rights. The conventional modification of natural right is permissable only on the premise that it benefits all existing and future potential rightsholders![58]

Thelwall goes on to distinguish between productive and consumable property and denies that any property right can bestow a monopoly of a productive resource. To breed a new strain of sheep is to acquire an indefeasible right to it, but to do so from the last surviving individual of a natural species would not.[59] But to monopolise a piece of land (at least where land has become scarce) is equivalent to monopolising a whole species of wild animal, and to do this is to "preclude others from their common right of exerting their faculties for their own advantage, upon an important part of the gifts of nature". So although "property is the first fruit of useful industry, the means of being usefully industrious are the common right of all."[60]

Potentially monopolistic appropriations of naturally productive resources were illegitimate because they invaded subsequent users' natural right. Thelwall takes on board the problem that Locke had shelved, the problem of what happens when there is not, in any realistic sense, "enough and as good left for others".

However, despite these strictures, Thelwall acknowledges the benefits of economic development, siding with Hume and Smith rather than with Ogilvie and Spence, the agrarian and nostalgic civic radicals, and even the equivocal Godwin, on the issue of economic modernisation.[61] He accepts the Scots' story not only of the economic benefits but of the intellectually and socially stimulating effects of a commercial society which had, since Hume,

[58] This interestingly anticipates, although in a stronger form, the argument advanced by John Rawls, that the most just rule of distribution is that which "maximises the minimum" holding. J. RAWLS, A Theory of Justice, Oxford/Cambridge, Mass. 1971, pp. 152ff.

[59] Rights of Nature III, p. 54.

[60] Rights of Man III, p. 55. Thelwall here may have drawn on Ogilvie, who argued precisely Thelwall's distinction between the rights to the natural and value-added value of land, and, like him, denied outright property right in the former.

[61] See Rights of Nature III, p. 5: "The simplest condition...out of which every other states has arisen, by a series of progressive innovations...".

become a commonplace of the sociology of opinion and belief which political economy supported.[62] Nevertheless the speculative economic history which Thelwall attached to this picture shows an imaginitive attempt to integrate the natural rights argument with the historical insights of the Scots.[63]

To progress past the primitive pastoral economy required the cultivation of the soil, the problem of establishing a title to the results of one's labour commonly resulted in its private possession. Nevertheless, Thelwall claims the property right must originally have lain "in the cultivation", and not in the earth. The natural right was a right to exercise one's labour usefully, and the right to a piece of land was a contingent safeguard of this. The existence of uncultivated land available to any surplus population must have minimised inequalities. We may feel nostalgia for such a state of affairs, but any desire to return to it would be totally impractical and undesirable. Thelwall accepted Burke's opposition between nature and civility, between the primitive and the cultivated, a revolution on the principle of a literal natural right would merely "transfer all property from the proud and the polished, the debauched effeminate and luxurious, to the brutal, the ignorant and the ferocious."[64]

The model of agrarian simplicity could not be used as the basis of a programme of reform without a return to the barbarism of Tacitus' Germans (about whom, I am afraid, Thelwall does not mince his words), but it could nevertheless help men to understand the differences between right and usurpation. To accomplish this Thelwall annexed to his Tacitean state of nature a critical adaptation of Adam Smith's account of the derivation of rent.

In the *Wealth of Nations* Smith argued that although in the "original state of things" (i.e. before the private ownership of land or accumulation of capital)

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[62] See especially the essay "Of Refinement in the Arts", David Hume, Essays, pp. 275ff.

[63] Thelwall endorses the "stagial theory" of social evolution advanced by the Scottish school, together with some of the political implications those thinkers had drawn from it. See Rights of Nature III, pp. 52ff., esp. p. 57: [in pastoral societies] "the power of the chieftan expires with the campaign: and all the habits of pastoral life are inimical to the usurpations of authority".

[64] Rights of Nature III, pp. 70-71.

"the whole produce of labour belongs to the labourer", once land was privately owned, and capital needed to equip labour and sustain it until harvest, two deductions, the rent of land and the return on stock, are made from the labourer's wages.[65] Smith advances this account primarily as a way of showing how the various returns of wages, rent and profit are derived from an aggregate social product; but his critical remarks about the landlords, who love, like other men (but are better situated than them) "to reap where they never sowed" provides a cue for a more radical critique of the process of economic development which Thelwall eagerly takes up.

Combining Locke and Smith, Thelwall emphasises that the labourer's share has now been invaded. Moreover, ironically it is through the very efforts of labour that the exercise of labour's own "natural" title to property has become impossible:

> The whole condition of the universe has been materially altered by cultivation. That cultivation has been conducted by the labour and diligence of the mass of mankind... Whatever were the worth of these rude gifts and accumulations the very frame and constitution of society has robbed him of them. He comes from the hand of nature into the state of cultivation; and finds the world of nature destroyed by the world of art.[66]

The individual's natural right of access to the means of useful labour is effectively denied him by the very same progress brought about by his forebears' labours. So, although Thelwall acknowledges that the permanent possession of land has benefitted mankind collectively through allowing increased production, he denies that it follows from this either that natural right has been satisfied, or that they must be relinquished along with the natural economy. Instead he explores a way of projecting natural rights claims into the modern economy.[67] Since there is a natural right to labour, and the right to private property is an adventitious or conventional right, the

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[65] ADAM SMITH, The Wealth of Nations, Oxford 1976, I, vii, pp. 82-83, 1-9, and see I, vi, pp. 4 & 7.

[66] Rights of Nature III, pp. 75, 78.

[67] Rights of Nature III, pp. 76-77: "If labour has its adequate reward, I maintain that the permanent possession of land is morally and politically expedient; because it assists production, without preventing distribution; and thereby, benefits the whole human race."

latter can only be justified by an advantage accruing to all (natural) rights-holders whose position might otherwise be disadvantaged. The claim that the abrogation of primitive natural right is justified by greater aggregate production, is allowable only under the condition that no individual is worse off than they otherwise would have been. The justice of this proviso is of course recognised by Locke in his famous if somewhat casual and contentious assertion that a King amongst the primitive American Indians "feeds, lodges and is clad worse than a day Labourer in England."[68] By contrast, Thelwall remarks that the "condition of the naked savage in America appears by far more tolerable that that of a large proportion at least, of the labouring classes in this happy, flourishing, cultivated island."[69] In consequence, "increased production is but an insulting mockery and aggravates the evils it should remove".[70]

Like Locke, Thelwall argues that natural rights are ultimately inalienable: "nothing in existence, no, not even your own direct assent, can justly take them away." Like Locke too, he argues that wage contracts entered into under conditions of duress are no more than a kind of monopolistic extortion decided not by the real value of the two parties' contributions to the product, but by the "power of the one and the wretchedness of the other".[71]

Dating from the same hungry year as Thelwall's *Rights of Nature* is Paine's *Agrarian Justice*, a short pamphlet, but one which, we can briefly show, indicates agreement with Thelwall's distinctive position. Paine too distinguishes between natural property "such as earth, air, water" and artificial

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[68] LOCKE, Second Treatise, 41.

[69] Rights of Nature III, p. 83, Paine is less clear on this but see Agrarian Justice, in Complete Works, p. 612 where he claims private property in land "has dispossessed more than half the inhabitants of every nation...without providing...indemnification for that loss, and thereby created a species of poverty and wretchedness that did not exist before."

[70] Rights of Nature IV, p. 92.

[71] Rights of Nature, III p. 80. In the marketplace labourers face not individual entrepreneurs, but "are subject to the whole Corporation of Employers". ibid., III p. 90. cf. Adam Smith's remarks about masters being "always and everywhere in a sort of tacit, but constant and uniform combination not to raise the wages of labour above their actual rate." Wealth of Nations, I, viii, 13. Locke's little remarked rejection of the legitimacy even of wage contracts made under non-coercive duress is to be found in the First Treatise, pp. 42-43.

property "the invention of men."[72] He accepts the stagial theory of social evolution - hunting, herding, farming, and that landed property came about only "from the impossibility of separating the improvement made by cultivation from the earth itself upon which that improvement was made." He agrees too that the private property-based agrarian economy is more ("tenfold" - Locke's figure) productive, and that return to a more primitive state is, for that reason impossible. He draws from this the same conclusions as Thelwall, that there can be no strict property right in land itself, which remains in joint human proprietorship.[73] He echoes Thelwall's theory of exploitation in asserting that "the accumulation of property is, in many instances, the effect of paying too little for the labour that produced it."[74]

Both Paine and Thelwall go on to argue, not for the redistribution of land, a policy that would clearly mark them "nostalgics", but for a social wage or bounty, equivalent to the value of the land naturally claimable by the individual, were it not for the intervention of the process of civilisation.

For both thinkers, claims of natural right mean that civilised society has a duty to supply to individuals at least an equivalent in value to what they would have enjoyed without its advances.[75]

Thelwall indeed goes further: He argues that because natural right is based on need, and because human needs are themselves changed and developed by civilisation (- another aspect of the historicisation of human nature) that the content of natural right changes over time. As a consequence what human beings are "naturally" entitled to increases as social progress renders nature more bountiful and human capacities for enjoyment more extensive.

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[72] TOM PAINE, Agrarian Justice, in: The Complete Writings of Thomas Paine, ed. P. S. FONER, New York 1969, 2 vols., vol. 1, p. 606. This contrasts with his account in The Rights of Man, which distinguishes amongst rights on the grounds of our powers to execute them unaided. Although part II of the Rights of Man proposes an elaborate scheme of social welfare and income redistribution, it does not hint at the theoretical justification outlined in Agrarian Justice.

[73] Agrarian Justice, pp. 610-612.

[74] Agrarian Justice, p. 620.

[75] The principle is clearly and frequently asserted by Paine too. See, Agrarian Justice, pp. 610, 613, 617 (a strikingly Rawlsian formulation: "I care not how affluent some may be, provided that none be miserable in consequence of it."), p. 621.

Economically advanced societies are, therefore, also responsible for ensuring the redistribution of a proportion of the surplus historically produced by labour *as a matter of natural right.*

Both Thelwall and Paine therefore constructed a position from which it was possible, without rejecting economic progress, to convert natural right into some minimum property right deriveable from considering the needs of, and returns to, individuals in a natural economy, and to show that these are not being met by civilised society. In doing so they laid the basis for more complex critiques of the modern economy, and established a bridge between nostalgic agrarianism and modern theories of social justice.

Finally, I think it is possible to show the radical development of the conception of property embedded in the language of philosophical psychology. One stimulating topic in political economy in the last years of the century was how to pay for the war. This raised considerable discussion about the effects and legitimacy of taxation and, in particular, its effect on the poor. In a series of letters to the editor of the *Scottish Chronicle* in 1796, someone in Lord Lauderdale's circle, if not Lauderdale himself, writing under the pen-name Sidney, depicted the deleterious effects of inequality on the mental properties of citizens, in terms that both drew on civic prejudices about the circumstances surrounding sustainable political virtue, and used Smithian and Humean philosophical psychology to do so.[76]

The writer noted that whilst the idle rich had no need to exercise or develop their moral and intellectual faculties, the poor were in such despair that they had no incentive to try.[77] The effects of inequality thus invaded "every

[76] For a figure linking Thelwall and Paine with the Land Reformers of the late nineteenth and early twentieth century see J. CUNLIFFE'S article on J. P. DOVE in: History of Political Thought vol. XII, no.3 (1990).

[77] James Maitland, Earl of Lauderdale was a prominent member of the Foxite Whigs and a member of the Ministry of All Talents. The letters were republished as The Letters of Sidney on Inequality of Property to the editor of the Scots Chronicle (1796) and in a modern edition: [JOHN MILLAR], Letters of Crito and Letters of Sidney, ed. V. MEROLLE, Rome 1984. Letter II, pp. 4-5 indicates the negative side of the observation of both Smith and Hume that a commercial society encourages mental development. For by contrast, the rich man whose desires are, without effort, immediately gratified has "never had any vigorous motive to cultivate reason or his taste." As a result "his understanding will therefore be as uncultivated, as his morals

connecting link, contaminating the morals of the whole nation."[78] But "Sidney" was not a traditional civic defender of austere egalitarian virtue - for he is also concerned that inequality stifles economic growth. The poor must spend all they have on consumption, the rich engage in careless commercial speculation, which threatens healthy competition, misdirects what investment there is and so "retards the general accumulation of riches."[79] The problem was, the author admitted, what could be done about it? How could redistribution occur in a way consistent with respect for property-rights? For "we percieve a uniform respect for property in all historical and social situations" and

> we may be assured that [such] conduct is influenced by principles that are sufficiently obvious...and...by feelings that are natural and universal...must be produced by a sentiment inseparable from human nature.[80]

However, closer examination of the operation of the mental associations that give rise to such universal sentiments, and of the prudent motives which stability of property is supposed to possess, provided the author with a radical wedge which could be inserted into the Human, sentimental and utilitarian defence of property rights.

Property is based on "the natural feelings of mankind" and we are invited to agree that the simplest way to appreciate this is the Smithean device of "considering the feelings which would naturally arise in the breast of a spectator" seeing someone's "natural and reasonable expectation" of continuing in the enjoyment of their possessions suddenly frustrated. Giving a Humean twist to Locke, it is claimed that "no association can be stronger than between a man and the product of his own labour." Originally based on the associations naturally produced by the observing mind, the rules of property are "established by habit and experience" prior to the establishment

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are vicious and as his mind is imbecile"; the author cites Adam Smith, Theory of the Moral Sentiments, I, iii, 2, on the effects of too much wealth: "a state of mind equally hostile to moral and intellectual improvement, and [which] must inevitably lead to discontent, profligacy, misery and contempt."

[78] The Letters of Sidney, Letter IV, p. 12.

[79] The Letters of Sidney, Letter VI, pp. 24-26.

[80] The Letters of Sidney, Letter IX, p. 43.

of civil society, the task of which is to reenforce the limited effects of association and the disinterested spectator, in providing motives for respecting property. Continual experience suggests that a "rigid adherence to rules can alone give that certainty of possession which prompts to activity, to ingenuity, to economy;...the whole fabric of society depends on the strict observance of the rules of justice." Here in Sidney is a popular amalgam of Smith and Hume as they filtered down to the level of popular public debate.[81] A combination of perceived utility and mental association being used to confirm the empirical appeal to the feelings of the impartial observer. But even with property based on something as morally subjective as associative principles, there can be claims almost as strong as rights. Property redistribution is wrong because it "disappoints the reasonable expectations of the present proprietors..."[82] So once again any radical moves seem to be outflanked in advance. When the consequences as well as the origin of property rights are considered there is even less room for manoeuvre. A programme of redistribution would result in economic breakdown as the "poor, indulging in comforts before unknown would totally remit their labours" whilst capital would be annihilated since "each would hasten to enjoy and consume his property while it was yet within his power."[83]

However, Hume's argument had acknowledged that many of the actual rules of property might rest more on purely irrational associations than considerations of utility. It is this opening in the theory that Sidney explores. There is, he argues, one point in traditional property rights, where these utilitarian considerations do not obtain, and where the associative arguments which supposedly give rise to reasonable expectations fail, and that is at the point of inheritance.

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[81] Hume stresses the wrongfulness of disappointing expectations in the Enquiry Concerning the Principles of Morals, Oxford 1974, p. 310. The device of the spectator, was a common feature of eighteenth century moral thinking, present in both Hutcheson and Hume's attempt to assess empirically what qualities evoke what response in "mankind". It is made much more explicit by SMITH, Theory of the Moral Sentiments, III,1,2, pp. 109-10.

[82] The Letters of Sidney, Letter IX, pp. 44-47.

[83] The Letters of Sidney, Letter X, pp. 50-52.

Some aspects of inheritance, it is true, find a basis in associationist psychology: near relatives are often "much connected with the deceased...are associated with him in the minds of neighbours...present at the death-bed, and so can begin the possession immediately." The result is "we are naturally led, by habit, to consider it a just rule."[84] But primogeniture - a relic of the warlike clan society where a single chief was needed - is in fact a most unnatural practice running counter to familial affection, and utility alike. It dispossesses the younger siblings and precludes the operation of the beneficial principle of desert. Furthermore, testamentary right seems "scarcely to have any foundation in the actual principles of justice. When a man is dead his dominion over external objects must be completely at an end." "When all connection between a person and the things of this world is dissolved; the rights attendant on this connection can no longer subsist". Sidney echoes Paine's attack on prescription by calling testamentary right a "right of ruling beyond the grave", and he can hardly have used this notorious phrase innocently.

Testamentary right - and even worse primogeniture - has no root in natural feelings or association properly understood, it "is merely a creature of the civil state".[85] Moreover "no relaxation of industry would follow from the abolition of testaments: there would still be sufficient motives to prompt us to exertion."[86]

Here then is the solution: Death or estate duty undermines none of the associative grounds of property in human psychology; nor is it affected by the economic argument for property rights through diminishing incentives to create wealth. "By this restriction of testaments, property would be gradually diminished", true; but its wider dispersal would result in benefits not only in terms of productivity, but in spreading incentives to moral and cultural improvement. Once again the radical suceeded in producing his version of an argument with an apparently strong conservative bias.

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[84] The Letters of Sidney, Letter XI, p. 56.

[85] The Letters of Sidney, Letter XIII, pp. 62-66.

[86] Ibid., p. 69.