COMPULSION, COMPENSATION AND PROPERTY RIGHTS IN BRITAIN, 1688–1833*

It is a commonplace that property was worshipped with unusual devotion in Britain between the Glorious Revolution and the railway age. As Hannah More put it, 'All property is sacred, and as the laws of the land are intended to fence in that property, he who brings up his children to break down any of these fences, brings them up to certain sin and ruin'.[1] Such views of the interrelated importance of property and the rule of law have led to major interpretations of the interplay of Britain's economic, social and political histories, including that secure property rights were a vital foundation for the first industrial revolution. Yet property was often heavily taxed, frequently expropriated and, exceptionally, eradicated through redefinition. Such vulnerabilities did not diminish after the Glorious Revolution, they increased — mainly because parliament now met annually, had greater sovereign power than earlier monarchs and legislated prolifically regarding property. After 1688, Britain's economic precocity rested less on the enhanced 'security' of property in any general sense of the word, much more on respect for parliament's authority and its willingness to allow property to be alienated, most usually by particular interests claiming to act for the public or wider good. At times this required the reversal of commitments made only a generation earlier, raising doubts about central government's credibility. Taken together, these uncertainties over property rights were sufficient for some to question whether property had a sound theoretical basis at all.

If often masked, there was an inherent tension in this period between claims for the sanctity of property on the one hand and

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[1] *Cheap Repository Shorter Tracts* (London, 1798), 73.

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those for the sovereignty of parliament on the other. In practice, the sovereignty of parliament often won, allowing the compulsory alienation of property for use by those pursuing commercial opportunities; it was the flexibility of property rights that stands out. This argument builds upon existing studies of ideas about property,[2] upon studies of the social history of the reconfiguration of property rights[3] and particularly upon studies of the relationship between property and power in eighteenth-century Britain. I especially seek to develop points made by Paul Langford, Joshua Getzler, Ron Harris and Susan Reynolds about the significance of compulsory expropriation.[4] As Langford observed, in the eighteenth century 'A feature common to very diverse kinds of legislation was a sense that statutory expropriation was an awesome responsibility for a Parliament obsessed with property rights'.[5] The scale of that expropriation was such, and the consequences so profound, as to undermine an important thesis that property rights became more secure after the Glorious Revolution, developed in a notable essay by Douglass North and Barry Weingast and now conventional amongst some 'new institutional economists'.[6] In fact, property rights became less secure after 1688 because of heightened expropriation as well

[2] John Brewer and Susan Staves (eds.), *Early Modern Conceptions of Property* (London, 1995); J. G. A. Pocock, *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition* (Princeton, 1975), ch. 13; James Tully, *A Discourse on Property: John Locke and his Adversaries* (Cambridge, 1980); Thomas A. Horne, *Property Rights and Poverty: Political Argument in Britain, 1605–1834* (Chapel Hill, 1990); Mark Goldie (ed.), *The Reception of Locke's Politics*, 6 vols. (London, 1999); G. E. Aylmer, 'The Meaning and Definition of "Property" in Seventeenth-Century England', *Past and Present*, no. 86 (1980); Bernard Bailyn, *The Ideological Origins of the American Revolution* (Cambridge, Mass., 1967).

[3] E. P. Thompson, *Customs in Common* (London, 1991), ch. 3; J. M. Neeson, *Commoners: Common Right, Enclosure and Social Change in England, 1700–1820* (Cambridge, 1993); Douglas Hay and Nicholas Rogers, *Eighteenth-Century English Society: Shuttles and Swords* (Oxford, 1997), ch. 7.

[4] Paul Langford, *Public Life and the Propertied Englishman, 1689–1798* (Oxford, 1991); Joshua Getzler, 'Theories of Property and Economic Development', *Jl Interdisciplinary Hist.*, xxvi (1996); Ron Harris, 'The Encounters of Economic History and Legal History', *Law and Hist. Rev.*, xxi (2003); Ron Harris, 'Government and the Economy, 1688–1850', in Roderick Floud and Paul Johnson (eds.), *The Cambridge Economic History of Modern Britain*, 3 vols. (Cambridge, 2004), i, 225–31; Susan Reynolds, *Before Eminent Domain: Toward a History of Expropriation of Land for the Common Good* (Chapel Hill, 2010).

[5] Langford, *Public Life*, 147.

[6] Douglass C. North and Barry R. Weingast, 'Constitutions and Commitment: The Evolution of Institutions Governing Public Choice in Seventeenth-Century England', *Jl Econ. Hist.*, xlix (1989).

as the occasional extinction of types of property, notably of hereditary offices and slaves. By providing the flexibility to seize new opportunities, it was the greater ease with which property rights might be expropriated after 1688 that was critical to Britain's economic development.

I begin by outlining the views of the new institutional economists — an approach little known to historians. A brief overview is then provided of the scale of expropriation in Britain between the Glorious Revolution and the railway age. The evidential heart of the article lies in three particular cases where the nature of property and its relationship to the power of central government were the subject of concerted discussions: property in financial assets, the national debt; property in offices, heritable jurisdictions; and property in people, slaves. Some of the strains within contemporary thinking about property are then explored, before the wider implications of the importance of compulsory sale to the relationship between property rights and economic change are considered briefly in the conclusion.

I

NEW INSTITUTIONAL ECONOMICS, PROPERTY RIGHTS AND ECONOMIC GROWTH IN BRITAIN

If both Marx and Weber dealt carefully with questions of property in their interpretations of economic and social change, much mainstream economics rarely did before 1945. Change over time was not a significant consideration, and it was frequently assumed that markets were efficient. The 'new institutional economics' emerged in the 1960s in reaction to such unrealistic assumptions.[7] It is important to note that by institutions are meant 'the rules of the game; organizations are the players'.[8] Recognizing the importance of the political, legal and cultural contexts at work upon decision-making, property rights have been a

[7] The roots to the reaction can be traced back to the 1930s, especially R. H. Coase 'The Nature of the Firm', *Economica*, iv (1937) and his 'The Problem of Social Cost', *Jl Law and Econ.*, iii (1960). Joan Robinson, *The Economics of Imperfect Competition* (London, 1933) also raised important concerns. New institutional economics can be thought of as adding a desire to understand the operation of the 'visible hand' of organizations, such as governments and firms, to an understanding of the 'invisible hand' of the market mechanism.

[8] Douglass C. North, *Understanding the Process of Economic Change* (Princeton, 2005), 62.

prominent, indeed often a pre-eminent, part of new institutional economics.[9] Property rights have been defined both as 'rights to the exclusive use of valuable resources' (an economic property right), and 'what the state assigns to a person' (a legal property right).[10] In a fundamental sense they are determined by society (and therefore endogenous), framing expectations about economic behaviour, finding 'expression in the laws, customs, and mores of a society'.[11] Many different types of property rights exist, not just land or real property, and they exist in a number of ways, most obviously as public, corporate and private. It has become a commonplace in new institutional economics to emphasize the importance of secure property rights to efficient economic behaviour, of their 'key role in economic performance of societies across history'.[12] The argument follows that states with more secure property rights are likely to prosper more than those without — a thesis particularly developed by Douglass North, Nobel prize winner in 1993, using it to provide an explanation for Britain's early industrialization.[13]

An early statement of North's approach was made with Robert Thomas in 1973: 'the differences in the performance of the economies of Western Europe between 1500 and 1700 was in the main due to the type of property rights created by the emerging states in response to their continuing fiscal crisis'.[14] This was somewhat elaborated upon in 1981, but has made its greatest impact in a much-cited article written with Weingast.[15] There it was argued that secure property rights depend not only on the rules surrounding them, but on the sovereign or government making a 'credible commitment' to property rights.[16] They

[9] The theoretical justification for this takes its lead again from Coase and what came to be called the 'Coase theorem', and Harold Demsetz, 'Toward a Theory of Property Rights', *Amer. Econ. Rev.*, lvii (1967). See also Armen A. Alchian and Harold Demsetz, 'The Property Rights Paradigm', *Jl Econ. Hist.*, xxxiii (1973).

[10] Richard A. Posner, *Economic Analysis of Law*, 4th edn (Boston, 1992), 31; Yoram Barzel, *Economic Analysis of Property Rights*, 2nd edn (Cambridge, 1997), 3.

[11] Demsetz, 'Toward a Theory of Property Rights', 347.

[12] Gary D. Libecap, 'Property Rights', in Joel Mokyr (ed.), *The Oxford Encyclopedia of Economic History*, 5 vols. (Oxford, 2003), iv, 269.

[13] There have of course been other prominent approaches to the importance of the nature of property to economic change. For a telling critical overview see Getzler, 'Theories of Property'.

[14] Douglass C. North and Robert Paul Thomas, *The Rise of the Western World: A New Economic History* (Cambridge, 1973), 97.

[15] Douglass C. North, *Structure and Change in Economic History* (New York, 1981).

[16] North and Weingast, 'Constitutions and Commitment', 803–4.

argued that there was little or no credible commitment in England in the half-century or so before 1688. Increasingly arbitrary government contributed to the outbreak of civil war, and the Restoration 'failed'. It was the emergence out of the Glorious Revolution of representative government, of a balanced constitution, that led to such a credible commitment. 'As a consequence of these institutional changes, private rights became fundamentally more secure.'[17] North and Weingast did not argue that 1688 replaced a monarchical absolutism with a parliamentary one, for the separation of powers helped to ensure that there existed several powers of 'veto', while a commitment to 'limited government' was sufficiently widespread to constrain parliament's ambitions.[18]

Such views have become conventional amongst some new institutional economists. For example, one major survey concluded that the civil wars and Glorious Revolution in Britain significantly redistributed political power, bringing about 'major changes in economic institutions, strengthening the property rights of both land and capital owners and spurred a process of financial and commercial expansion. The consequence was rapid economic growth, culminating in the Industrial Revolution'.[19] The North–Weingast thesis has stimulated considerable further research by some economists, political scientists, economic historians and legal historians. However, most of these have been concerned with the question of credible commitment in the

[17] *Ibid.*, 817.

[18] *Ibid.*, 818–19. Some of these themes were further developed in: Barry R. Weingast, 'The Economic Role of Political Institutions: Market-Preserving Federalism and Economic Development', *Jl Law, Econ., and Organization*, xi (1995); Barry R. Weingast, 'The Political Foundations of Limited Government: Parliament and Sovereign Debt in Seventeenth- and Eighteenth-Century England', in John N. Drobak and John V. C. Nye (eds.), *The Frontiers of the New Institutional Economics* (San Diego and London, 1997); Barry R. Weingast, 'The Political Foundations of Democracy and the Rule of Law', *Amer. Polit. Science Rev.*, xci (1997).

[19] Daron Acemoglu, Simon Johnson and James A. Robinson, 'Institutions as a Fundamental Cause of Long-Run Growth', in Philippe Aghion and Steven N. Durlauf (eds.), *Handbook of Economic Growth*, vol. 1a (Amsterdam, 2005), 393; reiterated in Daron Acemoglu and James A. Robinson, 'Paths of Economic and Political Development', in Barry R. Weingast and Donald A. Wittman (eds.), *The Oxford Handbook of Political Economy* (Oxford, 2006), 673. For similar views, see Mancur Olson, *Power and Prosperity: Outgrowing Communist and Capitalist Dictatorships* (New York, 2000), 38; Kenneth W. Dam, *The Law-Growth Nexus: The Rule of Law and Economic Development* (Washington, DC, 2006), 84–6.

realm of public finance, and therefore only indirectly with the security of property rights generally.[20] In these studies, the transformative effect of the birth of the permanent funded national debt from 1693 is usually accepted and its general implications for property rights assumed.

In addition to refinements of North and Weingast's argument, there have been significant direct challenges, including those by Gregory Clark and S. R. Epstein, though neither was much concerned with how secure property rights were after 1688.[21] More germane was Getzler's survey of theories of property and economic development which, while not focusing solely on North and Weingast, noted that England's 'highly unstable regime of water and land-use titles' was not compatible with general theses such as theirs. He concluded that 'It is ironic that property-rights theory, which was first cultivated to correct the exaggerated abstraction of classical social and economic theory, should now itself stand in need of fresh infusions of legal, institutional, and historical thought'.[22] What follows provides one such infusion by looking at three main instances when property rights were challenged by the state after 1688: the fate of annuitants in the South Sea scheme in 1720 (when they were encouraged but not compelled to trade in their assets); the compulsory abolition

[20] Amongst the major works, see Bruce G. Carruthers, *City of Capital: Politics and Markets in the English Financial Revolution* (Princeton, 1996); David Stasavage, *Public Debt and the Birth of the Democratic State: France and Great Britain, 1688–1789* (Cambridge, 2003); Hilton L. Root, *The Fountain of Privilege: Political Foundations of Markets in Old Regime France and England* (Berkeley and Los Angeles, 1994). Such works often depend heavily on the likes of: C. D. Chandaman, *The English Public Revenue, 1660–1688* (Oxford, 1975); P. G. M. Dickson, *The Financial Revolution in England: A Study in the Development of Public Finance, 1688–1756* (London, 1967); Patrick K. O'Brien and Philip A. Hunt, 'The Rise of a Fiscal State in England, 1485–1815', *Hist. Res.*, lxvi (1993); and John Brewer, *The Sinews of Power: War, Money and the English State, 1688–1783* (London, 1989).

[21] Gregory Clark, 'The Political Foundations of Modern Economic Growth: England, 1540–1800', *Jl Interdisciplinary Hist.*, xxvi (1996). To simplify grossly, Clark employed data of income from land across his period to argue for continuity of the security of property rights. S. R. Epstein, *Freedom and Growth: The Rise of States and Markets in Europe, 1300–1750* (London, 2000). Epstein mainly focused on the period before 1550 and provides a particularly thoughtful critique of North (and other new institutional economists). A vigorous attack on the historical basis of the secure property rights approach has been made by Max Everest-Phillips, *The Myth of 'Secure Property Rights': Good Economics as Bad History and its Impact on International Development*, Strategic Policy Impact and Research Unit, working paper 23 (2008).

[22] Getzler, 'Theories of Property', 654, 669.

of Scottish heritable jurisdictions in 1748 (considered at greatest length because it is less well known); and some parts of the debate over the compulsory abolition of the slave trade and of slavery between 1787 and 1833. Apart from their individual interest and significance, all three provoked considerable debate over what constituted property, how binding past undertakings were on the present and future, of the role of particular interests in maximizing the wider or national interest and, finally, of applying views decided upon in London across Britain and her empire. As such they shed a powerful light on an essential point about the security of property rights — perceptions of security. This article, therefore, studies attitudes and beliefs (or political thought in practice, to put it another way), revealing the conditional nature of property rights, and some contemporary confusions about how absolute they were.

While this article focuses upon three case studies relating to public measures, it is argued that the reasoning involved in them had a wider applicability, raising for contemporaries essential general issues relevant to literally thousands of specific acts relating to river improvement, the building of turnpike roads, bridges, docks, canals and railways, as well as parliamentary enclosure. The following section briefly sketches the scale of legislation involved in these instances, when the expropriation of property was often involved, before moving on to the three case studies.

II

THE SCALE OF EXPROPRIATION

A key starting-point is that under the Revolution constitution parliament itself occasionally expropriated property for the common good or, far more often, granted the authority for others to do so, provided in both cases an adequate compensation was paid. In doing so, it employed a principle of very long standing. Indeed, Susan Reynolds has traced its origins back through the medieval to the ancient world, also showing that it was far from peculiar to England.[23] It was from the sixteenth century that parliament began to be the main means by which expropriation with compensation was sanctioned, such as to build fortifications

[23] Reynolds, *Before Eminent Domain.*

and drain fenlands.[24] It was a principle readily invoked to aid with the rebuilding of London after the great fire of 1666, when 'fire courts' were given considerable authority to expropriate land to allow streets and passages to be widened for the public good.[25]

If the Glorious Revolution ushered in no new principle with regard to the power to expropriate, Langford has rightly noted that, in the eighteenth century, parliament 'found its *métier* as an institution devoted to the remodelling and revision of property rights'.[26] There were, for example, 912 new turnpikes authorized by parliament between 1663 and 1839, but only one before 1695. Many of these were given the authority to compel the sale of land for their use.[27] Frequently other infrastructural developments of the 'transport revolution' were similarly empowered, most notably canals from the 1760s and railways from the 1830s. To build canals involved not only real property, but water rights also. As with river improvements, such rights were valuable to a range of interests, including landlords, tenant farmers and mill owners.[28] Between 1825 and 1850 railway companies were given 'legal power to compel the sale of tens of thousands of acres of privately held English real property'.[29] Parliamentary enclosure of open fields, commons and wastes, mainly undertaken between 1750 and 1830, not only redistributed some property rights, but redefined or clarified the meaning of others in ways which many villagers disputed. Over 5,200 acts were passed, involving up to 6.8 million acres, some 21 per cent of England's surface area. While some of those acts were broadly consensual, some, probably a majority, involved an element of compulsion to overcome

[24] Few except American legal historians have noted this. See, for example, William B. Stoebuck, 'A General Theory of Eminent Domain', *Washington Law Rev.*, xlvii (1972); James W. Ely, Jr, '"That Due Satisfaction May be Made": The Fifth Amendment and the Origins of the Compensation Principle', *Amer. Jl Legal Hist.*, xxxvi (1992); William D. McNulty, 'The Power of "Compulsory Purchase" Under the Law of England', *Yale Law Jl*, xxi (1912).

[25] T. F. Reddaway, *The Rebuilding of London After the Great Fire* (London, 1940), ch. 4.

[26] Langford, *Public Life*, 145.

[27] William Albert, *The Turnpike Road System in England, 1663–1840* (Cambridge, 1972), 59, 202.

[28] Joshua Getzler, *A History of Water Rights at Common Law* (Oxford, 2004). For an early example, see Bernard Rudden, *The New River: A Legal History* (Oxford, 1985), 13–14, 265–7.

[29] R. W. Kostal, *Law and English Railway Capitalism, 1825–1875* (Oxford, 1994), 144.

resistance to enclosure by agreement.[30] Nor did property in labour escape the clutches of the state, with many men being impressed into the armed forces. As the duke of Richmond put it in 1775, 'What is pressing but a compulsory mode of obliging persons to take up arms', something that happened often enough in an era of frequent wars waged by ever larger armies and navies.[31] It speaks volumes that General Burgoyne noted in 1777 that 'the life of the Soldier is the property of the King'.[32]

If it is impossible to reduce such varied property rights to a single measure and then count them, from around 1750 in particular their compulsory sale was much more frequent and took place on a greater scale than in the seventeenth century. Moreover, by definition, compulsion was necessary in such instances because some were unwilling freely to sell or gift their rights. The scale of such resistance or opposition is easily overlooked. It has been examined most fully in relation to the opposition to enclosure, culminating in Neeson's richly crafted study.[33] But there was also some opposition to turnpike roads, at least in part because they involved the conversion of roads from communal to marketable commodities, albeit normally with free access to pedestrians and local traffic.[34] The building of canals raised related issues, but involved different social dynamics, sometimes

[30] There is a large literature here. For a summary, see Michael Turner, *Enclosures in Britain, 1750–1830* (London and Basingstoke, 1984). More detail is provided in Michael Turner, *English Parliamentary Enclosure: Its Historical Geography and Economic History* (Folkestone, 1980) — the statistics presented above are from pages 26, 32 and 71 of this work; J. A. Yelling, *Common Field and Enclosure in England, 1450–1850* (London and Basingstoke, 1977). On open field property rights, Carl J. Dahlman, *The Open Field System and Beyond: A Property Rights Analysis of an Economic Institution* (Cambridge, 1980). On redefinitions of customary rights, Thompson, *Customs in Common*, chs. 1 and 3.

[31] Quoted in Nicholas Rogers, *The Press Gang: Naval Impressment and its Opponents in Georgian Britain* (2007), 4.

[32] Quoted in Langford, *Public Life*, 5.

[33] Neeson, *Commoners*. In some respects this marks the culmination of a tradition of historical enquiry going back at least to J. L. and Barbara Hammond, *The Village Labourer, 1760–1830: A Study in the Government of England Before the Reform Bill* (London, 1911), via E. P. Thompson's exclamation in *The Making of the English Working Class* (Harmondsworth, 1968), 237–8.

[34] For example, William Albert, 'Popular Opposition to Turnpike Trusts in Early Eighteenth-Century England', *Jl Transport Hist.*, new ser., v (1979); challenged by Eric Pawson, 'Popular Opposition to Turnpike Trusts?', *Jl Transport Hist.*, 3rd ser., v (1984). Also Michael Freeman, 'Popular Attitudes to Turnpikes in Early Eighteenth-Century England', *Jl Historical Geography*, xix (1993).

setting substantial landowners against commercial interests — often themselves landed. Thus when the duke of Bridgewater sought further powers to complete the Trent and Mersey canal, Sir William Meredith insisted that 'the public must go unaccommodated rather than private property should be invaded'.[35]

Such high levels of compulsory sale of property after 1688 were possible because relatively few doubted that reasonable compensation was provided. In part this was because the authority given to the expropriator was carefully defined and somewhat limited; they could not easily act arbitrarily. Most usually, disagreements which arose were settled by local juries, which provided a means of reaching a definitive and broadly legitimated view of a just and fair valuation of compensation.[36] Necessarily, these were often needed where layer upon layer of rights existed, commonly in towns and cities, but also in many landed estates, or where current owners stood resolutely against accepting the prospective purchaser's final offer.[37] The extent of this was such that Lord Chief Justice Mansfield, albeit in the context of colonial taxation, could deny 'the proposition that parliament takes no man's property without his consent: it frequently takes private property without making what the owner thinks a compensation'.[38] Rejecting the prospective purchaser's final offer might be deemed 'obstinate' or 'unreasonable' from one perspective, but, as Posner points out, this is bad economics. All that can be said is that very different valuations, which are not always monetary, can be placed upon the same property rights by different parties.[39]

Expropriation and compensation at these unprecedented levels depended upon parliament providing the requisite legislation — totalling many thousands of acts. This was much easier to do after 1688, as it met more frequently and predictably, while

[35] Quoted in Hugh Malet, *Bridgewater: The Canal Duke, 1736–1803*, revised edn, (Nelson 1990), 124.

[36] The use of juries also provides another instance of the participatory nature of parts of the state. Mark Goldie, 'The Unacknowledged Republic: Officeholding in Early Modern England', in Tim Harris (ed.), *The Politics of the Excluded, c. 1500–1850* (Basingstoke and New York, 2001).

[37] For the organization of the 'frequent' juries needed to construct the approaches to Westminster Bridge, see R. J. B. Walker, *Old Westminster Bridge: The Bridge of Fools* (Newton Abbot, 1979), 151–2.

[38] Quoted in P. J. Marshall, 'Parliament and Property Rights in the Late Eighteenth-Century British Empire', in Brewer and Staves (eds.) *Conceptions of Property*, 535.

[39] Posner, *Economic Analysis of Law*, 56.

regularizing its processes for handling legislation. Parliament's availability transformed the possibilities for some property owners to seek to enhance their interests against other interests, themselves sometimes propertied.[40] However, as Langford has shown, an important element was that parliament was usually unwilling to produce general enabling legislation, preferring to proceed on a bespoke, case-by-case, basis to minimize the disruption involved, including from unintended consequences. Such bills were still liable to a high degree of scrutiny, but specific interests did come to seek large numbers of local acts to further their economic ambitions.[41] Necessarily, most of these did not raise issues in national terms. But, as will be seen, a number of contemporaries thought that the principles involved were largely the same as those considered in the following case studies — around definitions of property, whether it might be forcibly expropriated for some wider or public good, what constituted just compensation and how binding were past commitments.

III

THE SOUTH SEA SCHEME

It is easy to forget the scale and extent of insecurities around property in Britain in the generation after the Glorious Revolution. During the Nine Years War (1689–97) and the War of the Spanish Succession (1702–13) the possibility of a French-backed Jacobite restoration was a major threat to many new arrangements. Only with the failure of the Jacobite rising in 1716 did that threat diminish significantly. Simultaneously, an era of unprecedented party strife, stretching from local to central power, also challenged economic rights, notably in the disputes over the East India Company and the Royal Africa Company's monopoly.[42] Frequently fanciful speculative activities, where

[40] Langford, *Public Life*, 139–48; Julian Hoppit, 'Patterns of Parliamentary Legislation, 1660–1800', *Hist. Jl*, xxxix (1996); Julian Hoppit and Joanna Innes, 'Introduction', to Hoppit (ed.), *Failed Legislation, 1660–1800, Extracted from the Commons and Lords Journals* (London, 1997).

[41] Langford, *Public Life*, 156–75; Stuart Handley, 'Local Legislative Initiatives for Social and Economic Development in Lancashire, 1689–1731', *Parliamentary Hist.*, ix (1990); Joanna Innes, *Inferior Politics: Social Problems and Social Policies in Eighteenth-Century Britain* (Oxford, 2009), ch. 3.

[42] Carruthers, *City of Capital*; Gary Stuart de Krey, *A Fractured Society: The Politics of London in the First Age of Party, 1688–1715* (Oxford, 1985); Henry Horwitz, 'The

(cont. on p. 104)

myth and reality intermingled, proliferated in the 1690s and 1719–20.[43] And the meanings of property were actively disputed. The Copyright act of 1710 sought to clarify the nature of intellectual property, but there was no such resolution with regard to financial assets as new types of intangible property proliferated, including insurance, assurance, lotteries and public debts.[44] There was considerable and bitter debate over the merits and comparability of different types of property, especially as between land and paper assets.[45]

Such contentions waxed and waned, but reached a crescendo in early 1720 when the South Sea scheme for reducing the burden of the national debt was debated. In this debate contemporaries had to think hard about whether a new form of property deserved the same protection as older forms, requiring consideration to be given to whether to treat the government's creditors honourably as well as legally. On the government's side were arguments about the need for private interests to be subservient to the public good. But the public creditors could claim that when they loaned their money at such a risky time they had embraced the public good, coming to feel cheated out of their property and without power of redress after the collapse of the scheme in late 1720. To them, there was no credible commitment to their property, no hope of stopping the South Sea scheme and, consequently, far too little security of their property.

The South Sea scheme aimed to reduce the cost of expensive public loans taken out in the 1690s in particular, especially of the long-dated annuities for ninety-nine years. The challenge was to

(n. 42 cont.)
East India Trade, the Politicians and the Constitution 1689–1702', *Jl Brit. Studies*, xvii (1978); William A. Pettigrew, 'Free to Enslave: Politics and the Escalation of Britain's Transatlantic Slave Trade, 1688–1714', *William and Mary Quart.*, lxiv (2007).

[43] William Robert Scott, *The Constitution and Finance of English, Scottish and Irish Joint-Stock Companies to 1720*, 3 vols. (Cambridge, 1910–12); K. G. Davies, 'Joint-Stock Investment in the Later Seventeenth Century', *Econ. Hist. Rev.*, 2nd ser., iv (1952); Christine MacLeod, 'The 1690s Patents Boom: Invention or Stock-Jobbing?', *Econ. Hist. Rev.*, 2nd ser., xxxix (1986).

[44] John Feather, 'The Book Trade in Politics: The Making of the Copyright Act of 1710', *Publishing Hist.*, viii (1980). Dickson, *Financial Revolution*; Geoffrey Clark, *Betting on Lives: The Culture of Life Insurance in England, 1695–1775* (Manchester, 1999).

[45] Pocock, *Machiavellian Moment*, ch. 13; Dickson, *Financial Revolution*, ch. 2; Anne L. Murphy, *The Origins of English Financial Markets: Investment and Speculation Before the South Sea Bubble* (Cambridge, 2009), ch. 3.

exchange new cheaper debts for old and more expensive ones. But there were significant constraints as to what might be attempted. Critically, compulsory repayment of earlier loans would undermine the credibility of the government should it need to borrow again in the near future. Second, it would have been fanciful to expect public creditors to act selflessly for the national good by voluntarily surrendering their assets for something less secure and valuable. Rather, it had to be assumed that they would act in ways that sought to maximize their wealth and income. Obviously, they could only be offered a *potentially* higher rate of return at a cost of higher risk. This was what the South Sea scheme of 1719–20 attempted. It sought to *persuade* national debt annuitants to exchange their highly secure and rewarding assets for stock in the South Sea company, on the grounds that the company would become a corporate leviathan, tapping the riches of South America, including the trade supplying it with African slaves. That is, the annuitants were to exchange public for private investments, hoping in due course that the latter would prove more valuable than the former. The prospect was that, as the trade grew, dividends would be paid and the price of stock would rise. The South Sea scheme was, in short, an attempt to privatize the national debt, sanctioned by act of parliament, and further legitimated by personal financial backing from many members of the court and parliament.[46]

This plan provoked considerable disquiet at the time, notably from Sir Richard Steele, now an MP, previously (with Addison) a main author of the seminal *Spectator* periodical. He made two main contributions in 1720 — one in his periodical, *The Theatre*, the other in a pamphlet whose title bears reproducing in full: *The Crisis of Property: An Argument Proving that the Annuitants for Ninety-Nine Years, as such, are not in the Condition of Other Subjects of Great Britain, but by Compact with the Legislature*

[46] The standard history is John Carswell, *The South Sea Bubble*, revised edn (Stroud, 1993). See also: Dickson, *Financial Revolution*, chs. 5 and 6; Larry Neal, *The Rise of Financial Capitalism: International Capital Markets in the Age of Reason* (Cambridge, 1990), ch. 5. While there is plenty of recent research on the Bubble crisis, few have attended to the scheme's development and debates surrounding it. But see Richard Dale, *The First Crash: Lessons from the South Sea Bubble* (Princeton, 2004). The cultural impact of the Bubble has been explored most effectively in Silke Stratmann, *'South Sea's at Best a Mighty BUBBLE': The Literization of a National Trauma* (Trier, 1996). An attempt to re-emphasize the political dimension was made in Julian Hoppit, 'The Myths of the South Sea Bubble', *Trans. Roy. Hist. Soc.*, 6th ser., xii (2002).

are Exempt from any New Direction Relating to the Said Estates.[47] To Steele, the South Sea scheme threatened property and was an attempt by the state to enforce a new contract upon the annuitants by deception. To him, public creditors 'are not Usurers', but 'good Citizens . . . Patriots' who 'lent their Country Money, because they lov'd their Country'. They 'stept out of the Rank of common Subjects, with their Fortunes in their Hands, and gave them to the Faith of the Legislature', making them thereby 'exempt from any Act of Legislature' to change the contract, 'by all the Rules of Honour, Justice, and Equity'.[48] Put in North and Weingast's terms, Steele was sure that the South Sea scheme would destroy 'credible commitment'.

Steele certainly was not alone in raising such concerns. To one pamphleteer, the public creditors had secured the Revolution constitution which 'ought to render their Interest dear, and their Property sacred and inviolable'.[49] An 'Oxford annuitant' stressed that 'the *English* Nation are my Debtors, and the King, Lord and Commons of *Great Britain* my Trustees'. Annuitants, 'besides the common Title to the protection of Laws, they have the additional Sanction of a National contract to secure their Estate'. Yet the South Sea scheme sought to replace such security for one of a 'wavering uncertain Condition'.[50] As another author put it, 'it is pretty certain the Nation will be deceived if they trust to the *South-Sea* Company's Generosity to the Annuitants'.[51] Many observers, indeed, saw from an early stage that the scheme depended on a good deal of smoke and mirrors; that it was, in contemporary parlance, a 'job'. That is, the state was seeking to deceive its creditors into surrendering their assets. To Lord North and Grey the scheme 'countenanced and authorised the fraudulent and pernicious practice of Stock-jobbing', while the duke of Wharton warned that it 'might decoy many unwary people to their ruin, and allure them by a false prospect of gain, to part with what they had got by their labour and industry, to

[47] Additionally, Richard Steele, *A Nation a Family: Being the Sequel of the Crisis of Property* (London, 1720).
[48] Richard Steele, *The Crisis of Property* (London, 1720) 13, 18–19.
[49] Anon., *An Essay for Discharging the Debts of the Nation by Equivalents* (London, 1720), iii.
[50] Anon., *Scandal No Argument: An Oxford Annuitant's Letter to Sir Richard Steele, in Answer to the Crisis of Honesty* (London, 1720), 4, 18.
[51] Anon., *A Farther Examination and Explanation of the South-Sea Company's Scheme* (London, 1720), 35.

purchase imaginary riches'.[52] Moreover, the annuitants were being asked to support a corporate monopoly, which was dubious on the grounds that 'all Companies . . . consider their private Advantage, whatever Loss it might be to the Nation' as well as being able to set excessively high prices.[53] Linking back to the seventeenth-century debate over monopolies, this raised the fundamental question of who was to define the public good and whether corporate or private interests could be trusted to maximize it.

In fact, because of the conditions attached to the South Sea scheme, the annuitants who entered into it were helpless when the bubble burst in 1720, with calls for the new contracts to be cancelled being rebutted.[54] Subsequently they were understandably vociferous for redress and retribution. For example, in early August 1721 a large number went to the House of Commons to petition for justice: '*Pray do justice to the Annuitants, who lent their Money on Parliamentary Security'*. The crowd, including many women and children, 'made an Outcry for Right and Property'.[55] The perceived threat was such that the riot act was read to disperse them. A week later they went in 'great Numbers' to the House of Lords to present a petition, but it was rejected because of 'there being no Possibility of affording those unhappy Sufferers such Relief, at this Juncture, as the nature of their Petition required'.[56]

To the annuitants, therefore, the South Sea scheme hit at their property and at the contracts that had previously been entered into with the state, the nation, and the people. Moreover, they had been deceived into it. To them there had been no 'credible commitment', and nor was there realistic possibility of asking the Crown or the courts to use 'veto powers' to stop the scheme or provide full restitution. But it is important to note that there was

[52] *The Parliamentary History of England from the Earliest Period to the Year 1803*, ed. William Cobbett, 36 vols (London, 1803–20), vii (1714–22), col. 646.

[53] Anon., *A Letter to a Member of Parliament, Occasion'd by the South-Sea Company's Scheme for Reducing the Publick Debts* (London, 1720), 24.

[54] Anon., *The Nature of Contracts Consider'd, as they Relate To the Third and Fourth Subscriptions, Taken in by the South Sea Company* (London, 1720); Anon., *The Case of Contracts for the Third and Fourth Subscriptions to the South-Sea Company Consider'd* (London, 1720); Anon., *The True State Of The Contracts Relating to the Third Money-Subscription Taken by the South-Sea Company* (London, 1721).

[55] *London Jl*, 12 August 1721, 4.

[56] *Daily Jl*, 9 August 1721, 1.

an attempt to question directly the views that the annuitants' property was sacrosanct. Challenging Steele head on, one author pointed out that 'There are in *England* various Properties equally secure with us; and yet we daily see the Legislature breaking in upon them, and giving the Possessors valuable Considerations; as in the Case of making Rivers Navigable, Publick Roads, Erecting of Forts, and other Publick Edifices'.[57] That is, to some it was already firmly established that parliament could decide for reasons of public good to force property owners to sell, or reduce the value of their asset, or attach new terms to their title. Such an argument hinted at how the public good had changed over the past generation, requiring the new form of property in the national debt to be reconfigured, even at the expense of its owners. Such thinking was to be repeated when heritable jurisdictions were abolished in Scotland a quarter of a century later.[58] In 1720, arguments for the supremacy of the public over the private good, even when delegated to a company in the South Sea scheme and against earlier undertakings, won out over arguments for the sanctity of property. The collapse and scandal of the scheme tainted that decision, but it did not reverse it. Indeed, from the middle of the eighteenth century it was resorted to very frequently.

IV

THE ABOLITION OF HERITABLE JURISDICTIONS

In the two decades following the South Sea débâcle, the sting was taken out of earlier debates over property. The establishment of Walpole's primacy from 1721, one-party rule, the consolidation of public finances in an era of peace and the constraints of the

[57] Anon., *The Crisis of Honesty: Being an Answer to the Crisis of Property* (1720), 9. For another attack on Steele, see Sir John Meres, *The Equity of Parliaments, and Publick Faith, Vindicated* (London, 1720).

[58] 'My house is my freehold, which, strictly speaking none can take from me; yet if a bridge is to be built, or a road made, my house may, by the power of the legislature, be pulled down: They will make me an equitable satisfaction, which, though perhaps not adequate to my pleasure in retaining that house, yet I can't be in my senses, and think I am unjustly dealt by'. Anon., *An Ample Disquisition into the Nature of Regalities and Other Heretable Jurisdictions* (London, 1747), 12. Very similar again is Anon., *An Englishman's Answer, to the Address, from the Delegates, to the People of Great-Britain, in a Letter to the Several Colonies* (New York, 1775), 4. See also the statement by Fielding below, p. 112, and note 75.

Bubble act reduced tensions considerably. But they were reinvigorated from mid-century. One cause was the growth of parliamentary enclosure, another was major legislative interventions into Scotland and Britain's empire. In the case of Scotland, action was prompted by the second main Jacobite rising in 1745, provoking as it did serious reflection on major differences between English and Scottish societies and of ways in which the Highlands might be better governed and further commercialized. This brought into sharp relief some significant differences in the nature of property north and south of the border that the Union in 1707 had explicitly ratified. Six government measures were developed, including the abolition of heritable jurisdictions by compulsory compensated redemption, 'the eighteenth century's most spectacular act of expropriation in Britain'.[59] Discussions over this expropriation echoed many of the themes from 1720, but in the context of a very different form of property, property in offices, opening an area of debate that was to be revisited in different contexts on many occasions over the next hundred years.[60] But, in this instance, the property was not reconfigured, it was extinguished.

Heritable jurisdictions were courts and offices granted by the Crown to individuals and effectively owned as freeholds to be passed on by inheritance, gift or sale as they chose. 'The bulk of the Scottish heritable jurisdictions may be divided into baronies, regalities, and heritable sheriffships. Of these the first and second were throughout not only heritable but territorial; they accompanied grants of lands'.[61] To their owners, heritable jurisdictions were valuable in a number of ways. First, they gave them authority

[59] Langford, *Public Life*, 47. The fullest account of these measures is that of Byron Frank Jewell, 'The Legislation Relating to Scotland after the Forty-Five' (University of North Carolina Ph.D. thesis, 1975), especially, for heritable jurisdictions, chs. 5 and 6. The passage of the act abolishing heritable jurisdictions is dealt with most fully in print in George Menary, *The Life and Letters of Duncan Forbes of Culloden, Lord President of the Court of Session 1685–1747* (London, 1936), ch. 18. Some of the arguments involved are well considered in Colin Kidd, *Subverting Scotland's Past: Scottish Whig Historians and the Creation of an Anglo-British Identity, 1689–c.1830* (Cambridge, 1993), 150–61.

[60] Philip Harding, *The Waning of 'Old Corruption': The Politics of Economical Reform in Britain, 1779–1846* (Oxford, 1996).

[61] William D. Dickson, 'Heritable Jurisdictions', *Juridical Rev.*, ix (1897), 429. For a contemporary, unsigned, outline of the authorities, 'A Short Description of the Nature of Jurisdictions to be Abolished': British Library, London (hereafter BL), Add. MS. 33049 (Newcastle Papers), fos. 228–9. Duncan Forbes authored this, according to Menary, *Life and Letters*, 309.

through the exercise of the law, even for capital cases. Second, owners had the 'Right to apply all the Fines, Forfeitures and Amerciaments of their Courts to their own private Uses'.[62] Third, it gave them influence. This might be through patronage, deciding who was to undertake or help with the exercise of the authority, while sheriffs could significantly influence the casting and counting of votes in elections of MPs.[63] Again, fourth, this might indirectly generate income for the owners, though they were also valuable in non-monetary terms as marks of status. In sum, as one opponent of abolition put it, the owners 'reckon very highly upon them; partly for the Profits of them; but more a great deal for the Honour and Lustre they give them, and their Families'.[64] Given this, it is no wonder that passing the legislation to abolish the jurisdictions encountered considerable opposition, while implementing the provisions of the act that abolished them also involved a good deal of deliberation and disagreement.

Philip Yorke, lord chancellor since 1737 (then lord and later earl of Hardwicke), was the prime mover behind the legislation to abolish heritable jurisdictions, costing him 'more pains than ever any Parliamentary measure did'.[65] Initially, he hoped that the Court of Session in Edinburgh would prepare a report on what jurisdictions existed and a bill for their abolition.[66] But though the Court replied in general terms in early January 1747, they produced neither, partly because of the opposition within Scottish political society to doing so, partly because of the considerable difficulties of principle and practice involved. Hardwicke took back responsibility for the bill, which soon encountered significant opposition.

In part, the resistance the bill encountered had the positive aim of improving it.[67] But there was also more or less outright

[62] Anon., *Superiorities Display'd: or, Scotland's Grievance, by Reason of the Slavish Dependence of the People Upon their Great Men; Upon Account of Holdings or Tenures of their Lands* (Edinburgh, 1746), 10.

[63] Ronald M. Sunter, *Patronage and Politics in Scotland, 1707–1832* (Edinburgh, 1986), 8, 61.

[64] P. Turnbull, *A Cursory View, of the Ancient and Present State of the Fieffs, or Tenures, in both Parts of the United Kingdom of Great Britain* (London, [1747]), 46.

[65] Philip C. Yorke, *The Life And Correspondence of Philip Yorke, Earl of Hardwicke*, 3 vols. (Cambridge, 1913), i, 609.

[66] *Journals of the House of Lords*, xxvi (1741–6), 632.

[67] Hardwicke was able to work reasonably effectively with many Scottish authorities. Some Scots, perhaps many, quickly saw that the government was heavily committed to obtaining legislation, deciding that it would be best to seek to amend the bill

(cont. on p. 111)

opposition that focused upon a number of fundamental principles, often concerning property, each of which had to be confronted at the time. First, to some it was a 'Battle for our Constitution', for the jurisdictions had been specifically protected at the Union in 1707 (articles 18 and 20).[68] To one of the bill's critics, 'The Articles of the Union are the *pacta conventa*, the solemn Convention betwixt two independent Kingdoms'.[69] In this line of thought, the Union was untouchable: 'in every State, where Liberty has any Place, Fundamentals are acknowledged, and held sacred; without which the Fabric of the State would soon tumble'.[70] But if some felt that certain commitments were so deep-seated as to be unalterable, others noted that, as circumstances changed, so previous agreements might need to be altered: 'I think [it] not very prudent, to make any Article absolutely unalterable, by that which is then established as the future supreme Power of the United Kingdoms'.[71] As Hardwicke had emphasized, when introducing the original bill, parliament had that supreme, that absolute, authority.[72]

This linked closely to the second point about whether owners could be compelled to surrender their property. At the most general level, as one opponent put it, 'if we pass this Bill . . . we shall render the property of every man in the kingdom precarious'.[73] But there was also the question of the specific nature of this property, which originated in Crown grants. As the holders of gifts, 'how we can force . . . [the owners] to part with a Grant of Honour, is no-ways, clear to me'. Additionally, the same author claimed that the jurisdictions were 'not marketable; and therefore of such a Nature, that no Price, nor Value, could be put upon them'.[74] But this flew in the face of centuries-old practice that the jurisdictions did have a price, with some having been bought and sold

(n. 67 cont.)
to maximize its effectiveness and minimize its dangers. Duncan Warrand (ed.), *More Culloden Papers*, 5 vols. (Inverness, 1923–30), v, 155–6.

[68] *The Correspondence of the Dukes of Richmond and Newcastle, 1724–1750*, ed. Timothy J. McCann, *Sussex Record Soc.*, lxxiii (Lewes, 1984), 244

[69] [Lord Andrew MacDowall Bankton], *An Essay upon Feudal Holdings, Superiorities, and Hereditary Jurisdictions, in Scotland* (London, 1747), 48.

[70] Turnbull, *Cursory View*, 40.

[71] *Newcastle General Mag.* (April, 1747), 124.

[72] *Parliamentary Hist.*, xiv (1747–53), col. 12.

[73] *Ibid.*, col. 30.

[74] Turnbull, *Cursory View*, 47.

in recent decades. Others, moreover, also saw the jurisdictions as just another type of property. Henry Fielding was clear on this, arguing that heritable jurisdictions 'as Rights of Property . . . are not taken away without a Compensation made to the Owners, which is the Method used to reconcile private Justice with public Good in many Cases of a similar Nature, such as the Building of Bridges, making of Fortifications, and all other Acts where the Rights of Particulars are taken away for the Benefit of the Public'.[75]

Thirdly, it was objected that abolition would lead to an increase in the power of the executive, taking it away from the Scottish lords with one hand, and giving to the Crown with the other. In particular, 'If *formerly* the heritable Sheriff . . . *could* favour an Election by *making out* the Return; *can* we expect that less will be done . . . in *this Way* by the *Crown* Sheriffs?'[76] This would be added to the Crown's influence over the choice of the sixteen Scottish representative peers.[77] This was difficult to deny directly. Rather, the emphasis was upon the fundamental problems of allowing individuals to exercise authority in a self-interested way and developing positions on the public or wider good that were incompatible with those private rights. This might be linked to a rhetoric of liberty, as in the observation that 'It is not those who are not actually oppress'd but those who cannot be oppress'd that are free. Liberty exists only there where a power to oppress exists not'.[78] In such a vein, because landlords might use their jurisdictions maliciously against their tenants, some in the Highlands and islands were thought to be 'under a slavish and unlimited Subjection'.[79] Ending that subjection might, some argued, enable Scottish society to become more commercial. In a powerful speech in the Commons in defence of the bill, Lyttleton noted how Henry VII, by breaking the power of the barons, laid the foundations for 'the commerce, the wealth, and the liberty,

[75] Henry Fielding, *The Jacobite's Journal and Related Writings*, ed. W. B. Coley (The Wesleyan Edition of the Works of Henry Fielding, Oxford, 1974), 50.

[76] Anon., *A Letter to a Noble Lord; Containing some Remarks on the Nature and Tendency of Two Acts Past Last Session* (London, 1748), 22.

[77] *Parliamentary Hist.*, xiv (1747–53), cols. 35–6.

[78] Historical Manuscripts Commission, *Reports on the Manuscripts of the Right Honourable Lord Polwarth*, v, 1725–1780, ed. Rev. Henry Paton (London, 1961), 238.

[79] Anon., *Superiorities Display'd*, 11. Similarly, Anon., *An Ample Disquisition*, 9.

which the nation enjoys at this day'.[80] This was endorsed by 'An English gentleman', who argued that 'Human nature is eternally the same', across peoples and ages — that is, that there was no inherent difference between the Scots and the English. But the Scots are 'like men with their hands tied behind them'. Once freed from the 'slavish tenures', their natural 'prudence, diligence and frugality' would bear fruit: 'A prospect of wealth and plenty would naturally create industry, which having once taken root, would flourish in that climate'.[81]

A fourth initial concern with the bill was that it was too sweeping and would take away relatively easy access to justice for ordinary people. When the bill was drafted, the types of jurisdictions that existed were known only in outline, but not their number or extent. The bill aimed to regularize the administration of justice and to reduce the power of certain landowners. But as the efforts of the Convention of the Royal Burghs implied, some heritable jurisdictions were important elements of urban government. Barons' courts were seen by many as integral to the effective functioning of local society by providing convenient sites for dispute resolution. This point persuaded Hardwicke to amend the bill to modify, but not abolish, their powers, noting that Oliver Cromwell had left the baron's courts untouched when he 'abolished all the great heritable jurisdictions at once, without giving any compensation for them'.[82] Part of the thinking here, however, may also have been about the potential bill for compensation. Idle, lord chief baron of the Scottish exchequer, reported to Hardwicke that some Scottish gentlemen believed that 'there are above 3000 of these jurisdictions' who 'would be poorly paid for them at 100 l each'.[83]

A total bill of £300,000 was, in fact, twice the actual price that was paid to abolish the heritable jurisdictions. Despite Turnbull's belief that the jurisdictions could not be priced, it was generally and immediately acknowledged that financial compensation would have to be paid for their abolition. The act required that

[80] *Parliamentary Hist.*, xiv (1747–53), col. 48.
[81] Anon., *An Ample Disquisition*, preface and 10, 38–9.
[82] Yorke, *Life and Correspondence*, i, 608.
[83] Lord Chief Baron Idle to Lord Chancellor Hardwicke, 8 April 1747: BL, Add. MS. 35,446 (Hardwicke Papers), f. 160. Another Scot, Andrew Mitchell, made much the same point: Warrand (ed.), *More Culloden Papers*, 167.

claims for ownership and their value had to be made to the Court of Session in Edinburgh by 11 November 1747. The Court would then adjudicate on these, determining which jurisdictions were legally owned by the claimants and their value, reporting the outcome to the Privy Council.[84] In the event, there were nearly 160 claimants to jurisdictions valued by them at almost £600,000 in total, including most of the great Scottish landowners. Lists of all the claims were quickly published, as well as in summary in many papers.[85] In the *London Magazine*, 'Scoto-Britannus' reported on the widespread surprise at the amount claimed, 'and think it is not worth While to pay such a large Sum', believing that some claims of ownerships would be struck out entirely and that many claimants had inflated the value of jurisdictions.[86]

With the Court of Session working to a stiff timetable, a good deal of effort was expended on settling the compensation. Documents were read, pleadings heard, and points of law dealt with. Striking decisions were made by the Court, whose report was finished on 18 March 1748, a week before jurisdictions were abolished. Only 75 of the 157 claimants (48 per cent) received compensation, totalling £152,037, or just 26 per cent of the total of all the original claims. Although the decisions were judged by some to be the outcome of reasoned consideration, it was also easy to believe that politics had been at work, given that the duke of Argyll, a key figure to the government's management of Scotland, was the most generously treated, getting £21,000 for an original claim of £25,000 (84 per cent). Many 'owners' (many of them peers and large landowners) certainly felt they had either been robbed or short-changed. The Court's decisions were about as newsworthy as the original claims. Again summary figures were produced in a number of papers.[87] Compensation to the owners

[84] 20 George II, c. 43, 'An Act for Taking Away and Abolishing the Heretable Jurisdictions in that Part of Great Britain called Scotland; and for Making Satisfaction to the Proprietors Thereof'.

[85] Anon., *Roll or List of the Claims, Entered in the Court of Session in Scotland, in Pursuance of an Act . . . for Abolishing Heretable Jurisdictions* ([Edinburgh], 1747); Anon., *A List of Claims for the Value of Jurisdiction: on the Act of Parliament, MDCCXLVII* (London, 1748).

[86] *London Mag.* (January 1748), 6–7.

[87] The inaccurate reports put the compensation at £164,000, some 8 per cent too high. See, for example, *General Evening Post*, 15 March 1748. The only accurate report found so far is in the *Scot's Mag.*, x (1748), 136–8.

was only paid months later, leading to further complaints of the injustice of the compulsory sale.[88]

The case of heritable jurisdictions recalls the important differences that existed in property rights and legal codes between England and Scotland — Scotland had no need for bespoke enclosure acts, for example. [89] It also demonstrates that the Union came to have an important consequence for the nature of property in Scotland (as was also true in Ireland when borough 'owners' were bought out at the Union in 1801). Fundamentally, it shows that if parliament might, as in the late seventeenth and early eighteenth centuries, create new types of property, so it could extinguish types of property, even when it contradicted major legislation enacted only a generation earlier and the compensation fell far short of what the owners sought. In this case, heritable jurisdictions were abolished for political reasons. But, as the case of the slave trade and slavery shows, it was possible for society more generally to provide the lead in redefining what was and what was not property. The imperial parliament might be pressured by powerful forces it struggled to contain.

V

THE ABOLITION OF PROPERTY IN PEOPLE

The growth of the British empire from the early seventeenth century, especially following the great wave of migration from the 1650s to the 1680s, opened up the potential for Westminster legislating for very different environments to those in Britain and Ireland. Not only might new or uncommon arrangements of property be encountered, but authority would have to be exercised in much more autonomous political societies. In practice, this potential was realized only relatively occasionally and modestly before the middle of the eighteenth century. However, as

[88] That abolition took place well before compensation led to complaints that 'in all Bargains of Property, the Consideration and Possession ought to attend on one another, and be exchang'd at one and the same Time', *Old England* (19 September 1747), 2. It was reported that on 29 August 1749 money was remitted to Scotland from the Exchequer in payment of compensation, *London Mag.* (September, 1749), 431. The delay was in part caused by the fact that parliament could only vote supply once the total to be paid was known. This came so late in the 1747–8 session that nothing could effectively be done until the new session opened on 29 November 1748.

[89] Julian Hoppit, 'The Nation, the State and the First Industrial Revolution', *Jl Brit. Studies*, (forthcoming).

Peter Marshall has powerfully demonstrated, parliament then began to legislate in ways that many imperial citizens, in America, Canada, the West Indies and India, interpreted as challenging their property rights. Nor was this a separate world, for this was the same legislature daily considering domestic property rights. As Wilkes exclaimed when opposing Fox's India bill of 1783, the principle involved threatened all types of property at home: 'Not a corporation of the Kingdom, not a charter . . . not a deed, not a contract, not a document, not a security, no species of property, can be safe'.[90]

Of all the imperial questions over property that concerned Westminster, none was as long-lived as that regarding the slave trade and slavery, demonstrating the importance of societal values to definitions of property and the difficulties of changing the law to fit with changing ideals. Moreover, it also opened up the question of the relative importance of economic and commercial objectives as against moral and social values. The scale of the issues involved was to be matched by the breathtaking scale of compensation eventually provided.

As is well known, slavery within the British empire was abolished in two main stages, by legislating against the trade in slaves in 1807 and then by legislating against slavery in 1833.[91] Abolitionists decided in 1787 to concentrate initially upon the slave trade in significant measure because to try to abolish slavery 'would be to aim at too much' as abolitionists would be charged with 'meddling with the property of the planters'.[92] That said, however, many abolitionists denied from the outset the possibility of considering people as property.[93] Speaking later, Lord Grenville adopted the Lockean position that 'In a state of nature, man had a right to the fruit of his own labour absolutely

[90] Quoted in Marshall, 'Parliament and Property Rights', 536. This section of my article has particularly been influenced by Marshall's essay and by Draper, *Price of Emancipation*, ch. 2.

[91] 47 Geo. III, Sess. 1, c. 36, 'An Act for the Abolition of the Slave Trade'; 3 & 4 Will. IV, c. 73, 'An Act for the Abolition of Slavery Throughout the British Colonies; for Promoting the Industry of the Manumitted Slaves; and for Compensating the Persons Hitherto Entitled to the Services of Such Slaves'.

[92] Thomas Clarkson, *The History of the Rise, Progress, and Accomplishment of the Abolition of the African Slave Trade by the British Parliament*, 2 vols. (London, 1808), i, 284, 286. Roger Anstey, *The Atlantic Slave Trade and British Abolition, 1760–1810* (London, 1975), 255–6.

[93] For example, Thomas Clarkson, *An Essay on the Slavery and Commerce of the Human Species, Particularly the African* (London, 1786), part 2, ch. 4.

to himself; and one of the main purposes, for which he entered into society, was, that he might be better protected in the possession of his rights . . . the Slave-trade and the Colonial slavery were a violation of the very principle, upon which all law for the protection of property was founded'.[94] Similarly, one principle of the Somerset case of 1772 might be extended across Britain's empire to argue that it was impossible to have 'legal property in persons who were equally British subjects themselves'.[95] For many, religious and moral precepts produced the same conclusion. Such ideas, which have been fully studied by others, were at the heart of the abolitionist cause.[96]

Powerfully held though those arguments were, British merchants unquestionably bought slaves in West Africa, sold them in the Caribbean and elsewhere, and used the profits to fund consumption or investment. Like any other market, the price of slaves was set by the balance of supply and demand under particular conditions of uncertainty, including the legislative framework. To most merchants and planters, there was no question that slaves were property, though admittedly a distinct type of property.[97] Inevitably, therefore, any threat to the ownership of, and trade in, slaves was seen by them as a challenge to the security of property. In 1833 John Horsley Palmer, previously governor of the Bank of England, noted that parliament had formerly endorsed slavery through legislation, such that 'no minister had a right to tamper with that property. It tended to shake the credit and confidence of the country'.[98] When Colonel Tarleton defended the slave trade as MP for Liverpool he pointedly quoted Pitt the Younger's statement 'That he ever did and ever would invariably hold the maxim, that private property should be sacred'.[99] William Innes, a merchant involved in the slave trade, quoted those self-same words, and was certain that it was

[94] Clarkson, *History of the Rise*, ii, 530.

[95] Robert Otway Cave, MP, in 1830, quoted in Draper, *Price of Emancipation*, 84.

[96] There is now a very large literature on this. Central works include David Brion Davis, *The Problem of Slavery in the Age of Revolution 1770–1823* (Ithaca, 1975) and Christopher Leslie Brown, *Moral Capital: Foundations of British Abolitionism* (Chapel Hill, NC, 2006).

[97] The distinctive nature of property rights in people is considered in Stanley L. Engerman, 'Some Considerations Relating to Property Rights in Man', *Jl Econ. Hist.*, xxxiii (1973).

[98] Quoted in Draper, *Price of Emancipation*, 82.

[99] B. Tarleton, *Heads of the Speech, Delivered by Colonel Tarleton, on the 18th of April, 1791, in a Committee of the House of Commons, on a Motion Made by Mr. Wilberforce, for*

(cont. on p. 118)

'absurd to suppose, the Proprietors, in the Sugar-Colonies, have not an equal Right to be protected in their Property, with the Subjects of Great-Britain; in a Trade, hitherto so universally approved and encouraged'.[100] In this line of reasoning, to abolish the slave trade undermined that property by preventing the replenishment of labour stocks, damaged the property of merchants tied up in the trade and contradicted previous commitments. (There were, of course, many other arguments about the economic and national benefits of the plantation system and the triangular trade.) To some, therefore, abolition not only of slavery but of the slave trade required compensation to be paid.

Such claims outraged the abolitionists. 'Are you serious' exclaimed Clarkson. But he also went on to note a point of wider importance: 'the Legislature does not always think itself obliged in its provisions for a general good, to compensate all, who may suffer in consequence of them'.[101] That the state had the right to regulate overseas trade via legislation was clear, and that changing such legislation might harm the interests of some for the wider good was similarly acknowledged. Burke, therefore, was certain that

> As to the idea of the West-India merchants being reimbursed what they might lose by this abolition, it was totally against every principle of legislation. Government gave their countenances to certain species of commerce, as long as they were conducted on such principles of equity and humanity, as deserved their satisfaction. But when this commerce became an evil, a disgrace to the state, government was certainly competent to withdraw their countenance from what they had before authorized and protected. And as those who engaged in this commerce, adopted it with all the conveniences arising from the sanction and encouragement it received from government; it was, therefore, but just that they should be prepared to abide by the losses arising from that sanction and encouragement being withdrawn.[102]

This type of argument won the day in 1807, vindicating the judgment made by the abolitionists in 1787. But when the abolition of slavery was legislated for in 1833 compensation was paid, to the

(n. 99 cont.)
the Abolition of the Slave Trade (London, 1791), 8. He also quoted from Burke's *Reflections on the Revolution in France*.

[100] [William Innes], *The Slave-Trade Indispensable: In Answer to the Speech of William Wilberforce, esq. on the 13th of May 1789* (London, 1790), 6, 17.

[101] Thomas Clarkson, *Three Letters (One of which has Appeared before) to the Planters and Slave-Merchants, Principally on the Subject of Compensation* (London, 1807), 6–7.

[102] *Parliamentary Hist.*, xxviii (1789–91), col. 97.

tune of £20 million, as well as former slaves being required to serve a period of unpaid 'apprenticeship' lasting four to six years.

This was in the face of powerful sentiments against paying any compensation. One position, which Burke held, was that the slave trade was based upon robbery, seized Africans.[103] Thus, to the duke of Devonshire, 'I consider the claims of the West Indians to Compensation, if his property were destroyed, as the claim of a Receiver of stolen goods'.[104] Those in possession of stolen goods had no title to them and, thus, no claims for compensation. Rather, indeed, it was the robbers who should make restitution. 'The claims of the Planter to compensation, have been justly denominated *audacious* claims, because they rest on no ground of right or reason, of justice or common sense.' Indeed, to the same author, 'Admit the *slave-holders* claims to compensation, and you admit the justice of slavery'.[105]

Yet compensation was paid, and paid to ensure that legislation passed, though it also had the consequence of confirming that slaves had been property up to the moment of abolition. (In fact, all European societies paid compensation when slavery and serfdom were abolished, though the form and scale varied from place to place.[106]) Draper has fully set out what was done in the British case. A primary objective was to determine the level of compensation. Crucially, the decision was made to arrive at a total sum to be divided equitably amongst the claimants, a very different approach to the abolition of Scottish heritable jurisdictions. But this was not straightforward as the loss to planters was more than simply the number of slaves multiplied by a market rate, for slaves could generate income for many years and there were multiplier effects to consider also. Various figures were produced, many of them much larger than £20 million. Quite why it was finally agreed to by the two sides is unclear, beyond the

[103] Burke's ideas on property are considered in Francis Canavan, *The Political Economy of Edmund Burke: The Role of Property in his Thought* (New York, 1995).

[104] Quoted in Augustus Hardin Beaumont, *Compensation to Slave Owners Fairly Considered in an Appeal to the Common Sense of the People of England*, 4th edn (London, 1826), title page. For Burke 'the African trade was a robbery': *Parliamentary Hist.*, xxviii (1789–91), col. 97.

[105] Anon., *Letters on the Necessity of a Prompt Extinction of British Colonial Slavery . . . to which are Added Thoughts on Compensation* (London, 1826), 194–5.

[106] Stanley L. Engerman, *Slavery, Emancipation and Freedom* (Baton Rouge, 2007), 43.

tautological point that it was a figure acceptable to both. It is clear, however, that, by any standards, this was a very large sum indeed, certainly billions in today's money. Huge compensation was extracted from taxpayers both to purchase the freedom of the enslaved and to allow definitions of property to be redrawn across the empire to exclude property in people. Administratively, the challenge was large in scale, but not necessarily different in kind to settlement of earlier compensation claims, including that of the abolition of heritable jurisdictions. Some 45,000 individual claims from owners of 800,000 enslaved were made to the commissioners, whose office worked hard on them until 1840, though some claims took longer to settle.

VI

UNCERTAIN PROPERTY

It is clear that Westminster legislated for the compulsory sale of property on a considerable scale after the Glorious Revolution, particularly from the 1740s, often doing so in the face of clear opposition. Such opposition itself demonstrates one aspect of feelings about the insecurity of property. But no less important were the ideas employed, which, as the case studies have shown, tended to recur across the period. There was profound unease about the use of compulsion, leading some to worry not only about the vulnerabilities of property to the exercise of political power, but whether it had a sound theoretical basis at all.

One concern was with who might define the common good. The case studies just outlined were unusual because they addressed public questions, where parliament determined what was best for society as a whole. But most cases of compulsory sale depended on parliament providing the authority for particular interests, raising the troubling question of whether their selfish aims really would produce wider benefits. As one objector insisted, 'there is not yet a Canal in the kingdom, of which it may not truly be said, that private interest was the first, and public good the last object of the zeal and activity of those employed in producing it'.[107] When parliament legislated for enclosures, canals and railways, it effectively supposed that the pursuit of

[107] Anon., *A Letter to a Member of Parliament, from a Land Owner, on the Proposed Line of Canal from Baunston to Brentford* (London, 1793), 10.

personal or corporate profit would benefit society as a whole through economic improvement, a position with obvious enough objections and which has recently caused bitter controversy in the United States.[108]

A second concern was that, while some common assumptions or general propositions were at work when questions of expropriating property were considered, inherent tensions sometimes surfaced. Thus Blackstone could, on the one hand, state that 'So great moreover is the regard of the law for private property, that it will not authorize the least violation of it; no, not even for the general good of the whole community'. Yet just a few sentences later he acknowledged that parliament did in fact frequently 'interpose, and compel the individual to acquiesce', obliging the owner 'to alienate his possessions for a reasonable price'.[109] The fundamental difficulty was with simultaneously arguing both that private property was sacred and that parliament was absolute, able to command such property for the public good. That this was unresolved at the time gave weight to opponents of compulsory sale.

The tension within Blackstone's thinking was clear and, given his stature, very important. Occasionally, however, more rigorous thinking was available. As Reynolds has shown, Grotius had devised a robust line of reasoning in the early seventeenth century, reasoning then built upon by Pufendorf, Burlamaqui and de Vattel.[110] It is telling that, just as the first volume of Blackstone's *Commentaries* was in press, Grey Cooper, counsel of the duke of Atholl, made a celebrated plea to the House of Commons regarding the proposed purchase by the Crown for £70,000 of the duke's rights of regality over the Isle of Man (in an effort to stamp out smuggling there). Cooper summoned up the Lockean idea that 'Government, into whose-ever hands it is put, was intrusted with this condition, and for this end, that men might have and preserve their property'. Yet such preservation was not absolute, for 'it is one of the conditions under which civil property is held in all societies, that the owners may be forced

[108] Arising from the Connecticut case of Kelo v. the City of New London. Turnpike trusts as *trusts* did not raise this issue in quite the same way.

[109] William Blackstone, *Commentaries on the Laws of England*, 4 vols. (Oxford, 1765–9), i, 135.

[110] Reynolds, *Before Eminent Domain*, ch. 4.

to part with it to serve the necessities, or even the convenience of the state'. Crucially, however, although Cooper granted that the powers of parliament were extensive, he was sure that they were limited by its own sense of moderation and equity, as well as by the 'laws of God and nature'. His invocation of natural law theory was telling, as perhaps were his quotations from, amongst others, Grotius and Pufendorf.[111] Later, American loyalists invoked the self-same ideas when arguing that they had been compelled to defend the Crown after 1776, but had lost their property as a consequence and were, therefore, due compensation.[112]

Cooper's arguments about the limits to parliament's authority were soon overtaken by the further disintegration of relations between Britain and the Thirteen Colonies, in which claims for the absolute power of parliament were frequently made. As such, the fault in Blackstone's thinking was largely ignored. In fact, the weaknesses in ideas about compulsory sale allowed the space to develop for some to doubt the very foundations of private property. As early as 1753 it was complained that if parliament forced 'any Man to part with his private Property' then 'the Inference will then be just . . . That there is no such Thing as Property'.[113] Such concerns reached their zenith during the railway age with complaints over the 'invasion of the land', prompting deep unease with the very concept of property.[114] The striking fact is that, as Gordon has noted, while 'Property is one of the central tropes of eighteenth-century public discourse . . . And not property of any kind, but . . . property as an individual absolute dominion', English legal doctrines 'should contain so few plausible instances of absolute dominion rights'.[115] When, therefore, owners were being compelled to sell so much land to railway companies in the 1840s it was remarked, not unreasonably, that 'the

[111] *Parliamentary Hist.*, xvi (1765–71), cols. 24–5.

[112] [Joseph Galloway], *The Claim of the American Loyalists Reviewed and Maintained Upon Incontrovertible Principles of Law and Justice* (London, 1788), first issued in 1783. See also Anon., *The Case and Claim of the American Loyalists Impartially Stated and Considered* [London, 1783]; Mary Beth Norton, *The British-Americans: The Loyalist Exiles in England, 1774–1789* (London, 1974), ch. 7.

[113] Andrew Chalmer, *Some Observations in Relation to the Exercise of the Supreme Power of Parliament, Touching the Compelling Folks to Part with their Private Properties for Publick Good* ([Edinburgh?], 1753), 1.

[114] Kostal, *Law and English Railway Capitalism*, 145.

[115] Robert W. Gordon, 'Paradoxical Property', in Brewer and Staves (eds.), *Conceptions of Property*, 95–6.

proprietors of land in England are only perpetual stewards of the soil for the benefit of the people who dwell there on'.[116]

On pragmatic grounds, few adopted such a pessimistic view. But there was also a very different concern over defining or redefining property. The three case studies explored remind us that property is not a fixed unchanging given, but something that people will into being, and that will can change over time.[117] All involved forms of property that were or became unconventional at the time: the new property inherent in the national debt; the property of hereditary authority in Scotland; and the property in enslaved people. It was not clear to all contemporaries that these were indeed property. That they came to be judged so was the outcome of debate and disagreement, fed by different ideals and assumptions in which the outcome was not at all predictable. Hence, for example, 'owners' (more properly 'possessors' in most cases) of Irish boroughs were compensated for their loss at the Union in 1801, but those in Britain were not at reform in 1832.[118]

Property's security or insecurity was tied to the ways differing ideas vied one with another to establish a consensus.[119] Decisions by the Crown, parliament and courts were important parts of that process, but only a part. Exchanging ideas across society was also vital if definitions and redefinitions were to be credible. This was most clearly the case with regard to slavery. In 1700 relatively few doubted that people could be enslaved and considered as property. By 1800 many did doubt that. Crudely put, a new norm was being established which gained sufficient currency so that in 1833 the state was willing to provide the revenue needed to enable the definition of property to be rewritten to exclude property in people.[120] As was noted in one legal case from 1740, 'property is sacred until the public use requires it; which is the original compact upon which property subsists: and then property is

[116] Quoted in Kostal, *Law and English Railway Capitalism*, 179.

[117] Well explored in Brewer and Staves (eds.), *Conceptions of Property.*

[118] John Cannon, *Parliamentary Reform, 1640–1832* (Cambridge, 1973), 81, 92, 102, 131, 160, 209–10.

[119] For general issues see Andrew Reeve, *Property* (Houndsmills, 1986), 3, 23–7.

[120] It should be remembered that the relationship between property and people raised different, largely gendered, questions in the family context: Susan Staves, *Married Women's Separate Property in England, 1660–1833* (Cambridge, Mass., 1990); Amy Louise Erickson, *Women and Property in Early Modern England* (London, 1993).

not taken away, but ceases'.[121] In short, property might be insecure either by owners being tricked or forced into giving it up or by it being abolished outright.

The issue of changing definitions of property raises the question of the extent to which decisions regarding property rights made by one generation should bind succeeding generations or, to put it in North and Weingast's terms, of how long a commitment had to be honoured to be judged 'credible'? In all three cases considered, undertakings given to property owners only a generation earlier were now being reversed. This was bound to raise more general doubts. Tarleton addressed this in a specific context when he complained that if parliament, having previously endorsed the slave trade, should now stop it, surely merchants 'must have no respect for, or future confidence in acts of Parliament. The sanction of the Legislature is nothing!'[122] In fact, some were prepared to argue a more general case that is absolutely central to ideas about the security of property rights. As Beaumont, a future Chartist, asked, 'Is one law a better security than another? Is one Act of Parliament less an Act than another? One more sacred than another? One right of property held under one enactment, less secure than another right of property, held under another enactment?'[123] In an age of such legislative fertility such puzzlement was entirely understandable and raises major questions about the meaning of 'credible commitment' and the stability of property rights.

VII

CONCLUSION

The North and Weingast thesis deserves to be better known amongst historians. Such general arguments are an essential aspect distinguishing history from fact-gathering, and they offer an unusually clear and forceful interpretation of the relationship between political and economic change, rightly emphasising the profound constitutional changes wrought by the Glorious Revolution and the importance of property rights to the nature

[121] Thomas Leach, *Modern Reports; or, Select Cases Adjudged in the Courts of King's Bench*, 5th edn, 12 vols. (London, 1793–6), vii, 285.
[122] Tarleton, *Heads of the Speech*, 29.
[123] Beaumont, *Compensation*, 22–3.

of economic activity. Yet the evidence presented in this article questions several fundamentals in their interpretation, of the meaning of credible commitment, the availability of veto powers and of the significance of secure property rights. In all, the crucial development after 1688 was less with the enhanced security of property rights, more with the expanded capacity of property to be alienated.

A crucial limitation of North and Weingast's approach is that, as Epstein emphasized, they employ an anachronistic view of government derived from nineteenth- and twentieth-century nation states.[124] They look only at the level of general legislation, ignoring the masses of local legislation made available to particular interests. What was happening in the realm of public credit (which was their focus) was very different from the property rights caught up in such legislation. Nor do they consider the limitations of their Anglo-centric perspective, underplaying differences between England and Scotland and the challenges faced by Westminster as an imperial parliament. Such a mischaracterization of the state operates alongside their preoccupation with only one form of property — public credit. There is little or no consideration of the range of types of property, or of the distinctive nature of public credit as a new form. Moreover, this article has stressed that property is something that societies, as well as central government, will into and out of existence, and it is crucial to understand how such changes are translated into law; that is bound to be a fraught and testing process, with the outcomes far from predictable.

Property in this period was occasionally vulnerable to redefinition, much more often to expropriation. In both instances, owners were inclined to view the insecurity of their property in the context of prior endorsements of it by parliament. Allied to the fact that parliament passed so many acts relating to property, it was easy to believe that any commitment parliament made to property might prove rather short-lived and potentially meaningless; to them there was precious little 'credible commitment'. Moreover, those opposed to the compulsory sale of their property were liable to feel that parliament was acting less for the common good, more for particular interests; from their perspective it might appear arbitrary and selfish. As has been seen, for example,

[124] Epstein, *Freedom and Growth*, 6–7.

the abolition of heritable jurisdictions was rightly viewed as a politically motivated attempt to make Scotland conform more closely to English practices. Similarly, acts for enclosures and infrastructural developments were sought by interested, not disinterested, parties. In these instances, opponents of compulsory sale often lacked access to effective 'veto powers', though their voice was rarely simply ignored. Both fundamental inequalities within society and ideas of the supremacy of parliament cast doubt on just how balanced the constitution was in practice. Nor, of course, did owners always feel that adequate compensation had been provided, both because they were given too little money and because the social and cultural value of certain types of property could not be monetized.

Two fundamental strains relating to property rights can be pondered briefly by way of conclusion. First, because legally enforceable property rights depend upon the state being able to exercise sufficient authority, a powerful state is better at doing so than a weak one. But, equally, a strong state has more means to squeeze revenue out of such rights, or force the transfer of those rights to different owners. If the central state in Britain unquestionably grew in authority after 1688, this was linked to an enhanced capacity to tax property and to increasing the availability of sovereign power to alienate property rights. Central government certainly exploited these changes, but, with regard to alienation, much more significant was the fact that many thousands of specific economic interests obtained legislation, arguing that by pursuing their own ends they would maximize the wider or public good. It was parliament's availability to them and its ability to maintain a reasonable degree of legitimacy (even in the face of powerfully expressed doubts) that gave such means real force. Not that parliament offered a blank cheque. It preferred to consider property rights in relatively small parcels, and always within clear procedural frameworks. Bills were scrutinized and procedures established to allow opposing voices to be heard, voices that were sometimes effective. And, as this article has shown, common principles were invoked when considering the redistribution of property rights.

The second major strain in the nature of property rights was that the rhetoric of the supremacy of parliament was not fully compatible with the rhetoric of the sanctity of property. If parliament was supreme, then it could do anything; if property was

sacred, then nothing could force it. In fact, it frequently was forced by parliament and it might be wondered if, without such forcing, Britain's economy would have developed as it did. Arguably, what was crucial was not the security of property (save in the sense of the importance of a commitment to contract, due process and the rule of law) but the existence of effective avenues to allow it to be alienated, to be used by those who would employ it more efficiently. Such means were important in allowing new opportunities to be seized, for roads, canals and railways to be built along the most economic routes, for landlords to create more productive farms, and so on. Where property rights are a prisoner of the past, unanticipated opportunities may be difficult to exploit. Britain's economic development in the eighteenth and early nineteenth centuries often depended upon the reconfiguration of property rights, including being able to force such changes through, leaving previous undertakings behind.

The considerably expanded ability to alienate property was a profound development in property rights under the Revolution constitution. Initially this took place on a small scale relating to river improvement and the building of turnpike roads. The amount of land and other property rights involved was not very considerable. Later it grew, especially with the onset of the era of parliamentary enclosure and imperial challenge. In most cases this took place in very many bits and pieces, an enclosure here, a canal there, helping to explain Maitland's famous exclamation that eighteenth-century parliaments seemed 'afraid to rise to the dignity of a general proposition'.[125] But this article has shown that there were general propositions behind the widespread alienation of property, albeit that they were not fully worked through and led some to rather nihilistic conclusions. If not the product of centrally generated policies, there was a common framework of ideas behind the huge number of acts passed to allow economic opportunities to be seized. As has been seen, central government contributed to that framework and was, as such, not merely 're-active', though it was certainly also that.[126] To modern eyes

[125] F. W. Maitland, *The Constitutional History of England* (Cambridge, 1908), 383.

[126] [Tim Keirn and Lee Davison], 'The Reactive State: English Governance and Society, 1689–1750', in Lee Davison, Tim Hitchcock, Tim Keirn and Robert B. Shoemaker (eds.), *Stilling the Grumbling Hive: The Response to Social and Economic Problems in England, 1689–1750* (Stroud and New York, 1992), xi–liv.

legislation in the period may not appear very co-ordinated in relation to social and economic affairs. But just as Innes has shown that there was sufficient common ground for it to be possible meaningfully to identify 'social policy', so this article has shown an important aspect of what was, in effect, 'economic policy'.[127] Compulsion and compensation took place on a very large scale in Georgian Britain, compelling us to rethink ideas of the security of property and the willingness of the authority of the state to be utilized to mould both society and economy.

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[127] Innes, *Inferior Politics*, ch. 1.