

Lockeanism and restitution: What are the implications of a Lockean law of restitution for the contemporary UK?

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Declaration of Authorship

I, David Jarrett, hereby declare that this thesis and the work presented in it is entirely my own.
Where I have consulted the work of others, this is always clearly stated.

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Abstract

This dissertation sets out a Lockean law of restitution and enquires into some of the implications of this law. It firstly looks into the implications for property redistribution in a case study country – the contemporary UK. It secondly looks into the implications of the law for understanding exploitation in the contemporary UK and historical England until the early industrial era. According to Lockean justice, one owns one's body and is entitled to fully own previously unowned natural resources one has laboured on. One is also able to transfer one's property to whom one wishes. We are concerned with the problem of how to address holdings which did not arise in line with Lockean justice. We argue that previous attempts at addressing the problem, including those laid out by Nozick and Rothbard respectively, have been unsatisfactory. We set out a new way of approaching the problem, which we argue is more consistent with Lockean theory. We lay out a Lockean law of restitution inspired by the law of restitution found in the English legal tradition. After laying out the Lockean law of restitution, we look into some implications of the law. Using secondary historical and sociological sources, we argue that all property in the UK is unjustly held according to the Lockean law of restitution and should be redistributed in an egalitarian manner. We secondly argue that wage labour in the contemporary UK is exploitative in Lockean terms, and thirdly, that wage labour can reasonably be presumed to have always been exploitative in England historically. In light of our findings we outline the possibilities for a Lockean approach to property redistribution in the UK.

Contents

Chapter 1: Introduction ... 8

- 1.1 Introduction to chapter ... 8
- 1.2 Lockean justice in property ... 9
- 1.3 Lockeanism and illegitimate property ... 11
- 1.4 Previous Lockean approaches to injustice in holdings ... 14
- 1.5. Introducing the Lockean law of restitution ... 16
- 1.6 The interest to Lockean and socialists ... 17
- 1.7 Chapters outline ... 26
- 1.8 Conclusion to chapter ... 32

Chapter 2: The concept of Lockean justice in property: Discussion, debates, and engagement with the literature_... 34

- 2.1 Introduction to chapter ... 34
- 2.2 For and against natural rights ... 36
- 2.3 What is self-ownership? ... 38
- 2.4 For and against self-ownership ... 40
- 2.5 World-ownership ... 42
- 2.6 Variations of Lockeanism ... 44
- 2.7 Lockean proviso? ... 46
- 2.8 For and against Lockean world-ownership ... 48
- 2.9 Summary of Lockeanism ... 54
- 2.10 Two approaches to the problem of historical injustice in property: Rothbard's innocent homesteading and Nozick's rectification principle ... 54
- 2.11 Nozick's rectification principle ... 55
- 2.12 Rothbard's anti-criminal system ... 57
- 2.13 Previous justifications for socialist property reallocation ... 62

2.14 Conclusion to chapter ... 68

Chapter 3: How should we approach injustice in holdings? From the innocent homesteader approach to the Lockean law of restitution ... 71

3.1 Introduction to chapter ... 71

3.2 Clarifying Rothbard's innocent homesteader approach ... 73

3.3 Problems with Rothbard's innocent homesteader approach ... 78

3.4 A Lockean law of restitution ... 83

3.5 Plan and method for applying the theoretical framework ... 91

3.6 Conclusion to chapter ... 94

Chapter 4: Implications of the Lockean law of restitution for a case study country: the contemporary UK ... 96

4.1 Introduction to chapter ... 96

4.2 Land Monopoly ... 97

4.3 Restitution of manufactures made from unjustly held resources ... 103

4.4 Revenues derived from unjustly held land ... 105

4.5 Revenues from using unjustly held items ... 106

4.6 Income derived from taxation ... 107

4.7 Regulation and exploitation ... 109

4.8 How unjust incomes come to permeate and saturate all incomes over time ... 111

4.9 Goods bought with unjustly held money ... 114

4.10 Conclusion to chapter ... 115

Chapter 5: A Lockean theory of exploitation ... 118

5.1 Introduction to chapter ... 118

5.2 Marx, surplus value, and primitive accumulation ... 119

5.3 Marx, the colonies, and Lockean exploitation ... 125

5.6 Clarifying the significance of monopoly ownership ... 128

| | |
|--|-----|
| 5.7 Application to the contemporary UK ... | 135 |
| 5.8 Responses to opponents of the labour theory of value ... | 137 |
| 5.8 Conclusion to chapter ... | 144 |

Chapter 6: The history of proletarianisation in England ... 146

| | |
|--|-----|
| 6.1 Introduction to chapter ... | 146 |
| 6.2 Chambers takes on Marxist historiography ... | 148 |
| 6.3 Considering liberal claims on proletarianisation in the pre-Black Death period ... | 149 |
| 6.4 Proletarianisation in the early modern period ... | 156 |
| 6.5 Industrial era proletarianisation ... | 161 |
| 6.6 Conclusion to chapter ... | 167 |

Chapter 7: Discussion ... 170

| | |
|--|-----|
| 7.1 Introduction to chapter ... | 170 |
| 7.2 Discussion of main findings ... | 172 |
| 7.3 Enacting redistribution ... | 177 |
| 7.4 Exploitation: Findings and implications ... | 180 |
| 7.5 Summary of original contributions to knowledge ... | 182 |
| 7.6 Further research ... | 183 |
| 7.7 Conclusion to chapter ... | 183 |

Chapter 8: Conclusion ... 185

Bibliography ... 191

Chapter 1: Introduction

1.1 Introduction to chapter

This dissertation enquires into the implications of a Lockean law of restitution for property redistribution. In section two of this introductory chapter we will introduce the concept of Lockean justice in property. Briefly put, according to Lockeanism one owns one's body and is entitled to fully own previously unowned natural resources one has laboured on. One can also transfer one's holdings to whom one wishes. A fuller, critical discussion of the concept of Lockeanism will be found in Chapter 2. Section three of this introductory chapter raises the problem of property which has not been acquired in line with Lockean notions of justice in property, such as historical land theft. We point out that John Locke – the originator of Lockeanism – ignored the problem of historical injustice such as land theft and it has been common for subsequent economists to also ignore this problem. When historical injustice in property acquisition is overlooked, Lockeanism becomes a tool of defending concentrations of wealth which are actually unjust on Lockean grounds. In the fourth section of this introduction we discuss the necessity to Lockeanism of addressing injustice in holdings: without addressing injustice in holdings the Lockean approach is inconsistent and incoherent. We also introduce two previous approaches to addressing injustice in holdings that have been put forward in the Lockean tradition: firstly, Nozick's rectification principle, and secondly, what we label Rothbard's "anti-criminal" system – both of which we discuss further in the literature review. We argue that both are problematic and suggest that a Lockean version of the law of non-contractual obligations – found in Western legal systems – may be more suitable. We explain that the significant difference between this Lockean law of non-contractual obligations and Rothbard's anti-criminal system is that the former contains a Lockean law of restitution. We set out our plan to investigate the implications of this Lockean law of restitution in the rest of the dissertation.

In section five we argue that the Lockean law of restitution may be of interest to socialists, as it could potentially be used to justify at least some of the reallocation of property they favour. To make this argument we firstly define socialism as a classless society in which the means of subsistence and production are owned by users and workers, as opposed to landlords and capitalists. We suggest that the achievement of socialism would require addressing popular Lockean defences of current property allocations. We further suggest that one way of addressing these defences may be to accept the Lockean ethical framework, but argue that mass reallocation of property is justified on restitutionary grounds. Inquiring into whether such an

argument would be correct is the subject of this dissertation. We note that there is *prima facie* evidence that such an argument could possibly be correct in the literature on “primitive accumulation” (Karl Marx) and the “force theory” of profit (Kevin Carson), which both focus on state-sanctioned violence and theft.¹

1.2 Lockean justice in property

Expressed briefly, Lockean principles of justice in property are: (1) that people own themselves (i.e. they may do what they wish with their bodies as long they do not infringe on the self-ownership or private property rights of another person); (2) that people own any previously unowned land or natural resources they have laboured on; and (3) that people may transfer their property ownership rights to whom they wish. Within these broad parameters, there are a number of debates within Lockeanism (e.g. whether there should be limits on how much one can originally acquire through labour), some of which we address in Chapter 2 (we also look at the question of intellectual property in Chapter 4). Whilst there are a variety of Lockean positions, proponents of Lockean property rights argue that they are natural rights which are deducible from reflection on the nature of human beings. The ideas were first expressed by the seventeenth century philosopher, John Locke – hence the name “Lockean”.² He further argued that government should be limited to protecting persons’ “life, liberty and estate” – often re-phrased as “life, liberty and property”.³ Some modern Lockean theorists such as Rothbard have argued that states are entirely illegitimate entities, as they are dependent for their income upon taxation, which should be considered a form of theft. Such theorists therefore argue that the protection of life, liberty and property should be left to private defence agencies.⁴

Lockean notions of justice in property can be compared to other notions of justice in property.⁵ For example, mutualists agree that people own themselves, but oppose the notion of ownership

¹ Marx, Karl, *Capital: A Critique of Political Economy, Volume I, Book One: The Process of Production of Capital*, translated by Samuel Moore and Edward Aveling, ed. Frederick Engels, Moscow: Progress Publishers, First English edition of 1887), Chapters 26, 27, and 33. See also, Harvey, David, *The New Imperialism*, Oxford: Oxford University Press, 2003. On the force theory of profit see Carson, Kevin A., *Studies in Mutualist Political Economy*, Fayetteville, Ark: Anti-copyright, 2004, online at Centre for a Stateless Society, <https://c4ss.org/wp-content/uploads/2009/10/MPE.pdf> (accessed 03 Sep 2017), particularly pp. 116-129. Hereafter, in the footnotes, this book is referred to as “*Studies*”.

² Locke, John, *Two Treatise of Government*, London: Printed for Thomas Tegg et al, 1823, online at University of York [website], <http://www.yorku.ca/comminel/courses/3025pdf/Locke.pdf> (accessed 29 Aug 2017).

³ *Ibid*, Second Treatise, Chapter. 9, Section 123.

⁴ Rothbard, Murray, N., *For a New Liberty: The Libertarian Manifesto (Second Edition)*, Auburn, Alabama: Ludwig von Mises Institute, 2006; Rothbard, Murray, N., *The Ethics of Liberty*, New York and London: New York University Press, 1998. Hereafter we reference the latter book as just “*Ethics*”.

⁵ Throughout this dissertation, unless otherwise stated, we will be using an expansive definition of “property”, not limited to means of production, but including one’s toothbrush and T-shirt.

of land and other worldly items. Instead of *owning* worldly items, they believe people can only *possess* such items. Thus, once a person leaves a plot of land, that person loses control rights over it after some socially agreed period of time. The person does not have a permanent right to own the land as an absentee landlord, for example, as under Lockeanism. Also, under mutualism, one cannot sell a piece of land, because one cannot own it. One can only occupy and use it as a possessor.⁶ To take other alternatives to Lockean justice, let us note that Locke himself was writing in late seventeenth century England, and his primary argument was against the idea that the king owned the country and the persons that lived in it – monarchical ownership. Rather, for Locke, people owned themselves and they owned the property which they had laboured on to take out of the God-given common. Locke’s second argument was against any type of communist or collectivist land ownership system, which he worried was possibly suggested by the Bible. Additionally, common land (the commons) had historically been a prominent feature in England and was further associated with Native American societies in which private ownership of nature was rejected.⁷ As opposed to tyrannous monarchism on the one hand, and common ownership on the other, Locke was – at least ostensibly – arguing for a society of private property owners whose titles were rooted in labouring on land or gaining the proceeds of labour through voluntary transfer.

Significantly, the Lockean notion of justice in property is the only natural rights approach which can be used to defend the absolute right of private property with regards to land. There are natural rights approaches such as the Universal Declaration of Human Rights (UD) which allow for private ownership of land – or at least do not preclude it – but make all rights, including private property rights, contingent upon securing the “general welfare”.⁸ It is therefore conceivable that land could justifiably be expropriated for social purposes under the UD, if land concentration was having harmful impacts upon some persons. There is also a natural rights approach – Georgism – which allows for absolute private property in all items except for land (with land taken in its expansive definition to include all natural items not produced by labour). It is only the Lockean notion of justice in property which allows for absolute private property ownership to extend to land.

⁶ , Carson, *Studies*, particularly, pp. 199-200.

⁷ See Locke, *op cit*.

⁸ United Nations, *The Universal Declaration of Human Rights*, United Nations [Website], 1948, <http://www.un.org/en/universal-declaration-human-rights/> (accessed 12 Sep 2018), Article 29.

1.3 Lockeanism and illegitimate property

Locke was not merely designing a system of ownership rights. He was arguing that existing private property rights were justified according to the criteria he had outlined. That is, he claimed that the then contemporary property titles in England, particularly in land, *had* historically emerged in the manner which he had described as just – that is, by labourers homesteading land and then voluntarily transferring it to others via gift or exchange. He explained at the beginning of his famous chapter on property that his aim was to see how existing private property holdings *had* emerged: “I shall endeavour to show how men might come to have a property in several parts of that which God gave to mankind in common, and that without any express compact of all the commoners.”⁹ He then went on to outline a system of justice in property and concluded that this was how existing property titles had come about:

I think, it is very easy to conceive, without any difficulty, how labour could at first begin a title of property in the common things of Nature, and how the spending it upon our uses bounded it; so that there could then be no reason of quarrelling about title, nor any doubt about the largeness of possession it gave. Right and conveniency went together.¹⁰

This was completely misleading. In fact, as we discuss further in Chapter 4, for centuries, land had been engorged by the Crown, aristocracy, and land speculators. Disregarding this history allowed Locke to disregard the problem of illegitimate property – that is, illegitimate on Lockean grounds.¹¹

Locke’s disregard for actual history was continued by mainstream political economists – notably Adam Smith, who argued in the late eighteenth century that wealth accumulation had developed to its then contemporary state from a “rude state of society” in which “every man provides everything for himself”, via a process of free market exchanges – i.e. through Lockean acquisition and transfer.¹² In the nineteenth century Marx pointed out that the political economists of his time promoted this incorrect version of how the wage labour system had emerged. The commonly-promoted idea was that landless proletarians on the one hand, and wealthy people with money to invest in industrial capital goods on the other, had emerged

⁹ Locke, Second Treatise, Chapter 5, Section 24.

¹⁰ Locke, Second Treatise, Chapter 5, Section 51.

¹¹ Throughout this dissertation, when we use terms such as “illegitimate” or “unjust”, we mean illegitimate or unjust on Lockean grounds unless otherwise stated.

¹² Smith, Adam, *An Inquiry into the Nature and Causes of the Wealth of Nations, Books I, II, III, IV and V*, ed. S. M. Soared, MetaLibri Digital Library [website], 29 May 2007, https://www.ibiblio.org/ml/libri/s/SmithA_WealthNations_p.pdf (accessed: 03 Sep 2017), p. 276.

through free market processes.¹³ Today these historical claims are often implicit rather than explicit. Notably, economists have attributed, and continue to attribute, inequality in real world property allocations to “free market” processes, with “free market”, again, being shorthand for acquisition and exchange in line with Lockean justice.¹⁴ Similarly, claims along the lines that “the rich deserve their wealth due to their hard work” are often implicitly claims that the rich have gained their wealth through ways which are compatible with Lockean justice – and not through using force or fraud, or benefiting from such. This denies the role of state violence and oppression in generating present property allocations.

As we shall discuss later, after Locke’s time, illegitimately-acquired land in England continued to be upheld as legitimate, and the commons were further privatised (or “enclosed”) by the early nineteenth century. The legitimacy of these property allocations remain largely unchallenged to this day. Historians such as Oppenheimer have documented similar patterns of land expropriation and monopoly across the globe.¹⁵ Even the United States, sometimes claimed to have developed with a “truly libertarian land system”, has a history of land which is incompatible with Lockean justice.¹⁶ Albert Jay Nock documented mass land concentration in the United States as the economic, military and political elites, including those that framed the constitution such as George Washington, Patrick Henry, and Benjamin Franklin, claimed millions of acres of land as their personal property by legal fiat as the colonists viciously steam-rolled the natives

¹³ Marx, *Capital*, Chapter 26.

¹⁴ For example, see Patomaki, Heikki, ‘Global justice: A democratic perspective’, *Globalizations*, 3:2, 2006, pp. 99-120, p. 112.

¹⁵ Oppenheimer, Franz, *The State: Its History and Development Viewed Sociologically*, translated by John M. Gitterman, New York: Vanguard Press, 1926. See also Stromberg, Joseph R., ‘The American Land Question’ in *Markets Not Capitalism: Individualist Anarchism against Bosses, Inequality, Corporate Power, and Structural Poverty*, eds. Chartier, Gary, and Charles W. Johnson, London: Minor Compositions, 2012, pp. 335-346. Apart from land expropriation in Northern America this article includes an introductory discussion and references for land expropriation in English colonies in the Caribbean and Africa (pp. 339-341). See also Stromberg, Joseph R., ‘English Enclosures and Soviet Collectivization’ in *Markets Not Capitalism: Individualist Anarchism against Bosses, Inequality, Corporate Power, and Structural Poverty*, eds. Chartier, Gary, and Charles W. Johnson, London: Minor Compositions, 2012, pp. 347 – 368. This latter article discusses not only land expropriation in England, Russia, and Eastern Europe, but also in Latin America (see, pp. 355 – 358). Feudal concentration of land across Europe has been discussed in Tilly, Charles, *Coercion, Capital, and European States, AD 990-1990*, Cambridge, Massachusetts: Basil Blackwell, 1990. For an introductory discussion of land expropriation in China see Sargeson, Sally, ‘The Demise of China’s Peasantry as a Class’, *The Asia-Pacific Journal*, volume 14, issue 13, no.1, , July 1 2016, online at: <http://apjif.org/2016/13/Sargeson.html>, (accessed: 03 Sep 2017). Mukerjee has discussed how the British colonists in India transferred ownership of the land upon which whole villages were built to chosen allies: Mukerjee, Dhakamal, *Land Problems of India*, London: Longmans, Green & Co., 1933.

¹⁶ For this truly “truly libertarian” claim see Rothbard, *Ethics*, p. 74. For Rothbard’s historical discussion which overlooks all evidence cited in our next three footnotes, see: Rothbard, Murray, N., *Conceived in Liberty*, Auburn, Alabama: Ludwig von Mises Institute, 2011.

on the way west.¹⁷ Henry George would in the 1870s document further mass land speculation by people arbitrarily taking huge land titles all the way to the West Coast.¹⁸ Historian Meyer Weinberg has also documented large-scale acquisition of land in the US during westward expansion by speculators that did not even see the land, let alone labour there, as John Locke advocated.¹⁹

It is not only the history of land expropriation and monopoly which has created injustice in holdings according to Lockeanism. Under Lockeanism it is only legitimate to acquire property by labouring on unowned land or gaining the produce of labour through voluntary transfer. It is illegitimate to gain property through any way which violates the self-ownership or private property rights of another person. This means that, as we discuss in Chapters 2 and 3, when force is used (including by third parties) in the acquisition of property, or is used to distort property allocations, the legitimacy of the resulting titles is brought into question. Here the role of governments is important to take into account, as governments distort holdings through taxation and various forms of economic regulation which infringe upon self-ownership. For example, Kevin Carson, amongst others, has documented how capitalist states (states that support capital accumulation) such as that in the UK and the United States, apart from creating and upholding the general pattern of property ownership, have intervened in the economy on behalf of capital in many other ways. This has included, sanctioning slavery and other forms of forced labour, suppression of wage-labour organising, infrastructure support for business, monopoly banking laws, bank bailouts, corporate procurement deals, research and development support for business, support for oppressive Third World regimes, Third World Structural Adjustment Loans, and a host of other state services which have concentrated wealth in the hands of the rich.²⁰ As we discuss further in subsequent chapters, all of these state actions generate illegitimate holdings according to Lockean norms of justice.

¹⁷ Nock, Albert Jay, *Our enemy, The State*, n.p., Hallbert Pub Corp, 1983, online at: <https://famguardian.org/Publications/OurEnemyTheState/OurEnemyTheState-byAlbertJNock.pdf> (accessed 03 Sep 2017). For more on the Native American tribes, their land holdings, and the violence against them, see: Stannard, David E., *American Holocaust: The Conquest of the New World*, Oxford: Oxford University Press, 1992.

¹⁸ George, Henry, *Progress and Poverty: An Inquiry in the Cause of Industrial Depressions and Increase of Want with an Increase of Wealth – The Remedy*, New York: Robert Schalkenback Foundation, 1935.

¹⁹ Weinberg, Meyer, *A Short History of American Capitalism*, n.p., New History Press, 2003, online at: <http://www.newhistory.org/AmCap.pdf> (accessed 06 Dec 2017).

²⁰ Carson, *Studies*.

1.4 Previous Lockean approaches to injustice in holdings

In 1982 the Lockean theorist, Murray Rothbard, complained that the question of how to address the history of injustice in holdings from a Lockean perspective had “unfortunately been almost totally overlooked”.²¹ We can note that Locke himself was the first offender in this regard. By ignoring and falsifying history, Locke was able to avoid confronting the problem that much property was held unjustly according to his own criteria of justice. Many in the Lockean tradition have followed suit. For example, the US-based Libertarian party holds to the Lockean claim that the state (if it should exist at all) should be limited to protecting “life, liberty and property”.²² However, nowhere does the party’s platform mention the problem of addressing unjustly held property. With this said, two of the leading thinkers in the Lockean tradition – Nozick and Rothbard – have each attempted to address the problem. Before outlining their approaches, let us first look at Rothbard’s explanation of why the problem must be addressed.

Rothbard pointed out that having a conception of legitimate and illegitimate property is necessary to be able to use aggression in order to recover unjustly held property. He further added that “we cannot simply talk of defence of ‘property rights’ or of ‘private property’ *per se*. For if we do so we are in grave danger of defending the property of the criminal aggressor – in fact, we logically must do so.”²³ In this context he criticised right-libertarians that based their right-libertarianism upon utilitarian considerations rather than natural rights ideas. He wrote:

[The] utilitarian, who has no *conception*, let alone theory of justice, must fall back on the pragmatic, *ad hoc* view that all titles to private property currently existing at any time or place must be treated as valid and accepted as worthy of defense against violation.²⁴ This, in fact, is the way utilitarian free-market economists invariably treat the question of property rights. Note, however, that the utilitarian *has* managed to smuggle into his discussion an unexamined ethic: that all goods “now” (the time and place at which the discussion occurs) considered private property must be accepted and defended as such. In practice, this means that all private property titles designated by any existing *government* (which has everywhere seized the monopoly of defining titles to property) must be accepted as such. This is an ethic that is blind to all considerations of justice, and pushed to its logical conclusion, must also defend every criminal in the property that he has managed

²¹ Rothbard, *Ethics*, p. 51.

²² Libertarian Party, ‘Platform’, *Libertarian Party* [website], <https://www.lp.org/platform/> (accessed 15 Sep 2017).

²³ Rothbard, *Ethics*, p. 52.

²⁴ Note that I have kept all original American spellings in quotations for words such as defence (defense) and labour (labor).

to expropriate. We conclude that the utilitarian's simply praising a free market based upon *all existing* property titles is invalid and ethically nihilistic.²⁵

With this point in mind, let us now look at the two main Lockean theoretical responses to injustice in holdings. Nozick argued for what he referred to as a "rectification principle".²⁶ According to this principle, attempts must be made to make people as well off as they would have been had historical injustice not taken place. Nozick suggested that ideally all historical injustice suffered by persons, including injustice to one's ancestors, and injustice by governments as well as individuals, should be taken into account when considering how well off persons could have otherwise been. Lacking the historical information to do this, Nozick suggested that patterned redistribution from the best off in society towards the worst off (e.g. welfare) may be justified to address historical injustice if it is assumed that the best off in society have disproportionately benefitted from injustice and that the worst off have been disproportionately harmed.²⁷ However, Nozick offered little detail on how much redistribution would be justified.

Litan has expanded on Nozick's approach. According to Litan, the mathematical formula likely to bring us closest to rectifying past injustice in line with Nozick's approach, and getting us closest to a just distribution of holdings, is to give each person the mean average of the possible holdings they could have gotten without injustice taking place. Due to the fact that we can never gain a good understanding of all the relevant injustices that have historically taken place, Litan suggests that we cannot say that people have different distributions of possible ideal holdings. Thus we should treat everybody in a given society as having the same possible holdings. Litan explains that this would actually require attempting to equalise all property holdings between members of the society in question.²⁸ A problem with this Nozick-Litan approach, as we discuss further in the next chapter, is that it appears to clash with the core Lockean principles of justice in property, as it would involve redistributing property that is not shown to be illegitimately held.

The other major approach to injustice in holdings is what we may call an "anti-criminal" system, as outlined by Rothbard. There are two parts to this system. The first part can be labelled an "innocent homesteader" approach to injustice in holdings. As we discuss further later, this

²⁵ *Ibid*, p. 52

²⁶ Nozick, Robert, *Anarchy, State, and Utopia*, Oxford UK: Blackwell Publishers, 1974, p. 152.

²⁷ *Ibid*.

²⁸ Litan, Robert E., 'On Rectification in Nozick's Minimal State', *Political Theory*, Vol. 5, No. 2. May 1977, pp. 233-246.

innocent homesteader approach is slightly complex, and we will argue in Chapter 3 that Rothbard misunderstood his own ideas. Very briefly, he believed that his argument was that people should keep their property, even if criminally derived, unless either they themselves were the criminal that took the property, or another person could show that they or their ancestor were the original title-holder of the property.²⁹ However, we will argue that Rothbard's actual argument, and one that is more in line with Lockean notions of justice, was that property derived from crime can be appropriated by the first innocent homesteader(s). This has some significantly different implications. However, even when clarified, the innocent homesteader approach is still problematic in Lockean terms. Namely, it allows people to benefit from theft and it cannot address all victims of monopoly (particularly land monopoly) or exploitation. We therefore suggest that this component of Rothbard's anti-criminal system is not fit for purpose in addressing injustice in holdings. The second part of Rothbard's anti-criminal system is somewhat simple. It is that persons must pay compensation for the torts they commit against other persons or their property. We accept this part of Rothbard's system and do not critique it further. It is only the innocent homesteader part of Rothbard's system which we are concerned with critiquing.

1.5 Introducing the Lockean law of restitution

Due to the problems of Nozick's and Rothbard's schemes, we suggest an alternative approach to addressing injustice in holdings. We suggest a Lockean version of the law of non-contractual obligations. In Western legal practise, the law of non-contractual obligations is split into two parts: the law of restitution and the law of compensation (or law of tort).³⁰ As can be seen, it is similar to Rothbard's anti-criminal system in that both include a compensation component. However, the law of non-contractual obligations differs from Rothbard's system in that instead of Rothbard's innocent homesteader component there is a law of restitution. Therefore a Lockean version of the law of non-contractual obligations replaces Rothbard's innocent homesteader approach with a Lockean law of restitution.

In Western legal systems the law of restitution attempts to prevent defendants benefiting from injustice. Problematically in Western legal systems, restitution law is applied in ways which uphold state-sanctioned property, but we suggest that it can be applied in a Lockean manner. For example, the English law of restitution does not view taxes as illegitimate, whereas (as we

²⁹ Rothbard, *Ethics*.

³⁰ Samuel, Geoffrey, *Law of Obligations and Legal Remedies*, 2nd ed., London: Cavendish Publishing Ltd, 2001.

explain in Chapter 2) Lockeanism does, so according to the Lockean law of restitution, recipients of taxpayer money (e.g. corporations that have received subsidies) would owe their ill-gotten gains in restitution. In Chapter 3 we further lay out the Lockean law of restitution, and in subsequent chapters we enquire into its implications for property redistribution in a case study country, the contemporary UK.

Whilst we suggest that a Lockean law of compensation should also be part of a coherent Lockean approach to injustice in holdings, we do not go into detail on the implications of this law in this dissertation. This is because broad conclusions on the implications of the law of compensation seem more difficult to assess. That is, we suggest that some broad conclusions can be made about applying the Lockean law of restitution to the contemporary UK (namely that all property must be redistributed in an egalitarian manner), but the implications of the law of compensation can only be investigated on a case by case basis. Whilst this dissertation does not go into depth on the implications of a Lockean law of compensation, in Chapter 7 (section 2) some introductory ideas are presented of how the Lockean law of restitution and the Lockean law of compensation may work together in application.

1.6 The interest to Lockeans and socialists

Those that agree with Lockean notions of justice in property but do not wish to defend illegitimate, state derived property rights, should be interested in this investigation. We also suggest that an investigation into the correctness and implications of Lockean approaches to addressing injustice in holdings may be of interest to socialists. Why is this? Before answering this question it must be acknowledged that socialism is a contested term. People with a variety of political perspectives claim the “socialist” label. This is because socialism can be considered an attempt to address the problems raised by “capitalism” – itself a contested term. For the purposes of this dissertation we will take a historicist approach to the word capitalism. We will therefore describe it as the legal system which supports surplus value extraction by owners of capital.³¹ In today’s world surplus value is extracted through various economic rents, such as those listed earlier (state procurement contracts, etc.), as well as the wage labour system discussed by Marx – which we will discuss further in Chapters 5 and 6.

The problems of capitalism will be interpreted differently, and every person will have different ways of approaching them and come to different solutions. Here it should be noted, to paraphrase Olin-Wright, that for a person to see the dominant socio-economic order as

³¹ This definition is in line with Carson’s definition. Carson, *Studies*, p. 11.

problematic, they must be employing an implicit assumption that there are some social conditions which would need to be met in order for the society to not be considered problematic.³² There are a number of socialist perspectives on what these conditions are. Some self-identified socialists do not favour abolishing classes (we discuss classes in the next paragraph), but aim only for redistribution within the class system. Others favour abolishing classes, but even within this secondary group there are a variety of ideas on how society should function. Some socialists favour needs-based distribution of wealth. Others favour reward based on effort. Others favour that labour should get its full product. Others simply believe in worker ownership over the means of production. Not all of these approaches are compatible. For example, if labourers get their full product then differences between individuals in the amounts of production achieved will not yield needs-based distribution, and vice versa.

When we refer to socialism in this dissertation we are referring to the movement to abolish the class system. To understand this notion of socialism more clearly it must be recognised that historically under capitalism, as explained by Ricardo, wealth generated through labour has been divided three ways: between rents, capital and labour.³³ Socialists have sought to end (or at least very dramatically reduce) the share which goes to rents and capital. The proposed socialist method of achieving this has been to end the division between the owners of the means of subsistence and production (land, machinery, housing, etc.) on the one hand, and on the other hand, labourers.³⁴ This is what we mean by abolishing the class system.

The exact method of achieving the end of this division and how societies could be organised has been envisioned in a number of different ways. For example, in the communist tradition the tendency is to favour joint ownership by members of society over the means of subsistence and production. Meanwhile, in the mutualist tradition that includes figures such as Benjamin Tucker, there would be much possession of the means of subsistence and production by individuals. Tucker foresaw a society made up predominantly of independent artisans.³⁵ There have also been a number of market socialist schemes advocated as well as participatory economics.³⁶

³² "To describe a social arrangement as generating 'harms' is to infuse the analysis with a moral judgment. Behind every emancipatory theory, therefore, there is an implicit theory of justice, some conception of what conditions would have to be met before the institutions of a society could be deemed just." Olin-Wright, Eric, *Envisioning Real Utopias*. London: Verso, 2010, p. 8.

³³ Ricardo, David, *On the Principles of Political Economy and Taxation*, London: John Murray, 1821, online at: Library of Economics and Liberty [website] <http://www.econlib.org/library/Ricardo/ricP.html> (accessed 02 Sep 2017).

³⁴ See, for example, Marx, *Capital* and Tucker, *Individual Liberty*.

³⁵ Tucker, Benjamin, *Individual Liberty*, New York: Vanguard Press, 1926.

³⁶ David Miller, Alec Nove, and John Roemer have each thought up their own versions of market socialism. See (respectively): Miller, David, *Market, State and Community: Theoretical Foundations of*

Why would a socialist be interested in the question of a Lockean approach to addressing injustice in holdings? We suggest that a Lockean approach to reallocation of property could potentially overcome ethical objections other approaches to redistribution face. Achieving any form of socialism would require challenging many – certainly in the millions – of individual private property titles in the UK alone. These are titles which the vast majority of people may see as justified on Lockean grounds. It is worth elaborating on this point here.

One of the striking political developments of recent years is the rise in popularity of explicitly Lockean ideas. One example of this is the growth of the Libertarian Party in the United States. The party promotes the idea of limiting the government to only protecting “life, liberty and property” (echoing Locke’s phrase) and opposes the “welfare-warfare state”.³⁷ It therefore aims to end any government involvement in providing healthcare or pensions or welfare, and it also opposes further offensive military missions overseas.³⁸ In 2016 the Libertarian Party tripled its vote to become the third biggest party in the United States, with over 4 million votes.³⁹ It should be noted here that there are different theoretical strands which feed into the Libertarian Party and wider right-libertarian movement, including David Friedman-type utilitarian economist perspectives⁴⁰ and Ayn Rand-type “objectivism” (although leading objectivists tend to separate themselves from “libertarianism”⁴¹). However, the Lockean-type strand is certainly a prominent

Market Socialism, Oxford: Oxford University Press, 1989; Nove, Alec, *The Economics of Feasible Socialism*, London: George Allen and Unwin, 1983; Roemer, John E., *A Future for Socialism*, Cambridge, Massachusetts: Harvard University Press, 1994. For broader introductions to, and discussions of market socialist ideas, see Le Grand, Julian, and Saul Estrin, *Market Socialism*, Oxford: Clarendon Press, 1989; Griffiths, Simon, ‘Market socialism in retrospect’, *Contemporary Politics*, Vol. 12, No. 1, 2006, pp. 25-44. For introductions to the individualist anarchist strand of market socialism, see Chartier, Gary, and Charles W. Johnson, eds., *Markets Not Capitalism: Individualist Anarchism against Bosses, Inequality, Corporate Power, and Structural Poverty*, London: Minor Compositions, 2012; McElroy, Wendy, *Debates of Liberty: An Overview of Individualist Anarchism, 1881-1908*, Lexington, Massachusetts: Lexington Books, 2002; Ryley, Peter, ‘Individualism’, in *The Palgrave Handbook of Anarchism*, eds. Carl Levy and Matthew S. Adams, n.p., Palgrave, Macmillan, 2019. For a broader introduction to market anarchism, see Carson, Kevin, ‘Anarchism and Markets’ in *Brill’s Companion to Anarchism and Philosophy*, ed. Nathan Jun, Leiden: Koninklijke Brill NV, 2018, pp. 81-119. For an introduction to participatory economics, see: Albert, Michael, *Parecon: life after capitalism*, London: Verso, 2003.

³⁷ Libertarian Party, *op cit*.

³⁸ *Ibid*.

³⁹ *Ibid*.

⁴⁰ Friedman, David, *The Machinery of Freedom: Guide to a Radical Capitalism*, 2nd Edition, Illinois: Open Court Publishing Company, 1989.

⁴¹ Peter Schwartz of the Ayn Rand Institute describes libertarianism as “evil”. Schwartz, Peter, ‘On Moral Sanctions’, *AynRand.org*, 18 May 1989. <https://ari.aynrand.org/issues/culture-and-society/religion-and-morality/On-Moral-Sanctions#filter-bar> (accessed 07 Aug 2018).

force. The outstanding representative of this strand, Murray Rothbard, is widely considered the “creator” of the modern right-libertarian movement.⁴²

At the same time, right-libertarian ideas are becoming more prominent in the alternative media. For example, in 2016 it was reported that right-libertarian Alex Jones’ *Infowars.com* website had over 10 million views per month, which was more than *National Review* – the premier conservative US news source – and mainstream news sites such as the *Economist* and *Newsweek*.⁴³ *Infowars.com* regularly posts articles about Rothbard and his ideas. One of the articles from 2016 is headlined, “Murray Rothbard Soaring in Popularity: Interest in Murray’s work only continues to multiply”.⁴⁴ Rothbard also co-founded two popular think tanks: the Cato Institute and the Mises Institute which promote Lockean right-libertarian views.⁴⁵ The Cato Institute was also co-founded by, and remains under the control of, Charles Koch of Koch Industries – the 6th richest person in the world in 2018. Named after followers of John Locke, the institution is regularly ranked as one of the most influential think tanks in the world.⁴⁶

It should also be noted that Rothbard believed that he was for the most part simply reinvigorating classical liberal ideas going back to England in the seventeenth century. In fact, Rothbard used the terms “classical liberal” and “libertarian” interchangeably, referring to the English Revolution as a “radical libertarian movement.”⁴⁷ He argued that Locke’s contribution to classical liberalism was to “set forth the natural rights of each individual to his person and property” and to point out that “the purpose of government was strictly limited to defending such rights.”⁴⁸ Rothbard argued that the US revolution was inspired by “radical Lockean” and described the US Declaration as a “Lockean-inspired” document dedicated to protecting persons and their property.⁴⁹ Proponents of right-libertarianism such as Boaz and Mack, respectively,

⁴² Rockwell, Jr, Llewellyn H., ‘Introduction’, in *For a New Liberty: The Libertarian Manifesto (Second Edition)*, by Rothbard, Murray, N., Auburn, Alabama: Ludwig von Mises Institute, 2006.

⁴³ Beauchamp, Zack, ‘Alex Jones, Pizzagate booster and America’s most famous conspiracy theorist, explained’, *Vox.com*, 7 Dec 2016, <https://www.vox.com/policy-and-politics/2016/10/28/13424848/alex-jones-infowars-prisonplanet> (accessed 07 Aug 2018).

⁴⁴ Rockwell, Lee, ‘Interest in Murray’s work only continues to multiply’ *Infowars.com*, 31 Mar 2016, <https://www.infowars.com/murray-rothbard-soaring-in-popularity/> (accessed 07 Aug 2018).

⁴⁵ *Cato.org*, <https://www.cato.org/>, (accessed 07 Aug 2018), *Mises.org*, <https://mises.org/> (accessed 07 Aug 2018).

⁴⁶ Cato Institute, ‘25 years at the Cato Institute: The 2001 Annual Report’, *Cato.org*, https://object.cato.org/sites/cato.org/files/pubs/pdf/25th_annual_report.pdf (accessed 07 Aug 2018); McGann, James G., ‘2017 Global Go To Think Tank Index Report’, 2018, *TTCSP Global Go To Think Tank Index Reports. 13*, online at: https://repository.upenn.edu/cgi/viewcontent.cgi?article=1012&context=think_tanks (accessed 07 Aug 2018).

⁴⁷ Rothbard, Murray, N., *For a New Liberty*, p. 2.

⁴⁸ *Ibid*, p. 4.

⁴⁹ *Ibid*, p. 4.

have also placed the modern right-libertarian movement in the classical liberal tradition, dating back to Locke.⁵⁰ According to Boaz: “John Locke is rightly seen as the first real liberal and as the father of modern political philosophy. If you don't know the ideas of Locke, you really can't understand the world we live in.”⁵¹

We mentioned above that Locke was attempting to justify the emerging private property norms in England in the late seventeenth century. These private property norms have become legally dominant in the contemporary UK and the world more broadly. We suggest that it is the Lockean notion of justice in holdings which should be borne in mind when considering Hardt and Negri's discussion of the centrality of popular, internalised notions of justice in property to maintaining global order. They write:

Property, which is taken to be intrinsic to human thought and action, serves as the regulative idea of the constitutional state and the rule of law. This is not really a historical foundation but rather an ethical obligation, a constitutive form of the moral order. The concept of the individual is defined by not being but having; rather than to a "deep" metaphysical and transcendental unity, in other words, it refers to a "superficial" entity endowed with property or possessions, defined increasingly today in "patrimonial" terms as shareholder... Capital too functions as an impersonal form of domination that imposes laws of its own, economic laws that structure social life and make hierarchies and subordinations seem natural and necessary. The basic elements of capitalist society—the power of property concentrated in the hands of the few, the need for the majority to sell their labor-power to maintain themselves, the exclusion of large portions of the global population even from these circuits of exploitation, and so forth—all function as an *a priori*. It is even difficult to recognize this as violence because it is so normalized and its force is applied so impersonally. Capitalist control and exploitation rely primarily not on an external sovereign power but on invisible, internalized laws.⁵²

Hardt and Negri did not specify that it is Lockean notions of justice in property that are prominent. However, we suggest that it can be taken for granted, as there is no other natural rights-based approach to property which has been used to justify the right to concentrated

⁵⁰ Boaz, David, *Libertarianism: A primer*, New York: The Free Press, 1997; Mack, Eric, *Libertarianism*, Cambridge, UK: Polity Press, 2018.

⁵¹ Boaz, *op cit*, p. 36.

⁵² Hardt, Michael and Antonio Negri, *Commonwealth*, Cambridge, Massachusetts: The Belknap Press of Harvard University Press, 2009, p. 7.

ownership of the means of subsistence and production – particularly land – whilst many are left in poverty.⁵³

Not only are Lockean ideas seemingly broadly internalised and apparently becoming more explicitly popular, but they are also somewhat difficult to argue against. Part of the reason is that, whilst they are extremely problematic in certain ways (as we shall discuss in the next chapter), Lockean notions of justice in property do seem to have a certain intrinsic appeal – recognised even by ardent critics. (We will not speculate here how far this appeal may be due to the fact that we are all morally and intellectually stamped by bourgeois ideas or alternatively, how far it might derive from some innate notions of justice humans may hold.) Discussing only the self-ownership part of the Lockean justice thesis, as presented by Nozick, the pro-egalitarian G.A. Cohen has made the following comments:

The thesis of self-ownership has, after all, plenty of appeal, quite apart from anything that Nozick urges on its behalf. Its antecedent (that is, pre-philosophical) appeal rivals that of whatever principles of equality it is thought to contradict, even for many committed defenders of such principles: that is why *Anarchy, State, and Utopia* unsettles so many of its liberal and socialist readers... In my experience, leftists who disparage Nozick's essentially unargued affirmation of each person's rights over himself lose confidence in their unqualified denial of the thesis of self-ownership when they are asked to consider who has the right to decide what should happen, for example, to their own eyes. They do not immediately agree that, were eye transplants easy to achieve, it would then be acceptable for the state to conscribe potential eye donors into a lottery whose losers must yield an eye to beneficiaries who would otherwise be not one-eyed but blind.⁵⁴

We suggest that the Lockean world-ownership thesis (i.e. the approach to ownership of worldly items) – that one should own any unowned natural resources one labours on – is less convincing than the self-ownership thesis but it also surely has significant appeal. Rothbard asked how property titles should be allocated, and responded in the following manner:

Let us take, as our first example, a sculptor fashioning a work of art out of clay and other materials; and let us waive, for the moment, the question of original property rights in the clay and the sculptor's tools. The question then becomes: Who owns the work of art as it

⁵³ None of this is to say that there is a strictly Lockean system of private property rights in the UK or elsewhere. It is generally the case that existing private property titles to things such as land, houses, and other items are respected in a Lockean manner, but new income (income tax, capital gains, and inheritance tax) and purchases (VAT) are taxed. An exception is property taken under compulsory purchase orders/ eminent domain.

⁵⁴ Cohen, G.A., *Self-Ownership, Freedom and Equality*, Cambridge: Cambridge University Press, 1995, p. 70.

emerges from the sculptor's fashioning? It is, in fact, the sculptor's "creation," not in the sense that he has created matter, but in the sense that he has transformed nature-given matter—the clay—into another form dictated by his own ideas and fashioned by his own hands and energy. Surely, it is a rare person who, with the case put thus, would say that the sculptor does not have the property right in his own product. Surely, if every man has the right to own his own body, and if he must grapple with the material objects of the world in order to survive, then the sculptor has the right to own the product he has made, by his energy and effort, a veritable extension of his own personality.⁵⁵

We will examine these positions in more detail in the next chapter. Here our aim is simply to note that the core principles of Lockean ownership are not *prima facie* outlandish or ridiculous.

Another part of the difficulty in arguing against Lockean ideas is that it appears that they cannot be proven objectively false. After a rigorous philosophical examination, Cohen claimed that whilst the appeal of the self-ownership thesis can be reduced by argumentation, it cannot be strictly refuted.⁵⁶ We suggest that the same goes for the Lockean approach to justice in world-ownership. We also suggest that this would explain Lockeanism's longevity and its ability to renew itself with the right-libertarian movement.

It is in this context in which socialists are advocating reallocation of property. There are only two possible ways those that favour mass reallocation of property can justify such reallocation. The first way is denying that Lockean property norms are just. That is, suggesting that societies should be based on other norms of ownership and control over the means of subsistence and production. Since Lockean notions of justice in property appear not to be strictly refutable, this means direct confrontation with those that hold to Lockean notions of justice in property. The success of such a project would involve overcoming not only the property norms which Hardt and Negri described, as well as the large-scale right-libertarian media and advocacy we have pointed to. It would also mean building some kind of long-term, broad social consensus on the principles around which new societies could be built. Whether such a project would be possible in the foreseeable future is unclear.

The second, alternative way to justify such redistribution, would be to accept that Lockean property norms are just, but argue that property reallocation is justified, or indeed required, under these norms. We suggest that considering the political and cultural context, it *might* be easier for socialists to achieve popular support for mass redistribution under the latter method

⁵⁵ Rothbard, *For a New Liberty*, p. 37.

⁵⁶ Cohen, *Self-Ownership*.

(assuming that such redistribution can actually be justified on Lockean grounds). That is, accepting the dominant norms of justice in property. As Marx explained when commenting on considerations that should be taken into account when attempting to transform society:

What we have to deal with here is a communist society, not as it has *developed* on its own foundations, but, on the contrary, just as it emerges from capitalist society; which is thus in every respect, economically, morally, and intellectually, still stamped with the birthmarks of the old society from whose womb it emerges.⁵⁷

It is in this context that we suggest that a form of socialism based on redistribution of property within the Lockean framework may be more widely acceptable than redistribution based on other ethical values. Indeed, it is not unknown for Lockean to support extensive reallocation of property insofar as it is to rectify historical injustice. Nozick stated that his defence of Lockean principles could not be used to condemn redistribution policies unless it could be shown that those policies were not attempting to rectify historical injustice.⁵⁸ Rothbard went as far as to show a certain level of limited sympathy for revolutionary socialists. Where private property has been gained unjustly, he argued in *Ethics of Liberty*, it should be expropriated:

I am convinced... that the real motor for social and political change in our time has been moral and political indignation arising from the fallacious theory of surplus value: that the capitalists have stolen the rightful property of the workers, and therefore that existing titles to accumulated capital are unjust. Given this hypothesis, the remainder of the impetus for both Marxism and anarcho-syndicalism follow quite logically. From an apprehension of what appears to be monstrous injustice flows the call for “expropriation of the expropriators,” and in both cases some form of “reversion” of the ownership and the control of the property to the worker. Their arguments cannot be successfully countered by the maxims of utilitarian economics or philosophy, but only by dealing forthrightly with the moral problem, with the problem of the justice or injustice of various claims to property. The only genuine refutation of the Marxian case for revolution, then, is that capitalists’ property is just rather than unjust, and that therefore its seizure by workers or anyone else would in itself be unjust and criminal. But this means that we *must* enter into the question of the justice of property claims, and further it means that we cannot get away with the easy luxury of trying to refute revolutionary claims by arbitrarily placing the mantle of “justice” upon any and all existing property titles. Such an act will scarcely convince people who believe that they or others are being grievously oppressed and permanently aggressed

⁵⁷ Marx, Karl, ‘Critique of the Gotha Program’ *Marx/Engels Collected Works, Volume Three*, pp. 13-30, 1875, Moscow: Progress Publishers, 1970, online version at *Marxists.org*, <https://www.marxists.org/archive/marx/works/1875/gotha/> (accessed 07 Aug 2018), part one.

⁵⁸ Nozick, *op cit*, p. 231.

against. But this *also* means that we must be prepared to discover cases in the world where violent expropriation of existing property titles will be morally justified, because these titles are themselves unjust and criminal.⁵⁹

Despite the tone, this statement from Rothbard, *prima facie*, looks like an invitation to mass revolutionary expropriation of capitalist property. The role of illegitimate force, by state and non-state actors in capital accumulation is a major topic of historical and sociological analysis. For example, Marxists focus a lot of time and energy documenting historical examples of what is known as “primitive accumulation”.⁶⁰ That is, using the legal system, or various forms of violence to take person’s property from them, and illegitimately privatise widely used natural resources. Perhaps the most notorious form of documentation of primitive accumulation is Marx’s argument in *Capital* that the wage labouring class in England came into existence due to the violent expropriation of land – the primary means of subsistence and production – from the peasantry.⁶¹ As noted above, Kevin Carson has also put forward a “force theory” of profit. The theory is that in a genuinely free market, all income would derive from labour, so systematic profit on capital only exists due to state-backed theft and oppression.⁶² More mainstream economists such as Kevin Farnsworth and Dean Baker have also published research titled *The Corporate Welfare State* and *The Conservative Nanny State* respectively, which each describe an array of subsidies to capital.⁶³ Even figures in the Austrian school of economics, including Rothbard himself, have brought attention to some of the ways that big business has accumulated capital unjustly, including through state procurement, patents, tariffs, and various monopolies. Writing in his co-founded journal, *Left and Right* during the 1960s in his period of making overtures to the New Left, Rothbard acknowledged that since the 1920s, the United States had been characterised by “central planning, creation of a network of compulsory cartels for industry and agriculture, inflation and credit expansion, artificial raising of wage rates and promotion of unions within the overall monopoly structure, government regulation and ownership.”⁶⁴ This was a system of “privileging of various big business interests at the top of the

⁵⁹ Rothbard, *Ethics*, pp. 53-54.

⁶⁰ Harvey, *The New Imperialism*.

⁶¹ Marx, *Capital*, Chapter 27.

⁶² Carson, *The New Imperialism*, pp. 116-129.

⁶³ Farnsworth, Kevin, *The British Corporate Welfare State: Public Provision for Private Businesses*, SPERI Paper no. 24, Sheffield Political Economy Research Unit, July 2015, <http://speri.dept.shef.ac.uk/wp-content/uploads/2015/07/SPERI-Paper-24-The-British-Corporate-Welfare-State.pdf> (accessed 05 Sep 2017); Baker, Dean, *The Conservative Nanny State: How the Wealthy Use the Government to Stay Rich and Get Richer*, Washington DC: Centre for Economic and Policy Research, 2006.

⁶⁴ Rothbard, Murray N., ‘Left and Right: The Prospects for Liberty’, *Mises.org*, 2002, <https://mises.org/library/left-and-right-prospects-liberty> (accessed 26 Mar 2019).

collectivist heap.”⁶⁵ Furthermore, since the 1900s “intervention by the federal government was designed, not to curb big business monopoly for the sake of the public weal, but to create monopolies that big business (as well as trade associations smaller business [sic]) had not been able to establish” without such regulation.⁶⁶ Rothbard also acknowledged that since the early twentieth century, Europe had been characterised by “state monopoly capitalism” and “imperialism”.⁶⁷

However, there has been almost no socialist analysis of the implications of this history for property reallocation. Instead, as we discuss further in the next chapter, socialists have largely left the discussion of these implications to those in the right-libertarian movement such as Rothbard. This is problematic because, as mentioned, and as we elaborate on in Chapter 3, Rothbard outlined a method of approaching injustice in holdings which allowed most unjustly gained property to remain with the legal title holders. This dissertation can be considered an attempt to address this problem. We argue that there is a more coherent Lockean approach to addressing injustice in holdings and suggest that it requires egalitarian redistribution of all property in our case study country – the contemporary UK.

1.7 Chapters Outline

The first part of the next chapter (Chapter 2) is dedicated to critically introducing the concept of Lockeanism. We suggest that there are three core components of the concept: natural rights, self-ownership, and the right to fully own previously unowned natural resources one labours on. Each of these components can be criticised. That is, it is possible to (1) criticise the notion of natural rights, (2) accept natural rights but reject that natural rights imply self-ownership, and (3) accept natural rights and self-ownership but reject the right to fully own previously unowned natural resources one has laboured on.

Despite arguing that upon examination the justifications put forward for Lockeanism fail, we suggest that it is still impossible to prove Lockeanism objectively wrong. Therefore we suggest that for those that favour property redistribution, it is worth enquiring into another argument for redistribution. That is, accepting the three criteria of Lockeanism, but arguing for redistribution as a method of addressing historical injustice in holdings. Therefore in the second part of Chapter 2 we also more comprehensively introduce Nozick and Rothbard’s approaches to addressing past injustice. With regards to Nozick’s rectification principle, we argue that it is

⁶⁵ *Ibid.*

⁶⁶ *Ibid.*

⁶⁷ *Ibid.*

not clearly compatible with the broader Lockean framework. Indeed, it seems to contradict Nozick's own approach to justice as it could be used to justify the expropriation of justly held property. We suggest that Rothbard's anti-criminal approach is more coherent with Lockeanism. Furthermore, it appears to be more popular amongst Lockeans. We therefore suggest that it is worth further critical examination.

We have two main tasks in Chapter 3. The first is to propose a theoretical framework for addressing the problem of injustice in holdings – the Lockean law of restitution. The second is to outline our plan for attempting to assess the implications of this theoretical framework for a case study country – the contemporary UK. The bulk of the chapter is concerned with comparing and contrasting Rothbard's innocent homesteader approach with the Lockean law of restitution. The first sections of the chapter take the form of a critique of Rothbard's innocent homesteader approach. We start by clarifying the approach. Rothbard implies that the owner of criminally derived property can keep the title to their property if they themselves did not steal the property and if the victims of theft cannot be found. However, we will argue that this contrasts with his other claim that it is actually the first innocent homesteader that should rightfully own criminally derived property. Acknowledging that criminally derived property should only go to innocent homesteaders leads to a significantly different approach to addressing injustice in holdings to that advocated by Rothbard and his followers. Nevertheless, there are still problems with the innocent homesteader scheme which are the subject of the next part of the chapter.

The second part of Chapter 3 highlights that Rothbard's innocent homesteader approach suffers from multiple problems. The first is that it allows thieves to benefit from their crime as it sanctions the right of recipients of stolen holdings to be considered legitimate homesteaders. Thus a thief can steal property and then transfer it to a family member and as long as the theft victim (or heir) is not found, the thief's family member will be considered the legitimate owner. The second problem with Rothbard's innocent homesteader approach is that it is unable to gain redress for victims of monopoly ownership. These victims are people unjustly prevented from homesteading items such as unjustly held land. The third problem with Rothbard's approach is that it is unable to address exploitation – which we define as benefiting from somebody else's artificially weak bargaining position.

In light of these problems with Rothbard's innocent homesteader approach we suggest an alternative method for addressing injustice in holdings. We suggest replacing the innocent homesteader component of Rothbard's system for addressing injustice in holdings with a

Lockean law of restitution. We suggest that the Lockean law of restitution can address the three problems of Rothbard's innocent homesteader approach, and that the implications for property reallocation of this law can be investigated with historical and sociological materials including secondary sources. We outline the features of the Lockean law of restitution and then discuss our research methods in the rest of this dissertation for looking into the implications of this law. Namely, we will be assessing secondary sources such as history books, government publications, and sociological studies to assess historical and contemporary forms of historical injustice in a case study country – the contemporary UK – and then consider the restitutionary requirements which arise from these documented injustices. We will also attempt to base our assessments as far as possible upon legal precedent in the Anglo-American legal system. Our focus will be on investigating the three forms of injustice which Rothbard's approach could not deal with: stolen items, monopolised items, and exploitation.

Chapter 4 is the main chapter in which restitutionary claims are outlined. In this chapter we outline the claims arising from historical land theft and monopoly, taxation, and exploitation arising from economic regulations. The chapter is split into two halves. The first half is concerned with unjustly held land and manufactures made from unjustly held land. The first section of the chapter is concerned with historical land theft and monopoly in the UK. Basing our argument on secondary historical sources, we argue that it appears that all land in the country has historically been stolen or monopolised and therefore needs to go through a restitutionary process. Furthermore, we suggest that it is most in line with English legal precedent that all land must be divided equally, as when it is unclear who would own unjustly held items were it not for historical injustice, the items in question are distributed in an egalitarian manner. The second part of the chapter is concerned with manufactured items, and argues that all manufactures made from UK-sourced natural materials are held unjustly. However, because there is a chance that some manufactured items are sourced from justly held natural resources from overseas, we cannot say that all manufactures are unjustly held and we cannot say that all manufactures should be redistributed in an egalitarian manner.

The second half of the chapter is concerned with unjustly acquired money and the items purchased with it. We argue that all revenues arising from selling or renting out unjustly held land, or items made from such, are illegitimate – as are revenues earned by using unjustly held resources in any way. We also argue that it is illegitimate to receive money gained through taxation. For example, the money that employees of the state earn is illegitimate. We next begin our discussion of money earned through exploitation. We argue that various government regulations such as patents and professional licensure laws allow some people to gain artificially

high incomes at the expense of consumers. Such artificially high incomes are illegitimate. After discussing these broad categories of unjustly gained monetary income we argue that when it is spent, unjustly held money becomes an ever larger percentage of the total money in circulation until all money in a country's economy becomes unjustly held. Furthermore, any items bought with that unjustly held money can be considered to be the proceeds of injustice, and should therefore be considered unjustly held, and owed in restitution. As we do not know who would own which items were they not bought with unjustly held money, they should all be redistributed in an egalitarian manner.

Chapters 5 and 6 are concerned with exploitative elements in seemingly free contracts, and the restitutionary claims arising from such. We have a particular focus on capitalist wage labour relationships but we also consider credit. It may seem superfluous to engage in an investigation of unjust incomes derived from exploitation after already having argued that all incomes and property are held unjustly and should be redistributed in an egalitarian manner. However, we suggest that exploitation is still worth discussing. We have stated that the aim of this dissertation is to look into the implications of the Lockean law of restitution, and one of those implications is that it gives us a new way to interpret exploitation. There are two chapters spent on this topic not because wage labour exploitation produces particularly significant restitutionary claims, but because whether wage labour relationships can be considered exploitative has been the subject of much academic confusion, which we attempt to help clear up.

Chapter 5 lays out Marx's implicit argument that wage labour is exploitative on Lockean grounds when labourers work at an artificially low wage due to being unjustly deprived of ownership of means of subsistence and production. Marx's argument was based on the premise that wage labourers create the exchange value of commodities (this is the labour theory of value). According to Marx, wage labourers do not receive the full value of what they produce but instead receive a wage at the level of their labour-power. The difference between the value of what labourers produce and the value labourers are paid in wages, goes to the capitalist employer as "surplus value".⁶⁸ Note that Marx used the terms "surplus value" as interchangeable with "exploitation". Thus he referred to the rate of surplus value creation as "the degree of exploitation".⁶⁹ However, in this dissertation unless otherwise stated, we will be employing a different, Lockean notion of exploitation, in which person A is only exploited by

⁶⁸ Marx, *Capital*, Chapter 9.

⁶⁹ *Ibid.*

person *B* if person *B* gains a benefit from person *A*, due to person *A* being in an artificially weak bargaining position due to being violently oppressed.

Marx was interested in why wage labourers systematically work at less than the value of what they produce. He argued that in his primary case study country – England – a class of wage labourers who work for less than the value of what they produce was created by the expropriation of the peasants. He also argued that wage labour in the United States emerged due to various kinds of land monopoly. The implicit argument was that the surplus value extracted by the capitalist employers in his case study countries was exploitative on Lockean grounds. This Lockean exploitation argument was not made explicit by Marx, and has been overlooked by subsequent scholars. Chapter 5 is concerned with clarifying this argument and making it explicit. We also argue that Marx's implicit argument helps us understand that all surplus value extracted from wage labourers in the contemporary UK is exploitative on Lockean grounds. Chapter 5 further claims that our argument holds, even if we set aside the labour theory of value. We end the chapter by arguing that credit relationships in the contemporary UK can also be presumed to be exploitative on Lockean grounds, as it can be presumed that creditors benefit from the artificially weak bargaining positions of debtors.

Chapter 6 defends Marx's implicit argument that all historical proletarianisation in England can be said to have been due to Lockean oppression. In response to Marx's and subsequent Marxist discussions of the history of proletarianisation in England, so-called liberal historians have responded by arguing that proletarianisation was actually a result of free market forces. In particular, they argue that it was the result of peasant overpopulation. We dispute this claim. Again, it may be thought that such a discussion is superfluous, having already established that all wage labour relationships in the contemporary UK are exploitative. However, we suggest that the liberal claims are worth responding to for two reasons. Firstly, the discussion of historical wage labour taking place under circumstances of oppression will provide additional evidence of unjust incomes which have been historically generated in the UK and which continue to circulate in the economy. Secondly, by clarifying that proletarianisation has historically been the result of oppression, this will lend further indirect support to our Chapter 5 claim that if property were redistributed in an egalitarian way in the contemporary UK, capitalist wage labour relationships would be avoided. This would strengthen our claim that capitalist wage labour relationships in the contemporary UK are exploitative and are commonly entered into due to unjust oppression.

In Chapter 6, we submit that the liberal argument about free market proletarianisation overlooks or denies the land monopoly which the peasantry suffered under during the Middle

Ages onwards. For the Medieval period, firstly, it overlooks the extent of the demesne land monopolised by the landlords and secondly, it overlooks the exclusion of peasants from royal and non-royal forests and chases. It also overlooks the unjust rents which artificially increased the peasants' monetary requirements, made them artificially poor, and reduced their ability to invest in independent production, all combining to reduce their ability to remain as independent producers. We respond to attempts by liberals to claim that the feudal rents were justified, and argue that these claims are unsound from a Lockean perspective. Similar arguments apply when considering proletarianisation in the early modern period. Claims that peasants freely chose to engage in wage labour ignore the continued economic oppression peasants faced in land rents and mortgages as well as their continued confinement to artificially small plots of land as a holdover of the feudal era. The claim that peasants may have seen selling their land as an entrepreneurial opportunity is unsupported and ignores the risks of becoming a landless proletarian at the time, which peasants would have been aware of. Claims that a new non-peasant mind-set may explain proletarianisation are also entirely unfounded. Again, similar arguments apply for proletarianisation up until the early industrial era, although by this time, the majority of the population was already proletarianised. Therefore we conclude that there is no evidence of any proletarianisation occurring in English history free from the influence of unjust economic oppression.

Chapter 7 is the discussion chapter. In this chapter we discuss our findings and contributions to knowledge. We aim to firstly, show how far we have answered the original research question as laid out in the introduction. That is, how far redistribution is required according to the Lockean law of restitution. We suggest that we have plausibly argued that all property in the UK should be redistributed in an egalitarian manner. We then consider three possible objections that could be made to our findings from a Lockean perspective: firstly, that the theoretical framework we used – the Lockean law of restitution – is unsound itself; secondly, that we have applied the framework in a problematic way; and thirdly, that we have based our conclusions upon unsound empirical evidence. We attempt to rebut each such possible criticism. We next look at the political implications of our major finding – i.e. that all property in the UK must be redistributed in an egalitarian manner. We ask what redistributive measures could be taken. We suggest that the best solution would be for ownership of all items to be redistributed amongst all persons in the UK, with all persons gaining equal shares in all items. To achieve this, property could perhaps be managed through the parliamentary system and various forms of socialist organisation and governance could be enacted through this system.

In part three of the chapter we discuss our secondary findings. These relate to wage labour exploitation. We do not consider criticisms of these findings, as these are discussed in Chapters 5 and 6. Instead we ask what the significance of these findings are for our core question and what the broader social significance might be. We argue that whilst our wage labour exploitation findings do not change our conclusion that all property in the UK must be redistributed in an egalitarian manner, they may be politically significant to workers who wish for an economic system in which they are not exploited. In the fourth section of the chapter we summarise our original contributions to knowledge. In the fifth section we suggested that future research could focus on the implications of the Lockean law of restitution overseas, and a Lockean law of compensation for the UK or other countries. Chapter 8 is the conclusion chapter in which we summarise the rest of the dissertation.

1.8 Conclusion to chapter

This chapter has introduced the dissertation. Our project is to look into the implications of the Lockean law of restitution for a case study country: the contemporary UK. We started the chapter by briefly introducing the concept of Lockeanism. Lockeanism is the idea that people own themselves and any unowned resources that they labour on. People are also able to transfer their property to whom they wish. We further clarify the concept of Lockeanism in Chapter 2. We noted that Lockeanism has historically been used to defend existing private property allocations, but that this is problematic because historically much property has been acquired in ways which are unjust according to Lockeanism (e.g. historical land theft).

We noted that there have been two previous theoretical approaches outlined for addressing the problem of injustice in holdings: Nozick's rectification principle and Rothbard's anti-criminal system. However, we have suggested that both of these approaches have been problematic. Nozick's approach overlooks "side constraints" on redistributing justly acquired property, whilst the innocent homesteader component of Rothbard's system is unable to deal with a number of Lockean injustices.⁷⁰ We have therefore suggested replacing Rothbard's innocent homesteader approach with a Lockean version of the law of restitution – found in Western legal systems. We suggest that this law could be a more coherent way of addressing injustice in holdings. Outlining this law and then looking into its implications is the aim of this dissertation.

⁷⁰ For Nozick's use of the term "side constraint" to describe his approach to the limits upon human actions to prevent infringements upon rights, see Nozick, *op cit*, p. 30. See also, p. 56 below on this point.

We suggested that this dissertation should be of interest to those that favour a Lockean approach to justice in property but who do not wish to defend illegitimate holdings. We also suggested that the investigation should be of interest to socialists, as Lockeanism could hypothetically be a path to socialism. Furthermore, the property reallocation that socialists favour can only be justified by either appealing to some non-Lockean notion of justice in holdings (e.g. mutualism or communism) or accepting Lockeanism but arguing that mass reallocation of holdings is required in order to address historical injustice. Achieving socialism through the former method may be difficult because Lockeanism appears to be somewhat culturally hegemonic. It may therefore be useful to enquire into how far property reallocation is justified according to Lockeanism. There is *prima facie* evidence that substantial reallocation of holdings could be required, as much property has historically been acquired through various forms of Lockean injustice.

We ended the chapter by outlining the chapters plan for the rest of the dissertation. In Chapter 2 we more clearly outline Lockeanism, discuss previous approaches to addressing Lockean injustice, and clarify how our study is a new contribution to the literature. In Chapter 3 we outline the Lockean law of restitution and discuss our method for investigating its implications in this dissertation. Chapter 3 also defends the use of the theoretical framework by arguing that it overcomes problems with Rothbard's innocent homesteader scheme. Chapter 4 discusses the restitutionary implications of land theft, the tax system, and economic regulations which facilitate exploitation. The chapter also discusses some implications for property redistribution. Chapter 5 argues that capitalist wage labour and credit relationships can be considered exploitative in Lockean terms if a capitalist benefits from the artificially weak bargaining position of oppressed workers or debtors. We argue that in lieu of evidence to the contrary, this delegitimises all capitalist employer and creditor profits in the contemporary UK, as all workers and debtors can be presumed to be in artificially weak bargaining positions due to being unjustly deprived of property they are owed in restitution. Chapter 6 looks into wage labour exploitation in pre-twentieth century England. Chapter 7 discusses how far we have met the aims of the study, how the study may contribute to the political debate, our broader contributions to knowledge, and suggests further research in the area. Chapter 8 concludes the dissertation with an overview of the previous chapters.

Chapter 2: The concept of Lockean justice in property: Discussion, debates, and engagement with the literature

2.1 Introduction to chapter

In the introductory chapter we spoke of investigating the implications of Lockean justice in property. In this chapter we go into more detail on what we mean by Lockean justice, previous approaches to the problem of injustice, and how our investigation counts as an original contribution to knowledge. In explaining what we mean by “Lockeanism” we focus particularly on Rothbard’s approach to Lockean justice, as he has arguably articulated the most popular version of the approach, as discussed in the introduction. We firstly explain that Lockean notions of property are based in modern natural rights theory, which is a strand of natural law theory. We provide a brief, critical introduction to the modern natural rights theory upon which Rothbard based his ideas. We argue that modern natural rights theory is a plausible framework upon which to base ethical claims. We then move onto critically introducing the first natural rights claim within Lockeanism – that people own themselves. That is, that people should be free to act as they wish with their own bodies as long as this does not infringe upon the freedom of others to act as they wish with their own bodies and their justly held private property. We consider the criticism from within the natural rights framework: i.e. that our natural rights entail infringement upon self-ownership because we have positive duties to others. We do not consider criticisms of self-ownership from outside of the natural rights framework, as people that already oppose natural rights (e.g. Utilitarians) do not need to be convinced that self-ownership is wrong.

In part three we go into detail on the Lockean approach to world-ownership (i.e. ownership of items in the world that are not oneself). As a way of beginning to clarify the Lockean approach, we compare Lockeanism to other theories of world-ownership that have been deduced from self-ownership: mutualism, Georgism, and hard Libertarianism. We then consider the variations of Lockean approaches to how property is acquired, and the extent of property allowed under different types of Lockeanism. This is to clarify exactly which type of Lockeanism we are basing our investigation upon. We will be discussing the type of Lockeanism which requires minimal labour to legitimately appropriate natural resources (e.g. walking upon land would give one ownership of it) and which has no limit on the amount of unowned natural resources that one can appropriate by labouring on it. This is because we believe this Lockean approach is becoming increasingly popular with the rise of right-libertarianism. We will then consider a number of defences of this approach to world-ownership and suggest that none of them are convincing,

even for those that agree with natural rights and self-ownership. Nevertheless, we will continue our discussion of the implications of this approach to Lockeanism.

In part four we will review the relevant literature on previous approaches to addressing injustice in holdings. We will start by introducing Nozick's rectification principle. According to this approach we should attempt to calculate how property would have been distributed had it not been for historical injustice. Lacking the historical information to make an accurate calculation, we can make rough estimations which can justify property redistribution. A problem with this approach is that it overlooks "side constraints" on infringing upon the property rights of other persons. We next consider Rothbard's anti-criminal system. This contains two components: an innocent homesteader approach and a dedication to compensation. According to the innocent homesteader approach, property is considered legitimately owned unless it can be shown that it is stolen and somebody else is either the theft victim or victim's heir. We make some initial remarks on the problems with this innocent homesteader approach. Firstly, it accepts intergenerational justice which is controversial. Secondly, and more significantly, it fails to address several forms of injustice fully. It does not prevent thieves benefiting from their crimes, it does not address all victims of monopoly, and it does not address exploitation. We elaborate upon these points in Chapter 3. With these points in mind we suggest that an alternative approach to addressing Lockean injustice is required. The second part of Rothbard's anti-criminal system is addressing damage by torts with compensation. We do not see any problems with Rothbard's advocacy of compensation for torts and do not critique this component of his system.

The final part of this chapter focuses on previous approaches to redistribution. We argue that there has been no previous attempt to justify socialist redistribution by appealing to Lockean restitution. Rather, socialists have either appealed to some other notion of justice in property (e.g. mutualism, or communism) to justify reallocations of property, or, particularly in the Marxist tradition, have attempted to avoid ethical considerations altogether when it comes to property reallocation. In the individualist anarchist tradition, it has been suggested that redistribution could be justified in order to rectify past injustices, but the authors have not laid out a theoretical framework for achieving socialism through such means. It has also been

claimed by Spangler that Rothbard's anarcho-capitalism when combined with Konkin's theories of class and revolution amount to socialism, but we will argue that this is incorrect.⁷¹

2.2 For and against natural rights

Lockean property rights claims are founded in a natural rights and natural law approach to political ethics. Political ethics is the branch of ethics which considers when force can justifiably be used. There are different approaches to political ethics, such as consequentialism, Kantian ethics, and natural law. We are only concerned with the natural law approach here. Aquinas is considered the "paradigmatic natural law theorist", with both proto-natural law theorists such as Aristotle, and subsequent natural law theorists such as Locke, being compared to Aquinas as a reference point.⁷² Aquinas argued that natural law is to behave according to right reason, or practical reasonableness.⁷³

Locke originally provided a defence of Lockean property under a strand of natural law theory which Strauss referred to as "modern natural right" theory.⁷⁴ According to this approach, the law is determined by our naturally occurring rights, which are an inherent part of being human. For Locke, the crucial factors of human nature to be considered when deducing natural rights are (1) that humans are creations of God; (2) that humans must make use of scarce resources in order to survive; and (3) that human flourishing can best be served by a system of private property.⁷⁵ Locke's approach became the dominant approach to justice in property. One of the Founding Fathers, and future President of the United States, John Adams said... "The moment the idea is admitted into society, that property is not as sacred as the laws of God, and that there is not a force of law and public justice to protect it, anarchy and tyranny commence".⁷⁶ Adam Smith, often thought to have put forward a utilitarian defence of free markets in *The*

⁷¹ Spangler, Brad, 'Market Anarchism as Stigmergic Socialism', in *Markets Not Capitalism: Individualist Anarchism against Bosses, Inequality, Corporate Power, and Structural Poverty*, eds. Chartier, Gary, and Charles W. Johnson, London: Minor Compositions, 2012, pp. 85-92.

⁷² Murphy, Mark C., *Natural Law in Jurisprudence and Politics*, Cambridge: Cambridge University Press, 2006, p. 1.

⁷³ *Ibid.* See also Finnis, John, *Natural Law and Natural Rights (second edition)*, Oxford: Oxford University Press, 2011.

⁷⁴ Strauss, Leo, *Natural Right and History*, Chicago: The University of Chicago Press, 1953, p. 202.

⁷⁵ *Ibid.* See also Locke, *op cit.*

⁷⁶ Adams, John, 'Defence of the Constitutions of Government of the United States', in *The Works of John Adams, Volume 6*, ed. Charles Francis Adams, Boston: Charles Francis Adams, Little Brown & Co., 1850, p. 9.

Wealth of Nations, also spoke in religious terms when it came to property, referring to “the sacred rights of private property”.⁷⁷

A problem with Locke’s particular version of the Lockean property argument is that it entails respecting self-ownership only if one believes in God. We will not get into the debates around the existence of God here. Instead we will note that there is also a secular version of Locke’s theory, perhaps most popularly articulated by Rothbard. According to this approach we can study the nature of human beings like we can study other objects, and with this knowledge, we can make conclusions about what is conducive to human flourishing. We should not go against that flourishing.⁷⁸ Rothbard argued that we can deduce our rights from two defining features of human beings: (1) that human beings possess reason with which to choose and pursue their own ends, and (2) that humans require property in order to best pursue their own ends or flourish.⁷⁹

The secular natural rights argument can be critiqued at a number of points. The first is to critique the idea that there is such thing as a human nature. However, this is an extremely weak argument. Humans are organisms with set boundaries of physical and mental development which reflect our biological nature.⁸⁰ A stronger argument, we suggest, is that it is difficult to know the relevant features of human nature upon which political ethics should be based, and which kind of laws should reasonably be enacted in the light of those features. However, this is not an argument against natural law theory *per se*. It is only an argument against particular formulations of natural law. This is because the relevant features of human nature and the laws which should be enacted in consideration of these features are debated within natural law tradition itself.⁸¹ In fact the prominent natural law theorist John Finnis has argued, we suggest convincingly, that all popular ethical systems (utilitarianism, Kantian ethics, virtue ethics, etc.) are attempts to focus on one particular aspect of the natural law.⁸² All of these systems can be

⁷⁷ Smith, *op cit*, p. 188. At points Smith’s ideas appear indistinguishable from Locke’s. For example, he also wrote: “The property which every man has in his own labour, as it is the original foundation of all other property, so it is the most sacred and inviolable”, p. 138.

⁷⁸ Rothbard, *Ethics*.

⁷⁹ *Ibid*.

⁸⁰ See Chomsky, Noam, interviewed by Kate Soper, ‘On Human Nature’, *Red Pepper*, Aug 1998, online at: https://chomsky.info/199808_-2/ (accessed 16 Aug, 2018); Chomsky, Noam, ‘Universals of Human Nature’ (Editorial), *Psychotherapy and Psychosomatics*, 74, 2005, pp.263-268.

⁸¹ Finnis, *op cit*. See also, Crowe, Jonathan, ‘Natural Law Beyond Finnis’, *Jurisprudence*, 2:2, 2011, pp. 293-308.

⁸² Finnis, *op cit*, p. 127.

seen as attempts to deduce ethical principles from considerations of human nature.⁸³ We therefore suggest that the natural rights and natural law approach to political ethics can be considered reasonable. However, this is not to say that Rothbard's secular Lockean approach to natural law is necessarily reasonable. Let us now discuss the natural rights that Rothbard argued that we have, beginning with self-ownership. We will first outline exactly what these rights are, before debating their validity.

2.3 What is self-ownership?

In this section we critically introduce the first natural right which Lockeans argue that everybody has: self-ownership. The idea has been clearly delineated by Vallentyne, Steiner, and Otsuka in a jointly written article. They explain that ownership of any object entails five rights:

(1) *control rights* over the use of the object; (2) *rights to compensation* if someone uses the object without one's permission; (3) *enforcement rights* (to prevent the violation of these rights or to extract compensation owed for past violation); (4) *rights to transfer* these rights to others (by sale, rental, gift, or loan); and (5) *immunity to the nonconsensual loss* of any of the rights of ownership.⁸⁴

Proponents of self-ownership broadly agree that each person has these rights over their own bodies. The only major area of contention amongst proponents of self-ownership is whether one can sell oneself or not. On the one hand there are those who argue that selling oneself into slavery is entirely consistent with self-ownership. In fact, without the right to sell oneself, one would not have *full* ownership of oneself.⁸⁵ On the other hand are those that argue that self-ownership is "inalienable", or precludes selling oneself.⁸⁶ We can therefore distinguish proponents of full self-ownership from proponents of inalienable self-ownership. Our discussion applies to both types of self-ownership.

One criticism of self-ownership is that it is a useless concept because it is indeterminate. That is, it has "few concrete implications" because "it can be interpreted in a variety of incompatible ways."⁸⁷ It does not therefore have a distinct position in political philosophy.⁸⁸ This criticism has

⁸³ Note that Finnis does not describe natural rights as being deduced from human nature. Rather, he simply views natural rights as logically necessary for building a society in which persons can live in accordance with natural law. *Ibid.*

⁸⁴ Vallentyne, Peter, Hillel Steiner, and Michael Otsuka, 'Why Left-Libertarianism Is Not Incoherent, Indeterminate, or Irrelevant: A Reply to Fried', *Philosophy & Public Affairs*, 33, no. 2, 2005, pp.202-215, pp.203-4.

⁸⁵ Vallentyne, Steiner and Otsuka, *op cit*, take this line.

⁸⁶ Rothbard, *Ethics*, p. 135.

⁸⁷ Vallentyne, Steiner and Otsuka, *op cit*, p. 203.

⁸⁸ *Ibid.* See also Cohen, *Self-Ownership*, pp. 213-27.

some surface plausibility. There is much disagreement amongst adherents to self-ownership on the type of social system they would like to see. Here it is worth noting that it is common for those that adhere to the concept of self-ownership to refer to themselves as “libertarians”.⁸⁹ A notable dividing line is between left-libertarians and right-libertarians. The difference between left-libertarians and right-libertarians relates to world-ownership – i.e. ownership of objects external to oneself. Unlike right-libertarians, left-libertarians believe that ownership of natural resources may only be acquired, as Vallentyne explains “with the permission of, or with a significant payment to, the members of society”.⁹⁰ It is worth noting that – as we discuss further below (section 2.7) – left-libertarians differ greatly between themselves on exactly what this should entail. Right-libertarians place no such conditions on acquisition of natural resources. As discussed further below, some right-libertarians believe that there is a limit on the extent of natural resources one can justifiably acquire, whilst others don’t. Therefore the difference in political programs between and within left and right-libertarianism can be extremely vast.

An example of the debates between the two types of adherents of self-ownership is instructive here. Otsuka has argued that it is possible to have self-ownership alongside permanent economic equality. If land is primarily allotted to the disabled and less productive, equality could be achieved by allowing them to claim the surplus produced by more able and productive persons.⁹¹ Right-libertarian, David Gordon, acknowledges Otsuka’s position is logically sound but has criticised Otsuka for rendering self-ownership merely formal. He asserts that Otsuka’s world is unappealing to him on the grounds that it would result in effective slavery to the poor and disabled.⁹² Cohen, meanwhile, has criticised the right-libertarian approach to world-ownership on the grounds that self-ownership is rendered merely formal if proletarians have to submit to the will of capitalist property-owning employers.⁹³ So we see that there are very different views on the implications of self-ownership.

Vallentyne, Steiner and Otsuka have acknowledged that there is “some indeterminacy” to self-ownership, but argue that there is still a “significant determinant core.”⁹⁴ This core consists of

⁸⁹ Vallentyne, Steiner and Otsuka, *op cit*.

⁹⁰ Vallentyne, Peter, ‘Introduction: Left-Libertarianism – A Primer’, in *Left-Libertarianism and Its Critics: The Contemporary Debate*, eds. Peter Vallentyne and Hillel Steiner, New York: Palgrave, 2000, pp 1-22, p. 1.

⁹¹ Otsuka, Michael, ‘Self-Ownership and Equality: A Lockean Reconciliation’, in *Left-Libertarianism and Its Critics: The Contemporary Debate*, eds. Peter Vallentyne and Hillel Steiner, New York: Palgrave, 2000, pp. 149-76.

⁹² Gordon, David, ‘Is Inequality Indefensible?’ *Mises.org*, Oct 2003, <https://mises.org/library/libertarianism-without-inequality-michael-otsuka> (accessed 12 Aug 2018).

⁹³ Cohen, *Self-Ownership*, Chapter 4.

⁹⁴ Vallentyne, Steiner and Otsuka, *op cit*, p. 203.

the five rights over one's body that we quoted above which constitute ownership of objects.⁹⁵ Vallentyne, Steiner and Otsuka acknowledge questions still remain about the implications of self-ownership. For example, it is not clear what should be done to those that violate a person's rights. However, they argue that the concept still carries "significant normative force".⁹⁶ In particular, as long as the self-owner is not encroaching on the property rights of another person, she is at full liberty to use her own body, and has "a full security right over use of that object (i.e., no one else may use the object without her permission)."⁹⁷ Put another way, one is free to do what one wants with one's own body as long as this does not aggress against another person (or their legitimate property – although the concept of "legitimate property" is disputed). An additional source of indeterminacy is how strictly self-ownership should be adhered to. They note, "strict full ownership of my body is violated, if, in the process of putting out a dangerous fire, you inadvertently send a small bit of stone one hundred yards away, where it lightly flicks my hand. Most people with strong libertarian inclinations will want to reject these implications and thus reject full self-ownership in the strict sense."⁹⁸

2.4 For and against self-ownership

As noted, for Rothbard, forcing anyone to do anything is an infringement on them realising their human nature by freely choosing their own ends and following them. However, there are a number of ways to counter this argument. Here we consider counter-arguments to Rothbard's claim which accept the general idea of natural rights. The first is to argue that natural rights and natural law comes from God and are not necessarily compatible with self-ownership. Rather, natural law, as derived from God is described in the Bible or other religious texts. Where the rules of religious texts clash with self-ownership, the religious texts prevail. This approach presupposes a belief in God and in the divinity of particular religious texts – a debate we do not get into here.

A second, secular way to reject self-ownership is to argue that natural rights are found in other properties of human beings. One particular approach is to point out that humans are inherently social beings, with positive duties to help others. This is the approach of the 1948 United Nations Universal Declaration on Human Rights (UD), for example.⁹⁹ According to the UD's Article 22, social security is "indispensable for [man's] dignity and the free development of his

⁹⁵ As noted, whether ownership of oneself can be transferred to other persons is actually debated amongst libertarians. However, this still leaves a set of four core properties to self-ownership.

⁹⁶ *Ibid*, p. 205.

⁹⁷ *Ibid*, p. 206.

⁹⁸ *Ibid*, pp. 206-7.

⁹⁹ United Nations, *op cit*.

personality.”¹⁰⁰ Article 25 is that “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”¹⁰¹ Correspondingly, people have duties to society. According to Article 29:

(1) Everyone has duties to the community in which alone the free and full development of his personality is possible.

(2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.¹⁰²

Rothbard’s response to the idea of positive duties is to argue that for natural rights to be real natural rights they must be applicable in all times and places. For Rothbard this implies that persons cannot be entitled to certain material living standards. For example, he opposed the idea that people could have the natural right to three meals a day on the grounds that there are times and places that it is physically impossible to provide the whole population with three meals a day.¹⁰³ Rothbard’s argument here is correct as far as it goes. Persons clearly cannot have natural rights to things which are impossible to attain. However, Rothbard’s argument here does not work in arguing against the idea that humans can be obliged to help others where it *is* possible, which is what the proponents of positive natural rights are clearly arguing for. Here, Rothbard’s original argument – that forcing persons to help others is an infringement on their ability to use their reason to pursue their own ends freely – comes into play.

The difference in approaches to natural law is well-illustrated by Rothbard’s (warning: somewhat disturbing) discussion of parents’ duties towards infants. Whilst he opposed parental violence against infants, Rothbard claimed that infants do not have a natural right to be fed by their parents, as this would involve imposing a positive, legally-enforceable duty on the parents to help another person. That is, for Rothbard, it would not be against natural law for parents to allow their infants to starve to death, and thus it should not be legally punishable. Part of his

¹⁰⁰ *Ibid*, Article 22.

¹⁰¹ *Ibid*, Article 25.

¹⁰² *Ibid*, Article 29.

¹⁰³ Rothbard, *Ethics*, p. 43.

reasoning was that if this positive duty was legally enforceable, it would be impossible to draw the line at where legally enforceable duties to children end.¹⁰⁴

More generally, we can ask, if we have duties towards children, who else do we have duties to and how far do these duties go? Where is the line drawn? How well-off does one have to be to become legally obliged to help others? How much must one help others? The UD states that all incapable people should be provided adequate resources with which to achieve well-being, but what does “adequate” mean? How incapable does one have to be for others to be legally obliged to help one? Perhaps individuals cannot identify objectively correct answers to these questions but instead have a duty to embrace that we exist in social contexts and thus that our rights have to be agreed socially. Indeed, according to Article 21 of the UD, “Everyone has the right to take part in the government of his country” and “The will of the people shall be the basis of the authority of government”.¹⁰⁵ Under this conception of rights, it appears that one of our natural rights is to partake in the debates and decisions which set the boundaries of rights and responsibilities. For what it’s worth, this author does not have a clear preference between a self-ownership notion of rights and a positive duties notion of rights.¹⁰⁶ Nevertheless, we will continue the rest of the dissertation as if self-ownership were entirely correct.

2.5 World-ownership

Here we briefly introduce the concept of the Lockean approach to owning property external to oneself – i.e. world-ownership – by comparing it with other self-ownership-based schools of property: mutualism and Georgism (plus hard libertarianism further below). This is to show that there are numerous property systems that are compatible with natural rights and self-ownership. We are referring to non-proviso Lockeanism, and discuss the different Lockean provisos in a different section (2.7) further below.

¹⁰⁴ Rothbard, *Ethics*, Chapter 14.

¹⁰⁵ United Nations, *op cit*.

¹⁰⁶ With regards to the specific problem of the parents that refuse to feed their baby, I believe this could be dealt with from a left-libertarian perspective, which I have sympathy with (whilst I don’t have sympathy for Lockeanism, as discussed in the next section). If it became known that a parent was starving their baby, under left-libertarianism persons could legitimately disregard the world-ownership property rights of the parent in order to enter the home of the parent, violently if necessary (as the parent would have lost legitimate possession rights and the right to protect their property), to remove the baby and bring them into care. This leaves the problem of what should happen to the guilty parent. I think there should be a punishment. In a left-libertarian society it is imaginable that it would be possible to impose some significant, technically non-aggressive punishment (perhaps something along the lines of a social boycott of the person). How such a punishment would/could work and fit into a left-libertarian scheme is beyond what we can discuss here.

There are three main broad schools of thought on land ownership in the self-ownership tradition: Lockeanism, Georgism, and mutualism. Under each of them one can only appropriate natural resources by labouring on said resources, but the nature of appropriation is different for each school. Under Lockeanism, natural resources are considered unowned until a person labours on, or homesteads them, gaining full, permanent ownership. Under Georgism and mutualism, natural resources are considered to be under the common ownership of humanity as a whole, with individuals only gaining possessory or usufructuary rights.¹⁰⁷ Under Georgism the community plays a more active role in the management of natural resources, imposing a land tax on people corresponding to the estimated value of the natural resources the homesteader takes out of the common. Under mutualism, humanity's common ownership is latent. Individuals have the right to possess any land and property they are using, but the latent communal ownership prevents people claiming more than for personal use, and when land is scarce it can be rationed.¹⁰⁸

A key difference between mutualism and the other schools is the rules on abandonment. Under Lockeanism, one could slightly labour on more land than one needs (according to Rothbard, just walking on it would count as labour), and then claim permanent ownership of it to gain future rental value. But this is not the case under mutualism. When one stops using a piece of land, or other property, one is deemed to have abandoned it. One cannot leave property vacant and gain rental income as an absentee landlord. Under Georgism, one could own more land than one needs, but it should theoretically not do much good to the absentee owner as the community tax should equal the rental value of the land. However, one could gain rental value for any housing or other property one labours to produce. Under Lockeanism and Georgism one can transfer one's ownership of land to whom one wishes. Under Georgism the new owner would become responsible for any land tax. Under mutualism, one cannot sell land because one cannot fully own it, one can only occupy and use it.¹⁰⁹

¹⁰⁷ Carson, *Studies*, p. 199.

¹⁰⁸ These descriptions are taken from Carson, *Studies*, pp.198-202. Proudhon, often considered the founder of mutualism asserted that land should be rationed when scarce. Proudhon, Pierre-Joseph, *What is Property? An Inquiry into the Principle of Right and of Government*, translated by Benjamin Tucker, n.p., Humboldt Publishing Company, 1890, online at The Anarchist Library [website], <https://theanarchistlibrary.org/library/pierre-joseph-proudhon-what-is-property-an-inquiry-into-the-principle-of-right-and-of-government> (accessed 02 Sep 2017). See, for example, Chapter 3, section 1 titled, "The land cannot be appropriated."

¹⁰⁹ Carson, *Studies*.

It is also worth mentioning the “hard libertarian” position outlined by Allan Gibbard.¹¹⁰ According to this position, one has natural rights over one’s body, and the right to transform objects in the world. For example, one has a right to clear the land for a farm or make lumber out of trees. However Gibbard explains, “a person’s performing of such an act can never by itself deprive anyone else of his equal right to all things.”¹¹¹ He continues: “In absence of agreement to the contrary, a manufactured thing is to be regarded simply as commonly owned raw materials put into new form, and hence everyone has an equal right to it.”¹¹² According to this position, property rights – that is, the right to exclude somebody from using some resource – must be socially agreed somehow.

For full disclosure, out of the four positions described, this author is most sympathetic to the mutualist approach to land ownership. I believe that property possession can be justified as long as others are given equal opportunity to own natural resources. I would favour the hard libertarian position but this appears to be impractical in the world, so first users should be considered justified possessors unless the local community justifiably objects. I do not view the Georgist position as desirable for reasons such as those raised by Tucker. For example, under Georgism an innocent homesteader could be forced to pay large taxes through no fault of his own if land prices in his area increased due such things as a new town cropping up nearby.¹¹³ There are a number of questions and problems that the mutualist approach raises, as with any other system of property rights, but to discuss these would take us too far away from the investigation at hand.¹¹⁴

2.6 Variations of Lockeanism

The concept of Lockeanism raises a number of questions. One question is around the boundaries of ownership from one’s labour. Some have suggested an expansive interpretation of the boundaries of labour. Rothbard raises the problem of what he calls “Columbus Complex” whose adherents believe that the first person to land on an island acquires ownership of the whole island.¹¹⁵ Rothbard rejects this approach, arguing that only the pieces of land that the discoverer actually labours on becomes owned by him. Rothbard considers another suggestion that a

¹¹⁰ Gibbard, Allan, ‘Natural Property Rights’, in *Left-Libertarianism and Its Critics: The Contemporary Debate*, eds. Peter Vallentyne and Hillel Steiner, New York: Palgrave, 2000, pp. 23-30, p. 24.

¹¹¹ *Ibid*, p. 25.

¹¹² *Ibid*.

¹¹³ Tucker, Benjamin, ‘George and the Single Tax’, in *Individual Liberty*, by Benjamin Tucker, New York: Vanguard Press, 1926.

¹¹⁴ See Carson, *Studies*, particularly pp. 197-218, for an introduction to the debates.

¹¹⁵ Rothbard, *Ethics*, p. 47.

person could gain ownership of an island by walking around it (or paying agents to do this), thus creating a boundary of ownership. Rothbard rejects that the discoverer should own the land within the boundary but does believe that walking on land constitutes labouring on it, and thus the discoverer should own the boundary itself. For Rothbard, having been walked upon, “the boundary will have been transformed and used by man.”¹¹⁶ Rothbard seems to be claiming that any physical activity which decreases entropy on an unowned resource constitutes labour and is therefore enough to establish an ownership right.

In this context, Nozick raises an interesting question with regards to the extent of ownership gained through labour: “If I own a can of tomato juice and spill it in the sea so that its molecules (made radioactive, so I can check this) mingle evenly throughout the sea, do I thereby come to own the sea, or have I foolishly dissipated my tomato juice?”¹¹⁷ Presumably, in an imaginary world in which nobody had gone into the sea yet, so that it was unowned, Rothbard would be committed to saying that Nozick *would* rightfully own the sea due to his transformation of it with radioactive tomato juice. Rothbard actually did note in one publication that he did favour privatisation of the sea (as well as all other natural resources on the planet), but did not explain how this could be achieved in line with his approach to justice in property.¹¹⁸ One imagines that the major obstacle is the fact that it is difficult to identify the first homesteader(s) as the sea has been used for so long by so many people.

Another question the concept of Lockeanism raises is the extent of labour needed in order to gain ownership over property. At times, Locke himself appears to have been suggesting that significant transformation was needed in order to gain ownership of natural resources. Consider the following statement: “As much land as a man tills, plants, improves, cultivates, and can use the product of, so much is his property. He by his labour does, as it were, enclose it from the common.”¹¹⁹ However, as we have noted, this is usually overlooked by Lockeanism and anything which reduces entropy such as walking on land is deemed to confer ownership.

¹¹⁶ *Ibid*, Ch. 7 fn. 2 pp 47-48. Note here that the distinction between owning all the land and owning the boundary is clearly minimal as the boundary owners could say that as a condition of crossing the boundary, newcomers agree to transfer the ownership rights everything they labour on inland to the boundary owner.

¹¹⁷ Nozick, *op cit*, p. 175.

¹¹⁸ Rothbard, Murray, *For a New Liberty*.

¹¹⁹ Locke, *op cit*, Ch. 5., section 31.

2.7 Lockean proviso?

Another question relates to the limits of what one can acquire. Locke put in place a proviso that land acquisition should leave “enough, and as good left in common for others”.¹²⁰ This has provoked several reactions from interpreters of his writing. Nozick has pointed out that it is technically impossible to acquire natural resources whilst leaving “as good left in common for others”.¹²¹ In this context there are a number of alternative provisos which have been proposed. Vallentyne has categorised these provisos.¹²² The first two types are based on the assumption that resources are originally unowned. Firstly, according to “Nozickean right-libertarianism”, unowned resources may be appropriated but other individuals must not be made “worse off by the appropriation compared with non-appropriation.”¹²³ (Note that Nozick claimed that practically speaking, appropriation (privatisation) benefits everyone, so there should be no practical limits on appropriation.¹²⁴) Vallentyne explained that secondly, “sufficientarian (centrist) libertarianism” requires that persons must be left with “adequate” natural resources. “Adequate” can be interpreted in different ways including the basics for subsistence, or enough for “minimally decent life prospects.”¹²⁵

There are two types of Lockean left-libertarianism. These positions begin from the assumption that resources are originally jointly owned. The first type is “equal share left-libertarianism” (Georgism) in which persons may appropriate any natural resources as long as they leave enough for others to appropriate the same.¹²⁶ Alternatively, persons may appropriate more than this amount on the grounds that they pay compensation to others equal to the market value of the extra share taken. An egalitarian criticism of this view is that persons are naturally endowed with abilities which mean that having an equal share in worldly resources does not amount to everyone having an equal opportunity for material well-being. The second type of Lockean left-libertarianism – “equal opportunity left-libertarianism” – attempts to address this egalitarian problem.¹²⁷ Under this scheme persons with less internal endowments are entitled to more external resources.

¹²⁰ *Ibid*, Ch. 5, section 26.

¹²¹ Nozick, *op cit*, pp. 175-77.

¹²² Vallentyne, Peter, ‘Left-Libertarianism and Liberty’ in *Debates in Political Philosophy*, eds. Thomas Christiano and John Christman, Oxford: Blackwell Publishers, 2009, pp. 137-52.

¹²³ *Ibid*, p. 148.

¹²⁴ Nozick, *op cit*, p.177. For research which refutes Nozick’s claim, see Ostrom, Elinor, *Governing the Commons: The evolution of institutions for collective action*, Cambridge: Cambridge University Press, 1990.

¹²⁵ Vallentyne, ‘Left-Libertarianism and Liberty’, p. 148.

¹²⁶ *Ibid*, p.148.

¹²⁷ *Ibid*, p.149.

An alternative approach to all of the outlined provisos is that all Lockean provisos should be entirely rejected. This was the approach of Rothbard. He described Locke's proviso as "unfortunate".¹²⁸ He also rejected even Nozick's weak version of the proviso, on the grounds that it could lead to the outlawing of all land being taken as private property. This is because "one can always say that the reduction of available land leaves everyone else, who could have appropriated the land, worse off."¹²⁹ Furthermore, there is, "no way of measuring or knowing when they are worse off or not".¹³⁰ According to Rothbard:

Everyone should have the right to appropriate as his property previously unowned land or other resources. If latecomers are worse off, well then that is their proper assumption of risk in this free and uncertain world. There is no longer a vast frontier in the United States, and there is no point in crying over the fact.¹³¹

Rothbard also suggested that people can usually gain access to resources by buying or renting them but, "even if owners refuse to sell or rent them, that should be their right in a free society."¹³²

When we refer to "Lockeanism" in the remainder of this dissertation, unless otherwise stated, we are referring to this non-proviso version. That is, persons are able to gain ownership of an unowned resource by minimally labouring on it (e.g. walking on it), i.e. "homesteading" it, and there are no limits on acquisition. Discussing this version of Lockeanism has two benefits. The first is simplicity. We want to discuss one of the right-libertarian variants of Lockeanism, and unlike the non-proviso version, the Nozickian proviso version has the problem of needing to take into account the subjective well-being of people affected by the original acquisition of resources. This would greatly complicate any discussion of the topic. Secondly, non-proviso Lockeanism is highly relevant with the increase in support for Rothbard's politics in recent years, as discussed in the introduction chapter. It would therefore be useful to enquire into what the principles he claimed to promote should actually entail.

¹²⁸ Rothbard, *Ethics*, p. 244.

¹²⁹ *Ibid.*

¹³⁰ *Ibid.*

¹³¹ *Ibid.*

¹³² *Ibid*, p. 245.

2.8 For and against Lockean world-ownership

Are Lockean rights self-evident?

Why does labouring on natural resources give one ownership of them? Often those that promote this idea make appeals to intuition rather than logical deductions. Consider as an example Rothbard's discussion in *Ethics* of the sculptor and his sculpture which we quoted in the Introduction chapter. As we saw, even before making any argument that the sculptor should own his sculpture, Rothbard wrote: "Surely, it is a rare person who, with the case put thus, would say that the sculptor does not have the property right in his own product."¹³³ The right to ownership over the fruits of one's labour are considered an *a priori* and self-evident truth. One should own the fruits of one's labour, and that is that.

Is it self-evident that one should own the fruits of one's labour? Not necessarily. Let us imagine that Rothbard's sculptor is part of a group that is cast away on an island. Whilst the sculptor is on his own exploring the island, the rest of the group notice that there is a deposit of clay that could be used to make stoves and other useful tools for the group's survival. As it is late, they decide that they will go to sleep and the next day they will dig up the clay to start making the stoves. Let us imagine that in the meantime, the sculptor comes along, sees the clay, takes it all, and begins working on a pretty sculpture before the group begins making the stoves. The other castaways would, we suggest, be very likely to confiscate the clay and politely explain that sculpture-making can wait for another time. If the sculptor said that this is unfair because he had started labouring on the clay, or if he started spouting un-argued assertions on the natural right of persons to own unused resources they have homesteaded, one doubts that this would do him much good, unless the island was filled with die-hard Lockean. People from many different ethical perspectives could object to the sculptor's claim (we give a couple of examples in the next paragraph). This thought experiment should put to rest the idea that the right to the fruits of one's labour is some *a priori*, self-evident truth, as Rothbard would have us believe.

Significantly, the sculptor's claim to ownership rights would not be self-evidently legitimate even if all the islanders believed in self-ownership. For example, anyone that held the "hard libertarian" position outlined by Gibbard would certainly not see the sculpture as the legitimate property of the sculptor. Similarly, under mutualism, land and other natural resources can become rationed under scarcity, so mutualists would see themselves as justified in rejecting the sculptor's claim to the clay. Having hopefully established that the legitimacy of the Lockean

¹³³ See page 23 above.

homesteading principle is not self-evident, let us now look at the actual arguments for the Lockean approach.

Labour mixture argument

Let us first look at Locke's classic labour mixture argument. Locke argued that one should own the fruits of one's labour because one owns one's labour and by labouring on an unowned object one mixes one's labour with it. Thereby the object becomes joint to one's labour, and thus gives the labourer ownership of the whole object – e.g. land.¹³⁴ This argument is highly problematic. Firstly, Kinsella has criticised the idea that we “own” labour any more than we own other actions we do. According to Kinsella, we own our bodies, and we merely “engage in” actions.¹³⁵ Kinsella believes that saying one owns one's labour or one's actions is just a figurative and less precise way of saying that one is a self-owner and has the right to perform actions including labour. He writes: “If you are a self-owner you have a right to perform actions—including ‘labor’. (Self-ownership also gives you the right to do pushups, eat ice cream, dream, love, read books, and reminisce, but it would be odd to say you own pushups, eating, dreams, love, your literacy, or memories.)”¹³⁶

David Hume criticised Locke's argument on the grounds that we don't really join our labour to anything. According to Hume: “We cannot be said to join our labour to anything but in a figurative sense. Properly speaking, we only make an alteration on it by our labour.”¹³⁷ Kinsella has elaborated upon this point in his attack on intellectual property, which as we discuss in Chapter 4, he views as incompatible with right-libertarianism. He points out that defenders of intellectual property often use the argument that mixing one's labour with something gives one ownership of it. He claims that this argument is “as if they view labor as some owned substance emanating mystically from godlike Creators, ‘mixed with’ or somehow ‘present in’ creation-objects floating out there in Platonic space (but somehow still connected to the real world).”¹³⁸ The correct, view, for both Hume and Kinsella, is that by labouring on something, one merely

¹³⁴ Locke, *op cit*, Essay 2, Chapter 5, Section 26.

¹³⁵ Kinsella, Stephan, ‘Hume on Intellectual Property and the Problematic “Labor” Metaphor’, *Mises.org*. 09 Apr 2011, <https://mises.org/wire/hume-intellectual-property-and-problematic-%E2%80%9Clabor%E2%80%9D-metaphor> (accessed 17 Aug 2018).

¹³⁶ *Ibid.*

¹³⁷ Cited in Kinsella, *Ibid.* For original, see Hume, David, *A Treatise of Human Nature*, ed. L. A. Selby Bigge, Oxford: Clarendon Press, 1896, Book III, Part II, Section III, note 16.

¹³⁸ Kinsella, *Ibid.*

alters things. It is this alteration which justifies ownership according to Kinsella, following Hume.¹³⁹

Altering natural resources arguments

Let us now consider this variation of the argument – that one should own previously unowned resources that one alters. The question is, why? Hume justified such rules on appropriation as a useful social convention, not on natural law terms.¹⁴⁰ What are the natural law arguments?

Personality imprint argument

Rothbard claimed that by labouring on worldly objects they come to reflect one's personality.¹⁴¹ Under this argument, one is not joined to a piece of property, but one's past use of it has left a permanent imprint of oneself on the object. However, again, why should this justify having the right to exclude people from, or charge rental value from, land that one walked on years ago? Or why should this justify the sculptor taking the clay the islanders need for survival? We suggest it does not.

Adding value argument

Another Lockean argument is that by labouring on items one gives them value, and one is entitled to the value one produces.¹⁴² However, again, which value has the person made who has merely walked on a piece of land several years ago? In fact, if one used one's previous labour of walking on land several years ago to justify excluding others from using it, one would actually be removing value from the world.

Survival argument

A further argument that Rothbard has made is that people depend on producing to survive. Therefore people should have full ownership of what they produce.¹⁴³ However, the argument that owning the products of labour is justified because one's products allow you to survive, only applies to those products which actually do help you survive. It does not apply to products of labour which do not help one survive: for example, land that you have not used in several years, or the sculptor's sculpture in the island scenario we discussed. Thus Rothbard's argument is weak here.

¹³⁹ *Ibid.*

¹⁴⁰ Hume, *op cit*, Book III, Part II, Section II.

¹⁴¹ Rothbard, *Ethics*, p. 48.

¹⁴² Nozick, *op cit*, p. 175.

¹⁴³ Rothbard, *Ethics*, p. 48.

Avoiding conflict

Kinsella has claimed that ownership of what one labours on or uses before others is necessary to avoid conflict. “[As] in the case with bodies, property is assigned to the person with the best claim or link to a given scarce resource — with the ‘best claim’ standard based on the goals of permitting peaceful, conflict-free human interaction and use of resources.”¹⁴⁴ For Kinsella “it is obvious that *ownership presupposes the prior-later distinction*: whoever any given system specifies as the owner of a resource, he *has a better claim than latecomers*.”¹⁴⁵ Is it obvious that the sculptor has the better claim to the clay than the rest of the islanders that want to use it to make a cooker? It is not obvious to this author. Nor would it be obvious to most mutualists or hard libertarians.

Kinsella continues, “If [the first user] is not [the legitimate owner], then who is? The person who takes it from him by force?”¹⁴⁶ Perhaps. If the person who takes it by force has justifiable grounds for using force to take the property. For example, in the case with the islanders and the clay sculpture, where the sculptor was not justified in using the clay because it was a scarce resource the others needed for survival. Also note, however, that taking property does not require using force when the property is abandoned. If Mr Green puts up a sign saying he owns a particular meadow because he has walked on it, and the local villagers then see that he has not returned to the meadow for two years since putting the sign up, so decide to use the land to make a children’s play park or some such thing – without asking Mr Green for permission or agreeing to pay rent – they do not need to use force to make the play park. They just need to ignore his claim.

Kinsella further says in defence of his argument, that “If forcefully taking possession from a prior owner entitles the new possessor to the thing, then *there is no such thing as ownership* but only mere possession. But such a rule — that a later user may acquire something by taking it from the previous owner — does not avoid conflicts, it rather authorizes them.”¹⁴⁷ We can first respond to the claim that if the forcible taking of property from first users were allowed, property would no longer exist. This is incorrect, as under mutualism there is such thing as

¹⁴⁴ Kinsella, Stephan, ‘What Libertarianism Is’, *Mises.org*, 21 Aug 2009, <https://mises.org/library/what-libertarianism> (accessed 17 Aug 2018).

¹⁴⁵ Kinsella, Stephan, ‘Thoughts on the Latecomer and Homesteading Ideas; or, why the very idea of “ownership” implies that only libertarian principles are justifiable’, *Mises.org*, 15 Aug 2007, <https://mises.org/wire/thoughts-latecomer-and-homesteading-ideas-or-why-very-idea-ownership-implies-only-libertarian> (accessed 17 Aug 2018).

¹⁴⁶ *Ibid.*

¹⁴⁷ *Ibid.*

ownership – ownership of one’s body. It is technically correct to say that there would only be such thing as “possession” of worldly items under such a system, but it is unclear why this would be worse than Lockean ownership rights.

Let us also consider Kinsella’s claim that mutualism does not prevent (more accurate terminology than Kinsella’s “avoid”) conflicts but authorizes them. Firstly, we can note that a mutualist society would not necessarily be one of more conflict than a Lockean one. In a Lockean society, if there is concentrated property, conflict could take the form of theft on the one hand, and on the other hand, violence to enforce property rights against thieves by preventing theft, capturing and punishing thieves, and addressing the resistance and disputes that would arise from such property rights enforcement. It is conceivable that in a mutualist society there would be far less theft, as the society would be more egalitarian, so there would be far less of this type of violent conflict.

There may be more legal disputes over legitimate property claims under mutualism than Lockeanism. However, Kinsella does not explain why having such disputes is worse than people being potentially excluded from resources due to Lockean property rights. Furthermore, as we shall see in the next chapter, Lockean property norms greatly increase the scope for disputes over legitimate property claims in a very significant way in comparison to mutualism. Under mutualism, the distant history of titles is an irrelevance, as current, or very recent occupation and use determines the legitimate possession. However, according to any Lockean approach, the history of titles becomes a factor over which disputes necessarily arise. Thus as we discuss later in this chapter, analysts in the Lockean tradition have been concerned with the property rights implications of historical land theft, the history of slavery, and wider historical injustice by governments. This is something mutualists don’t need to consider when assessing possessory rights. For mutualists, titles are judged by current or very recent occupancy and use. Therefore, for example, under mutualism the descendants of slaves are not entitled to the estates their ancestor’s worked on, as they may be under Lockeanism. Thus historical disputes over titles are potentially greatly reduced. Here it must also be noted that in the next chapter we put forward a Lockean law of restitution which does not acknowledge intergenerational claims (e.g. from descendants of slaves), but under our approach all existing property titles still come under disputed ownership due to historical injustice. Therefore, Kinsella’s argument that Lockean property norms reduce disputes over claims is highly problematic.

Preventing parasitism

An argument Rothbard makes is that Lockean property rights are needed to prevent parasitism – which Rothbard claims to believe is against natural law. Let us see how he makes this argument. Rothbard asks us to consider the alternatives to people owning what they have laboured on. There are only two alternatives. Firstly, some other group of people owns the products, or secondly, everybody owns the products. In reality, Rothbard suggests, it is impossible for everybody to manage the products and it will end up being a management group that will end up owning the products, so it is only this alternative that he considers. Rothbard claims that allowing a group to take the property that others have produced is to enable parasitism. He argues that this is against natural law because parasitism cannot be carried out universally by all humans as parasites need hosts (productive, non-parasitic people) to feed on. Natural law must apply to all humans, thus parasitism cannot be in line with natural law.¹⁴⁸

The first problem with this approach is that it does nothing to justify property rights over naturally occurring wealth, in which the question of parasitism on the labour of others does not arise.¹⁴⁹ Naturally occurring wealth includes things such as naturally occurring fruit trees, rivers, lakes, the fish in lakes, and so forth. If somebody ate an apple from a naturally-existing tree of a Rothbardian, the apple-eater could not be said to be being parasitic on the labour of the Rothbardian. How would Rothbard justify the enforcement of property rights against this person? We can make a similar argument for soil. Rothbard argues that somebody could claim legitimate ownership over the soil simply by walking on it. If somebody disregarded the Rothbardian ownership claim and used the soil to produce his own food, this could not be said to be parasitic. How does Rothbard justify enforcing property rights against these people? In fact, if the Rothbardian charged rents from a farmer because the Rothbardian had once walked on the land, surely the Rothbardian would be the parasitic one by using the threat of eviction to extract tribute from the farmer. That is, surely Rothbard's notion of justice in property rights is an argument *for* a form of parasitism.

Additionally, not all mutualist expropriation of property which has been produced through labour would be parasitic. For example, in the case of the islanders we just discussed, the group would not be parasitic on the labour of the sculptor by taking his sculpture. Rather, they would be destroying his work in order to use the nature-provided clay for an entirely different project. They would simply be disregarding the labour of the sculptor, not being parasitic on it. We can

¹⁴⁸ Rothbard, *Ethics*, Ch. 8.

¹⁴⁹ This is the argument of the Geogist tradition.

imagine similar scenarios in which a privately-owned car park is expropriated, with the pavement dug up to expose the soil for farming. In such a case there would be no parasitism on the labour of the car park builders. Rothbard's argument that property rights are required to prevent parasitism does not work here.

Another problem with Rothbard's argument against parasitism is that certain forms of parasitism *can* be carried out universally – for example, where parasitism is limited to confiscating concentrations of resources which inhibit universal independent production. As an example, in the case of the islanders we mentioned above, it would be parasitic if the sculpture the islanders confiscated just happened to be stove-shaped, so that the islanders did not need to demolish it, but could cook with it as it was. It is not clear why this should be barred by natural law (hence it isn't barred under the mutualist approach). That is, if they *were* being parasitic on the sculptor's labour, it is not clear why this would make them confiscating the sculpture more unethical than if they weren't being so. Put another way, it is not clear that they would be being more ethical if instead of confiscating the stove-shaped sculpture and using it to survive, they confiscated the sculpture, smashed it up into random clay pieces, and then laboured themselves to build the stove, so as not to be parasitical.

2.9 Summary of Lockeanism

We have now critically introduced the form of Lockean property rights which we will be investigating in the rest of this dissertation. It is based on natural rights, it includes self-ownership and includes full ownership rights over natural resources one labours on. As we have seen, this approach to natural rights is very problematic. Nevertheless, we will investigate the implications of this Lockean approach as if we believed Lockean ideas were sound.

2.10 Two approaches to the problem of historical injustice in property: Nozick's rectification principle and Rothbard's anti-criminal system

As discussed in the introduction Lockeanism also requires an approach to addressing the problem of holdings that do not arise in line with Lockean justice. There have been two major theoretical approaches to addressing this problem. Both come from the right-libertarian tradition. The first is Nozick's rectification principle based on attempting to redistribute property to people based on what they would have had if there had not been historical injustice. The second is what we can label the "anti-criminal" system, outlined by Rothbard. We suggest that there are significant problems with both approaches. The problems with Nozick's approach have

already been addressed in the literature.¹⁵⁰ However, the same cannot be said for Rothbard's. Thus in the remainder of this chapter we outline both approaches before returning to a fuller discussion and critique of Rothbard's system in Chapter 3. In Chapter 3 we also offer an alternative Lockean approach to the problem of addressing injustice in holdings.

2.11 Nozick's rectification principle

Nozick began his discussion of rectification of injustice in holdings with the following questions:

If past injustice has shaped present holdings in various ways, *some identifiable and some not*, what now, if anything ought to be done to rectify these injustices? What obligations do the performers of injustice have toward those whose position is worse than it would have been had the injustice not been done? Or, than it would have been had compensation been paid promptly? How, if at all, do things change if the beneficiaries and those made worse off are not the direct parties in the act of injustice, but, for example, their descendants? Is an injustice done to someone whose holding was itself based on an unrectified injustice? How far back must one go in wiping clean the historical slate of injustices? What may victims of injustice permissibly do in order to rectify the injustices being done to them, including many injustices done by persons acting through their government?¹⁵¹

As we can see, Nozick takes a broad approach to the question of injustice. He is interested in addressing the whole history of injustice, including those injustices that are unidentifiable. His solution to these questions is what he refers to as the "rectification principle", where attempts must be made to make people as well off as they would have been had historical injustice not taken place.¹⁵²

A problem with Nozick's approach is that we lack the necessary information to make an accurate estimate of the rectification required. Litan has listed the forms of historical information that would be required in order to calculate rectification in line with Nozick's suggestion:

- (1) Those instances in which the principle of justice in acquisition was violated, the parties committing such violations, the victims, and the amounts of compensation owed.
- (2) Those instances in which the principle of justice in transfer was violated, the parties committing such violations, the victims, and the amounts of compensation owed.

¹⁵⁰ Litan, *op cit*.

¹⁵¹ Nozick, *op cit*, p. 152.

¹⁵² Nozick, *op cit*, pp. 152-3.

(3) The change in the property distribution at time “one” generated by the different capital distribution following compensation.

(4) The alteration of inheritance patterns in all subsequent generations induced by the compensation payments.

In turn, these items would require knowledge of the preferences of all persons throughout time (preferences between goods, between present consumption and saving, and between heirs) and each person’s productivity (to compute interest rates tailored to each individual) in order to fix levels of compensation payments at each point in time.¹⁵³

Nozick himself acknowledged the information problem. Lacking sufficient historical information to accurately estimate holdings people would have had, had it not been for historical injustice, Nozick outlined the following suggestion. If we assume that those who are worst off in this society are most likely to have been made worse off by historical injustice, and those best off are most likely to have benefited from historical injustice, then patterned transfer payments from the best off in society to the worst off in society cannot be ruled out as unjust.¹⁵⁴

Litan took this analysis further. Litan explains that Nozick’s aim is to get as much of the population as close as possible to a just allocation of holdings. Litan argues that there is only one mathematical rule “which will consistently guarantee that 100% of the population will be moved closer to their ideal allocations”. That is, select “the mean [average] of the just entitlements property distribution for each person.”¹⁵⁵ The “mean of the just entitlements” means that we choose the mean figure of what persons could have had were it not for historical injustice in property allocations. Litan suggests that due to the extensive history of injustice which we lack information on, we cannot say that individuals have different possible holdings distributions. Therefore, “*an intergenerational rectification scheme which treats individuals seriously must redistribute the entitlements in society equally among all of the members of that society.*”¹⁵⁶ As we are discussing an interconnected world, this would presumably mean redistributing property equally amongst all people on the planet.

Whilst socialists may be satisfied with the conclusion of the Nozick-Litan approach, there is a significant problem from a Lockean perspective. The major critique from a Lockean perspective is that Nozick is suggesting doing injustice against some in order to reduce the amount of injustice overall. This is a rejection of his own idea that rights should be considered as “side

¹⁵³ Litan, *op cit*, p. 238.

¹⁵⁴ Nozick, *op cit*, pp. 230-231.

¹⁵⁵ Litan, *op cit*, p. 241.

¹⁵⁶ Litan, *op cit*, p. 242. Italics in original.

constraints” on permissible actions – preventing injustice cannot come at the price of infringing on any individuals’ rights.¹⁵⁷ A consistent Lockean approach rejects the idea that carrying out injustice against one person is justified in order to reduce injustice for the great majority.

2.12 Rothbard’s anti-criminal system

Rothbard’s anti-criminal system is a dual method of addressing injustice in holdings. The first part of Rothbard’s anti-criminal system is what we call an “innocent homesteader” approach. It is this part of the scheme which we claim is problematic. Rothbard outlined this approach in *The Ethics of Liberty* (hereafter referred to as ‘*Ethics*’). This approach has been accepted by prominent right-libertarian scholars such as Block and Kinsella, and it is this approach which will be the primary target of our critique in the next chapter.¹⁵⁸ Here our aim is simply to present the idea. In *Ethics* Rothbard starts by claiming that it is only legitimately gained (on Lockean grounds) property that persons have a right to keep. It is in this context, as we noted in the introduction, that Rothbard expressed support for the expropriation of capitalist property where such property is unjustly held.

To illustrate his point, Rothbard asked us to imagine a hypothetical country, Ruritania, in which a king decides to end feudalism, but does so by dividing the land into parcels of private property for himself and his family. Thus the inhabitants of Ruritania no longer have to pay taxes but must instead pay private rents to their new private landlords.¹⁵⁹ In such a situation, Rothbard explained that the correct right-Libertarian response would be to reject the legitimacy of such property, and expropriate the property of the former king and his family. For Rothbard, the inhabitants should say:

‘We are sorry, but we only recognize property claims that are *just* – that emanate from an individual’s fundamental natural right to own himself and the property which he has either transformed by his energy or which has been voluntarily given or bequeathed to him by such transformers. We do not, in short, recognize anyone’s right to any given piece of property purely on his or anyone else’s arbitrary say-so that it is his own. There can be no natural moral right derivable from a man’s arbitrary claim that any property is his. Therefore we claim the right to expropriate the ‘private’ property of you and your relations, and to

¹⁵⁷ Nozick, *op cit*, p. 30.

¹⁵⁸ Block, Walter, ‘On Reparations to Blacks for Slavery’, *Human Rights Review*, Jul-Sep 2002, pp. 53-73; Kinsella, Stephan, ‘Justice and Property Rights: Rothbard on Scarcity, Property, Contracts...’ *StephanKinsella.com*, 19 Nov 2010, <http://www.stephankinsella.com/2010/11/justice-and-property-rights-rothbard-on-scarcity-property-contracts/> (accessed 17 Aug 2018).

¹⁵⁹ Rothbard, *Ethics*, p. 55.

return that property to the individual owners against whom you aggressed by imposing your illegitimate claim.’¹⁶⁰

After laying out this approach to criminal private property, Rothbard addressed the problem of how such principles could be applied in practice. He claimed that his approach would not involve a “chaotic enquiry into everyone’s property”.¹⁶¹ This is because, Rothbard said, all goods justly belong to the first person “who finds and transforms them into a useful good (the ‘homestead’ principle).”¹⁶² Therefore if a piece of property is possessed by someone, and it cannot be clearly shown that the possessor or his ancestors to the title were criminal, then the person who has been possessing and using it (the possessor) must be considered the legitimate title holder in line with the homestead principle. Rothbard explained further:

...if we do not *know* if Jones’s title to any given property is criminally derived, then we may assume that this property was, at least momentarily, in a state of no-ownership (since we are not sure about the original title), and therefore that the *proper* title of ownership reverted instantaneously to Jones as its “first” (i.e., current) possessor and user.¹⁶³

It is only property which is “clearly identified as criminally derived” which can be considered illegitimately held.¹⁶⁴ Rothbard then considers the question of what happens if a piece of property *is* identified as criminally derived. He asks, “does this necessarily mean that the current possessor must give it up?”¹⁶⁵ His answer is, “No, not necessarily”.¹⁶⁶ For Rothbard, this depends on two things: firstly, whether the victim or the victim’s heirs are identifiable; and secondly, “whether or not the current possessor is *himself* the criminal who stole the property.”¹⁶⁷ Rothbard asks us to consider that Jones owns a watch which was given to him by an ancestor that either stole the watch or bought it from a thief (it is irrelevant for Rothbard whether this was done knowingly or not). If we can identify the victim or the victim’s heirs, then Jones’s title is invalid and the watch must be returned to the victim or heir. However, if we know that the watch was criminally gained but we cannot find the victim or victim’s heirs, two other paths must be taken. If Jones himself *was* the thief, then he cannot be allowed to keep it, as a “criminal

¹⁶⁰ *Ibid.*

¹⁶¹ *Ibid*, p. 56.

¹⁶² *Ibid.*

¹⁶³ *Ibid*, p. 57.

¹⁶⁴ *Ibid.*

¹⁶⁵ *Ibid.*

¹⁶⁶ *Ibid.*

¹⁶⁷ *Ibid.*

cannot be allowed to keep the reward of his crime.”¹⁶⁸ However, if Jones was *not* the criminal, but he inherited it or innocently purchased it from a thief, then in that case, Rothbard claims, the watch goes into a “state of no-ownership” with no legitimate owner. Therefore the property belongs justly “to the person to come along and use it to appropriate this now unowned resource for human use.” Rothbard continues...

But this “first” person is clearly Jones, who has been using it all along... Therefore, we conclude that even though the property was originally stolen, that *if* the victim or his heirs cannot be found, *and if* the current possessor was not the actual criminal who stole the property, then the title to that property belongs justly, and ethically to its current possessor.¹⁶⁹

Rothbard then offers an overall summary of his scheme:

To sum up, for any property currently claimed and used: (a) if we *know* clearly that there was no criminal origin to its current title, then obviously the current title is legitimate, just and valid; (b) if we *don't* know whether the current title had any criminal origins, but can't find out either way, then the hypothetically “unowned” property reverts instantaneously and justly to its current possessor; (c) if we *do* know that the title is originally criminal, but can't find the victim or his heirs, then (c1) if the current title-holder was not the criminal aggressor against the property, then it reverts to him justly as the first owner of a hypothetically unowned property. But (c2) if the current titleholder is himself the criminal or one of the criminals who stole the property, then clearly he is properly to be deprived of it, and it then reverts to the first man who takes it out of its unowned state and appropriates it for his use. And finally, (d) if the current title is the result of crime, *and* the victim or his heirs can be found, then the title properly reverts immediately to the latter, without compensation to the criminal or the other holders of the unjust title.¹⁷⁰

Rothbard's innocent homesteader approach is broadly dominant in the right-libertarian movement with authors such as Block and Kinsella backing it. (Or at least they *think* they back it. We discuss some confusion around Rothbard's approach, perhaps held even by himself, in the next chapter.) For example, Block has intervened in the debate about black reparations in the United States, attempting to apply Rothbard's method to the problem. Block argues that descendants of slaves should be entitled to what they can prove their ancestor produced, but

¹⁶⁸ *Ibid*, p. 58. Rothbard does not specify in *Ethics* what should actually happen to the watch in this scenario, but presumably he believes anyone can take the watch from Jones and homestead it themselves.

¹⁶⁹ *Ibid*, p. 58.

¹⁷⁰ *Ibid*, p. 59.

adds that “black leaders cannot take too much comfort from libertarian reparations theory” as most descendants of slaves would only be entitled to small amounts of compensation.¹⁷¹ He explained that in the case of an estate with 500 slaves where only one descendant could be found, that this descendant would be entitled to one-five-hundredth of the value of the estate, in line with “the estimate of the productivity of their own ancestor alone.”¹⁷² This is because the slave estate’s heir should be considered the legitimate owner of the rest of the property – in line with Rothbard’s scheme – unless the rest of the descendants of the slaves can be found.¹⁷³

Whilst several authors on the political right have adopted Rothbard’s approach to confiscation, others have argued that it is too generous to the descendants of victims of injustice. Cowen (not to be confused with Cohen) has argued that reparations should not go to the descendants of victims as we do not have enough counterfactual information to know that the property would have come down to these descendants as inheritance.¹⁷⁴ For example, the heirs of victims of historical crimes might not even exist had the crimes not been committed against their ancestors or had compensation been paid promptly, as their ancestors’ lives may have taken very different routes. The descendants of slaves, for example, may not exist had their ancestors not been enslaved and met the spouses they did. Furthermore, if the ancestors had been properly compensated for the crimes they suffered at the time, they may have spent their wealth on perishable goods, meaning that their descendants would not have gained the compensation. For these reasons Cowen is critical of intergenerational rectification.¹⁷⁵

Is Cowen correct here? Cowen himself acknowledges that we need to act upon some idea of counterfactuals in order to administer any legal system.¹⁷⁶ More to the point, as we mentioned above, in any Lockean legal system, we would need counterfactual information to judge any case of compensation. For example, any judgement of compensation for injuries which takes into account loss of earnings a victim suffers can be based only on a speculative estimate of what the victim may have earned had they not suffered injury. With regards to the specific issue of intergenerational rectification, whilst Cowen opposes it, he acknowledges that there are also good reasons for it. Cowen notes that one defence of intergenerational rectification is to see the compensation as actually being paid as a remedy to the dead or his representatives (or

¹⁷¹ Block, *op cit*, p. 56.

¹⁷² *Ibid.*

¹⁷³ *Ibid.*

¹⁷⁴ Cowen, Tyler, ‘How Far Back Should We Go?: Why Restitution Should be Small’, in *Retribution and Reparation in the Transition to Democracy*, ed. Jon Elster, Cambridge: Cambridge University Press, 2006, pp. 17-32.

¹⁷⁵ *Ibid.*

¹⁷⁶ *Ibid.*

presumed heirs). He notes that respecting the wishes of the dead is actually a common part of our legal system, with wills generally not being overturned, for example. He suggests that there are actually good reasons for this, as knowing whether our posthumous wishes will be granted have an impact on us whilst we are alive.¹⁷⁷ It is perhaps for this reason that, inheritance is considered a legitimate part of the Lockean tradition.¹⁷⁸ However, for the purposes of this dissertation, we are going to attempt to address injustice in holdings in a way which does not depend upon intergenerational justice. So one can either accept or reject intergenerational justice to make use of the core arguments of this dissertation.

We have touched on one problem with Rothbard's approach which has been highlighted in the literature – his acceptance of intergenerational justice. However, the intergenerational justice element of Rothbard's theory is by no means the major problem with it from a Lockean perspective. It is that it overlooks many forms of injustice. However, this problem has not been discussed in the literature thus far. This is something which we will have to treat at length in the next chapter. This will itself be an original contribution to knowledge as it has previously been assumed that Rothbard's approach is in line with the rest of Lockean theory. After discussing the problems with Rothbard's approach we will outline the Lockean law of restitution, which we argue overcomes these problems.

The second part of Rothbard's system is that property may be redistributed when torts are committed in which compensation is owed for damage to a person or their property. For example, Rothbard explains that if a mugger assaults a victim and causes the victim to suffer fear and anxiety, the mugger should pay compensation for this fear and anxiety caused.¹⁷⁹ He also argued that if it could be proved that a particular polluter had caused pollution damage to another person or their property, then compensation would be owed by the polluter.¹⁸⁰ We see no significant problem with Rothbard's views on compensation, and believe compensation should be a part of any reasonable Lockean approach to addressing injustice. Thus we include a Lockean law of compensation as part of the system we propose for addressing injustice in holdings (a Lockean version of the law of non-contractual obligations). However, we have little to say about the law of compensation in this dissertation, apart from some preliminary comments in the discussion chapter (section 7.2).

¹⁷⁷ *Ibid.*

¹⁷⁸ Rothbard, *Ethics*, Block, *op cit.*

¹⁷⁹ Rothbard, *Ethics*, p. 89.

¹⁸⁰ Rothbard, Murray, N., 'Law, Property Rights, and Air Pollution', *Cato Journal*, 2, No. 1, Spring 1982, pp. 55-99.

2.13 Previous justifications for socialist property reallocation

This dissertation is about investigating how far a Lockean version of the law of restitution can be used to justify socialist property redistribution. This is a new approach to the question of how socialist redistribution can be justified. Previously, when arguments have been made for socialist property reallocation, they have taken three main forms, each of which are problematic in ways which our approach addresses. The first is that socialists have outlined a set of principles according to which they believe society should be organised, and then asserted that property should be reallocated to match those principles. For example, in his book *Why not Socialism?* Cohen argued that society should be organised along communist, egalitarian lines in order to foster community.¹⁸¹ One reviewer simply responded by stating that the success of Cohen's scheme depended upon people accepting egalitarian principles over Lockean principles, which the reviewer did not – a view which we suspect is quite widespread for reasons discussed in our introductory chapter.¹⁸²

Like ethical communists in the fashion of Cohen, mutualists also propose that property is reallocated according to a chosen ethical framework. That is, they favour ending absentee ownership claims and moving to a property system based on possession and use. Here the work of Carson must be commented on. Carson's book *Studies in Mutualist Political Economy* is perhaps the most systematic and thorough analysis of state support for capital accumulation ever written. His critique of capitalism, to this author at least, appears for the most part to be in line with what a Lockean critique of existing holdings would look like. He looks at the historical role of land theft, colonisation, slavery, and other forms of forced labour in capital accumulation. He also looks at the contemporary role of various government regulations and subsidies. He argues that without such forms of state intervention, labour would get its full product and capitalist profits would largely not exist. However, there are important ways in which his critique differs from what a Lockean critique would consist of. Notably, he considers all absentee ownership of property and the revenues gained by absentee owners of capital to be illegitimate. This goes further than a Lockean critique of existing property allocations would go, as according to Lockeanism, absentee ownership titles – and revenues accruing from such – are legitimate insofar as they have been acquired justly (according to Lockeanism). Because much of Carson's critique of existing property allocations is compatible with a Lockean critique, it may appear to an undiscerning reader that Carson is justifying property reallocation based on

¹⁸¹ Cohen, G. A., *Why not Socialism?* New Jersey: Princeton University Press, 2009.

¹⁸² Gordon, David, 'Why not Socialism? By G. A. Cohen', *Mises Review*, Vol. 15, No. 3, Fall 2009.

rectification of historical injustice. However, this is not the case. As a mutualist (at least at the time of writing his book *Studies in Mutualist Political Economy*), Carson favours simply imposing mutualist property norms, which would immediately amount to a revolutionary expropriation of property by users and occupiers, as absentee ownership rights would be rescinded. His discussion of state violence in capital accumulation appears simply to be designed to show that with a combination of mutualist property laws and an end to state violence (i.e. the end of the existence of the state), there would be far greater equality, as capitalists and landlords would disappear, whilst labour would get its full product.

We noted above that the problem with Cohen's ethical socialism approach is that it can simply be rejected by those that support Lockean ethics. The same problem applies to Carson's promotion of mutualism. Given that Lockeanism is currently the dominant notion of justice in property rights, at least in Europe and the United States, George Reisman's response to Carson's suggestion is perhaps understandable. The response is summed up in the title of Reisman's article: "Mutualism: A Philosophy for Thieves".¹⁸³ Reisman rebukes Carson on the grounds that: "The idle wealth of the rich is what he has in mind for seizure and subsequent use by the poor, who would allegedly be its rightful owners by virtue of the mere fact of their use of what they had stolen."¹⁸⁴ We suggest that such a critique of Carson's book could not be made if Carson had presented his argument in Lockean terms. That is, if he had made clear that many existing property titles were unjust according to Lockeanism and that reallocation was justified on Lockean grounds. If Carson had done this successfully, Lockeans would either have to accept the justness of mass property reallocation, or would have to switch to a so-called utilitarian defence of existing titles – the approach which, as we saw above, Rothbard denounced as ethically nihilist. This would greatly weaken the ethical force of such defences of existing property titles. This dissertation can be considered an attempt to see whether a Lockean version of Carson's argument is possible. That is, the aim is to see if existing concentrations of property can both be considered illegitimate and be justifiably reallocated in an egalitarian manner according to Lockean criteria.

The social democratic tradition is not strictly socialist in the way that we have defined socialism, but is also worth commenting on here. Authors in this tradition tend not to question the legitimacy of capitalist property relations or state management of the economy, but wish to see the state intervene in ways that broadly promote social welfare. Some in the tradition have

¹⁸³ Reisman, George, 'Mutualism: A Philosophy for Thieves', *Mises.org*, 18 Jun 2006, <https://mises.org/wire/mutualism-philosophy-thieves> (accessed: 29 Mar 2018).

¹⁸⁴ *Ibid.*

brought attention to the role of state support in capital accumulation, but they do not frame their support for redistribution as restitution for historical injustice. Hence, they do not promote expropriation of property which has been accumulated with the help of the state support they document. They take it for granted that the state-corporate nexus is legitimate. They just want it to work in a more egalitarian manner. For example, Farnsworth explains that he views it as important “to ensure that corporate welfare is provided in such a way that it helps to encourage and reward responsible business behaviour and promote social justice.”¹⁸⁵ This position can be criticised from both socialist and Lockean perspectives. From the socialist perspective, this position will not abolish the class system, as we defined it in the introduction. It will also not address the purported symptoms of this class system, as discussed by a number of authors in the socialist tradition.¹⁸⁶ Meanwhile, from a Lockean perspective, the social democratic approach illegitimately infringes upon private property rights and self-ownership.

The second broad approach to socialist redistribution is the Marxist one. Marx attempted to portray the achievement of socialism in a somewhat morally neutral, scientific way. Marx believed he was discovering the historical trajectory of society based on its technological development and relations of production. According to Marx it was inevitable that workers should seize the means of production and organise a communist society. This would be because the working class would simply see this expropriation as being in its self-interest, rather than any particular ethical reasoning.¹⁸⁷ Taking such an amoral approach overlooks the force that ethical beliefs may have in either maintaining current property distributions or in promoting socialist transformation.

Marx did document the role of state and non-state violence in capital accumulation but he did not claim that this history justified socialist property reallocation. In fact, Marx appears not to have been averse to the historical violence he documented, viewing it as ultimately progressive because such violence helped lay the industrial basis for his predicted communist utopia. In *Capital*, after documenting the violent expropriation of the English peasantry which laid the basis for the capitalist wage relationship, Marx explained that had peasant production been allowed to remain in place it would have been “to decree universal mediocrity” upon society.¹⁸⁸ Similarly, after documenting the violent British colonisation of India, he speculated that the

¹⁸⁵ Farnsworth, Kevin, *op cit*, p. 3.

¹⁸⁶ For an introduction, see: Harvey, David, *Seventeen Contradictions and the End of Capitalism*, Oxford: Oxford University Press, 2014.

¹⁸⁷ Marx, *Capital*, Chapter 32. See also, Marx, Karl, and Frederick Engels, ‘Manifesto of the Communist Party’, *Marx/Engels Selected Works*, Vol. One, Moscow: Progress Publishers, 1969, pp. 98-137.

¹⁸⁸ Marx, *Capital*, p. 383.

British government was an “unconscious tool of history” helping “mankind fulfil its destiny”.¹⁸⁹ The prominent contemporary Marxist, David Harvey, has affirmed this classical Marxist position. In his book, *The New Imperialism*, after documenting various modern means of violent capital accumulation, Harvey explained, “You cannot make an omelette without breaking eggs... primitive accumulation may be a necessary precursor to more positive changes”.¹⁹⁰

The third broad approach of socialists, particularly amongst modern left-wing individualist anarchists, has been to take a Lockean approach to justice in holdings and argue for redistribution based upon rectification of historical injustice, but to not outline a method for doing this. The individualist anarchists/market socialists Chartier and Johnson exemplify this problem. In their introduction to their edited collection *Markets Not Capitalism*, they discussed the problem of, “an unnatural, destructive, politically-imposed maldistribution of property titles” which has been, “produced by the history of political dispossession and expropriation inflicted worldwide by means of war, colonialism, segregation, nationalization and kleptocracy”.¹⁹¹ They state that markets cannot be, “viewed as being maximally free so long as they are darkened by the shadow of mass robbery or the denial of ownership”.¹⁹² Thus they advocate:

reasonable rectification of past injustices – including grassroots, anti-corporate, anti-neoliberal approaches to the “privatization” of state-controlled resources; processes for restitution to identifiable victims of injustice; and revolutionary expropriation of property fraudulently claimed by the state and state-entitled monopolists.¹⁹³

This is broadly consistent with what a Lockean approach to addressing injustice in holdings should be. However, Chartier and Johnson do not clearly outline what such a reasonable approach to rectification would consist of. This has left the extremely problematic Rothbardian approach to injustice in holdings unchallenged – an approach which does not address the problem of state-entitled monopolists.

In this context it is significant that in Chartier and Johnson’s edited collection they include an article by Brad Spangler, a so-called left-Rothbardian. According to Spangler, the Rothbardian version (as opposed to the utilitarian, David Friedman-type version) of anarcho-capitalism is actually misnamed and that it is really a form of market socialism similar to mutualism. Spangler

¹⁸⁹ Marx, Karl, ‘The British Rule in India’ *New-York Daily Tribune*, June 25, 1853, online at *Marxists.org*, <https://www.marxists.org/archive/marx/works/1853/06/25.htm>, (accessed 03 Mar 2019).

¹⁹⁰ Harvey, David, *The New Imperialism*, p. 162, 164.

¹⁹¹ Chartier, Gary, and Charles W. Johnson, ‘Introduction’, p. 4.

¹⁹² *Ibid.*

¹⁹³ *Ibid.*

argues that “understanding society as systematic theft (oppression) and speculation about how to achieve a more just society has... always been the defining quality of all earnest socialists.”¹⁹⁴ According to Spangler, the only difference between mutualist socialism (and other neo-Ricardian forms of socialism) on the one hand, and Rothbardian anarcho-capitalist anarchism on the other, is the tools used to understand this oppression. He argues that for socialists (at least those that draw on Ricardo), the tool used to understand this oppression has historically been the labour theory of value. Meanwhile Rothbardian anarchists utilize natural law theory and Lockean ideas on self-ownership and property “as an alternative framework for understanding and combating oppression.”¹⁹⁵

For Spangler, therefore, Murray Rothbard was in fact a “visionary socialist” (although, Spangler notes, Rothbard’s “cultural roots in the Old Right would, if he were still alive, admittedly cause him fits to be characterized as such”).¹⁹⁶ According to Spangler, the only gaps in Rothbard’s thinking were that he failed to fully develop his class analysis and theory of revolution. However, Spangler continues, these tasks were completed by Rothbard’s follower, Samuel E. Konkin. With Konkin supposedly completing Rothbard’s work, Spangler claims that Rothbardian anarchism “answers the social question” of capitalism (i.e. the problem of systematic theft) and “is therefore just as much a part of the libertarian socialist tradition as Tuckerite/Proudhonian mutualism.” Spangler adds: “In some ways, it’s very nearly the same thing explained with different rhetoric”.¹⁹⁷ Spangler provides the following checklist to show how Rothbardian anarchism meets socialist criteria:

- Abolition of state granted privilege? Check.
- Labour-based ownership rights? Check.
- Redistribution of property as a result of the above? Check. (An unavoidable consequence of the rise of a non-state system of law not beholden to fake grants of title to politically favored interests).

We’re socialists. Get over it.¹⁹⁸

However, such claims by so-called “left-Rothbardians” such as Spangler are extremely problematic. To see this, let us briefly outline Konkin’s scheme. In brief, Konkin promoted the idea of destroying the state by people moving to black market activities and refusing to pay tax. As more and more people did this, parallel societies with private security forces and dispute

¹⁹⁴ Spangler, Brad, *op cit.*, p. 90.

¹⁹⁵ *Ibid.*

¹⁹⁶ *Ibid.*

¹⁹⁷ *Ibid.*

¹⁹⁸ *Ibid.*, p. 91.

resolution businesses would emerge, as the state eroded and eventually collapsed through lack of funds. Alongside this, “statists” (people that receive money from the government either as state employees, contractors, or subsidy receivers) would be expropriated. The first problematic claim of Spangler about Konkin’s scheme is that it is incorrect to say that Konkin (or Rothbard) put forward a method of abolishing state-granted privilege. Konkin did not modify Rothbard’s approach to restitution, which as we shall see in the next chapter, does not address many forms of unjust, state derived property rights. For example, it does not address those that have benefitted from historical land monopoly or government regulations. Thus under both of Konkin’s and Rothbard’s schemes, the beneficiaries of several kinds of historical injustice, including by governments, would keep their property.

Secondly, if we consider socialism to include the abolition of classes, Konkin’s (*a fortiori* Rothbard’s) approach cannot be said to be socialist. Konkin did speculate that if black market activities became more popular, that production would come to be dominated by small-scale entrepreneurs. However, he did not explain how concentrations of ownership over land, housing, and large-scale industry could be undermined by increased black market activity. In fact, he argued that corporations such as car manufacturers could engage in black market activity simply by tax avoidance and side-stepping labour regulations. Such activities would in no way challenge concentrations of ownership over the means of subsistence and production. Thus under Konkin’s scheme, private property owners would largely maintain their holdings apart from those expropriated under Rothbard’s problematic innocent homesteader approach. It is certainly not clear that under this approach that property would be expropriated and redistributed to the point that each person would own their own means of subsistence and production.

We can therefore also note that it is problematic that Spangler’s article would be included and unchallenged in a book (*Markets not Capitalism*) which ostensibly opposes both state privilege and capitalism. We suggest that what is needed for those that oppose state derived concentrations of wealth, is a critique of Rothbard’s innocent homesteader approach, and an alternative approach to Lockean restitution. That will be the subject of the rest of this dissertation. The original contributions to knowledge will be: (1) An understanding of the failings of Rothbard’s innocent homesteader approach from a Lockean perspective; (2) a more coherent Lockean method (the Lockean law of restitution) for addressing injustice in holdings; and (3) an idea of the possible implications of this law of restitution for a case study country – the contemporary UK.

It might be noted here that some socialists may be sceptical of our investigation because they do not wish to affirm Lockean principles. Cohen, for example, has observed that it is part of the Marxist tradition to critique capitalism from a position which implicitly affirms self-ownership, but to avoid explicitly doing so.¹⁹⁹ Cohen rebukes Marxists for even doing so implicitly, citing two problems. Firstly, Cohen claims that such a critique does not apply to much capitalist property. Secondly, such a critique entails support for a future society based upon Lockean principles – a society which is opposed to socialist principles.²⁰⁰ We suggest that Cohen is incorrect in three ways. Firstly, he does not understand the extent of Lockean injustice in holdings in our actual world. Secondly, it is not necessarily the case that affirming Lockean principles when critiquing capitalism necessarily requires being dedicated to a future Lockean society. It is possible to imagine redistribution as a stepping stone to an alternative social set-up. Thirdly, even if society is based upon Lockean principles, it is not clear that this would result in the property concentration Cohen foresees. We elaborate on these points in Chapter 7 in our discussion of the possible implications of implementing a Lockean law of restitution.

2.14 Conclusion to chapter

In this chapter we have critically introduced the key concepts upon which the rest of the dissertation is based. We firstly outlined the concept of natural law which is an ethical approach based upon applying human reason. We then outlined a subcategory of natural law known as modern natural rights theory which views human rights and duties as deducible from human nature. We considered two objections to the modern natural rights approach. Firstly, that we do not have a human nature, and secondly, that even if we do have a human nature, this does not tell us what our rights and duties are. We rejected the idea that we don't have a human nature. We acknowledged that there are difficulties in assessing which aspects of human nature we should base ethical principles upon and what those principles should be, but noted that these debates are external to natural law – it is part of the natural law and natural rights tradition to debate these questions. We therefore suggested that natural law and natural rights theory may be a sound approach to ethics.

We then outlined the concept of self-ownership. According to this concept: (1) you have the right to use your body as you wish as long as you do not infringe upon the rights of others, and (2) others may not use your body without permission. It is debated amongst adherents to self-ownership whether you can legitimately transfer ownership of yourself to someone else. We

¹⁹⁹ Cohen, *Self-Ownership*, Chapter 6.

²⁰⁰ *Ibid.*

also considered whether self-ownership is logically deducible from natural law. We suggested that the argument that self-ownership is deducible from natural law has some merit, but at least one other approach to natural law also has some merit. This is the tradition of natural law which sees human beings as necessarily social creatures with positive duties towards each other that are determined through democratic processes.

We next outlined the type of world-ownership we will be discussing in the rest of this dissertation. We will be discussing a Lockean approach to world-ownership which sees it as legitimate for people to gain ownership of natural resources by performing any action on them which reduces entropy, and which sets no limit on the amount of natural resources that can be appropriated in this way. After outlining the basics of the concept of Lockeanism, we enquired as to whether it is (1) self-evidently just, and (2) whether it is logically-entailed by self-ownership. We suggested that it is not self-evidently just using the example of scarce clay on an island of shipwrecked people. We also rejected the argument that Lockean ownership is logically-entailed by self-ownership. We rejected the idea that labouring on something joins it to a person or their labour; we rejected the idea that altering something before others do necessarily justifies ownership over it; we rejected the idea that adding value to an item confers legitimate ownership over it; we rejected the idea that needing something for survival justifies Lockeanism; and we rejected the idea that preventing parasitism is a good justification for Lockean ownership. Nevertheless, we have resolved to continue our investigation as if we find Lockeanism to be just.

We then looked at different approaches to addressing injustice in holdings. Addressing injustice in holdings is a necessity of Lockeanism because many holdings have historically been acquired in ways which are illegitimate according to Lockean standards. We first considered the Nozick-Litan approach. Nozick argued that we should attempt to redistribute property so that people get what they would have had, had historical injustice not taken place. Litan argued that the mathematically correct way to implement this approach would be to redistribute all property in society equally. We suggested that this approach is illegitimate under Lockeanism on the grounds that it involves inflicting an injustice (taking property from possibly innocent people) in an attempt to get closer to a situation of overall justice. This is not allowed.

We next outlined Rothbard's anti-criminal system. This is the most prominent approach to addressing injustice in holdings within the Lockean tradition. There are two parts to this system. The first part of Rothbard's system is what we find problematic. We call this first part the "innocent homesteader" approach. According to this approach a person may keep their

criminally derived (stolen) property unless it can be shown that they stole it or the theft victim or victim's heir can be found. This is the position we will be critiquing from a Lockean perspective in the next chapter. This will be a new contribution to knowledge in itself. The second part of Rothbard's system is that persons must pay compensation for damages they cause to other persons or their property. This part of Rothbard's scheme appears sound to this author and we do not critique it.

The final part of the chapter discussed how this dissertation differs to previous approaches to socialist redistribution. One method has been to promote a socialist ethical framework and suggest that the world should be moulded to fit this framework. This approach has been opposed by Lockeans. A second, Marxist approach has been to set aside the question of morality. This approach can also be critiqued by Lockeans. A third approach has been to suggest that Lockeanism could entail significant redistribution but not challenge Rothbard's theoretical framework for redistribution – which as we shall see, protects unjustly gained property in numerous ways. We lay out a Lockean framework for redistribution which does not suffer from this problem.

Chapter 3: How should we approach injustice in holdings? From the innocent homesteader approach to the Lockean law of restitution

3.1 Introduction to chapter

In the previous chapter we discussed the concept of Lockeanism. This concept outlines a theory of justice in self-ownership, as well as ownership and transfer of external holdings. We also noted that Lockeanism requires a theoretical framework for addressing injustice in holdings. This chapter aims to: firstly, outline the requirements for such a theoretical framework; secondly, suggest a framework which would help meet these requirements – the Lockean law of restitution; and thirdly, lays out a plan and methods for investigating the implications of this theoretical framework. We are unable to outline these methods until we have clarified our theoretical framework because, as will be seen, our theoretical framework guides our research methods.

After this introductory section, the second part of this chapter clarifies and critiques Rothbard's approach to injustice in holdings. In the last chapter we noted that in the Lockean tradition two major theoretical frameworks have been suggested for addressing injustice in holdings: Nozick's rectification principle and Rothbard's anti-criminal system. In the last chapter we noted that Nozick's framework can be immediately rejected as it breaks "side constraints" on infringing the rights of particular individuals in order to increase overall justice in the society. We noted that Rothbard's approach is problematic, but we did not clearly delineate these problems as this requires a more in depth discussion. We engage in this discussion in this chapter. The discussion will help us clarify problems that need to be addressed in a Lockean approach to injustice in holdings. Without such a discussion the requirements of a theoretical framework for a Lockean approach to addressing injustice in holdings will remain unclear.

The second section of this chapter aims to clarify the innocent homesteader approach component of Rothbard's anti-criminal system in order that we can clearly critique it. We argue that Rothbard claimed, and perhaps aimed, to build an approach to addressing injustice in holdings which was compatible with the homestead principle. This is the principle that land and natural resources are brought into legitimate ownership by being used or laboured on. However, we note that in the key summary of his approach to addressing injustice in holdings, he overlooked the role of homesteading and implied that the *legal* owners of property should be considered the legitimate owners without specifying that their title must be rooted in homesteading. This would be a departure from Lockean theory in which ownership derives from

homesteading. Rothbard's mistaken summary is important to note as it muddles the argument, and by discussing this point we can gain clarity on Rothbard's position.

The second section of this chapter argues that there are three major problems with Rothbard's actual innocent homesteader approach. The first is that it allows thieves to benefit from their crime, as his scheme allows the third parties to whom thieves transfer their loot to, to homestead this loot, which creates the opportunity for thieves to benefit. The second problem with the innocent homesteader approach is that it does not address all victims of resource monopoly. Resource monopoly consists of claiming and enforcing ownership over a resource such as a piece of land when the ownership is rooted in injustice. Rothbard believes that if a thief steals land and then transfers it to a third party, then that third party justly owns the land (as long as the original theft victim cannot be found). This approach fails to take into account people that are unjustly barred from homesteading the stolen land whilst the thief still has the land in his ownership before transferring it to the third party. Thus the innocent homesteader approach does not address all victims of land monopoly. The third problem with the innocent homesteader approach is that it overlooks exploitation. We define exploitation as using the artificially weak bargaining position of a violently oppressed person to gain a benefit from them. This might occur, for example, when a capitalist employer can pay a wage labourer an artificially low wage due to that labourer being unjustly deprived of ownership of his or her own means of subsistence and production.

In the third section of this chapter we suggest that a Lockean version of the law of restitution solves the problems we have identified with Rothbard's innocent homesteader approach. The law of restitution is found in the Western legal tradition dating back to at least the Romans and has been a part of natural law theory since at least Aquinas. It is concerned with preventing a defendant from benefitting from injustice. We provide an outline of the English version of the law of restitution as described by Oxford jurist, Graham Virgo. We point out that there are three problems with the existing English law of restitution from a Lockean perspective. The first is that it accepts holdings as just if they are deemed legal according to governments. Lockean justice is often overridden. For example, tax revenues are justly held according to the government but taxes are unjust forms of aggression according to Lockeanism. We therefore propose a Lockean version of the law of restitution in which restitution is required when holdings are gained in ways which are unjust according to Lockean justice even if deemed legitimate by a government. Secondly, the injustice of resource monopoly is not acknowledged in the English law of restitution (or any existing legal system). We argue that a Lockean law of monopoly is compatible with a Lockean law of restitution and argue that a Lockean law of restitution should

address Lockean monopoly. Thirdly, whilst there is a law of exploitation in English law, it is not a Lockean version of exploitation. We therefore suggest a Lockean version of the law of exploitation and argue that a Lockean law of restitution should address Lockean exploitation.

Having laid out the theoretical framework we lay out our plan and methods for investigating the implications of this framework. We explain that having played the role of Lockean legislator in this chapter (laying out the law), in the remainder of the dissertation we attempt to play the role of Lockean investigator and judge. In the role of Lockean investigator we use secondary historical and sociological sources to document examples of Lockean injustice in a case study country – the UK. In the role of Lockean judge we attempt to propose restitutionary measures in line with the Lockean law of restitution.

3.2 Clarifying Rothbard’s innocent homesteader approach

We start by reproducing key parts of Rothbard’s text again, as it will be the subject of critique in this chapter. Firstly, let us look at the underlying principle which Rothbard claims to be attempting to follow with his approach addressing injustice in holdings:

[R]emember always the basic principle: that all resources, all goods, in a state of no-ownership belong properly to the first person who finds and transforms them into a useful good (the “homestead” principle).²⁰¹

Rothbard wrote the following application summary of how he believed this approach could be applied to criminally derived property:

To sum up, for any property currently claimed and used: (a) if we *know* clearly that there was no criminal origin to its current title, then obviously the current title is legitimate, just and valid; (b) if we *don’t* know whether the current title had any criminal origins, but can’t find out either way, then the hypothetically “unowned” property reverts instantaneously and justly to its current possessor; (c) if we *do* know that the title is originally criminal, but can’t find the victim or his heirs, then (c1) if the current title-holder was not the criminal aggressor against the property, then it reverts to him justly as the first owner of a hypothetically unowned property. But (c2) if the current titleholder is himself the criminal or one of the criminals who stole the property, then clearly he is properly to be deprived of it, and it then reverts to the first man who takes it out of its unowned state and appropriates it for his use. And finally, (d) if the current title is the result of crime, *and* the victim or his

²⁰¹ Rothbard, *Ethics*, p. 56.

heirs can be found, then the title properly reverts immediately to the latter, without compensation to the criminal or the other holders of the unjust title.²⁰²

We start by noting a subtle, but significant, problem with Rothbard's above application summary. His discussion of the scenario in which a person could keep criminally derived property does not quite match what he wrote in his more extended discussion of the topic which preceded this summary. As can be seen, in section (c1) of the above application summary, which was from page 58 of *Ethics*, Rothbard asserted that if the current "*title holder*" (emphasis added) had not stolen the watch himself, and if the original owners or his heirs could not be found, then the title reverts back to him "as the first owner of a hypothetically unowned property". There is an inconsistency between his application summary here and what he wrote on this elsewhere. Notably, elsewhere he made clear that the first innocent user or homesteader should be considered the legitimate owner of criminally derived property.

In the earlier discussion Rothbard specified that the watch owner should keep ownership of his criminally derived watch if he was not the criminal that stole it and if the victim (or heir) could not be found. However, the watch owner should not keep the watch because he was the legal title holder but only because he has used the watch by wearing it. Thus on page 57, the page before the summary, Rothbard wrote, "we have seen that any good in a state of no-ownership, with no legitimate owner of its title, reverts as legitimate property to the first person to come along and *use* it, to appropriate this now unowned resource for human use. But this 'first' person is clearly Jones, who has been using it all along [*italics added*]."²⁰³ Thus we can imagine that if his father had stolen the watch, but put it into safe keeping with a storage company, then the son would not legitimately own (on Rothbard's terms) the watch after his father dies, as he would not have used (i.e. homesteaded) it.

We can also imagine other situations where Rothbard's confiscation criteria (c1) is met (i.e. we *do* know that the title is originally criminal, but can't find the victim or his heirs, and the current title-holder was not the criminal aggressor against the property) but the current title-holder should *not* be considered the legitimate title holder. In fact, Rothbard himself points to such an example. Rothbard asks us to imagine Smith is tilling some land as the just owner when Jones comes along and initiates a feudal situation by demanding rent from Smith for the right to continue tilling the land. Rothbard continues:

²⁰² *Ibid*, p. 59.

²⁰³ *Ibid*, p. 57.

Suppose now, that centuries later, Smith's descendants (*or for that matter, other unrelated families*) are now tilling the soil, while Jones's descendants, or those who purchased their claims, still continue to extract tribute from the modern tillers. Where is the property right in this case? It should be clear that here... we have a case of continuing aggression against the true owners – the true possessors – of the land, the tillers, or peasants, by the illegitimate owner, the man whose original and continuing claim to the land and its fruits has come from coercion and violence... The current “tenants,” or peasants, should be the absolute owners of their property, and... the land titles should be transferred to the peasants, without compensation to the monopoly landlords [emphasis added].²⁰⁴

He explicitly adds:

Note also that the peasants in question need not be the descendants of the original victims. For since the aggression remains in force, the current peasants are the contemporary victims and the currently legitimate property owners. In short, in the case of feudal land, or land monopoly, both of our conditions obtain for invalidating current property titles: For not only the original but also the current land title is criminal, *and* the current victims can currently be identified.²⁰⁵

This is in contradiction to Rothbard's (c) and (c1) summary claim that “if we do know that the title is originally criminal, but can't find the victim or his heirs”, and “if the current *title-holder* was not the criminal aggressor of the crime which generated the criminal property title, then it reverts to him justly as the first owner of a hypothetically unowned property” [italics added].²⁰⁶ In this case we know that Jones's land title is originally criminal, we cannot find the victim (Smith) or his heirs, and the title-holder (Jones's descendant) is not the original criminal. Nevertheless, Rothbard explains that it is *not* Jones's descendant that should get the land. Rather, it is the tillers – whoever they are. On the other hand, if we were to apply Rothbard's application summary literally, then it would be Jones's descendant that would get the land, as the current title-holder. That is, the tillers would *not* get the property which they had tilled. Jones's descendant would get the property simply by virtue of his ancestor being a criminal. Not because he, or any of his ancestors had homesteaded the land, or gained it in a voluntary transfer – i.e. the conditions usually required for gaining ownership of property under Lockeanism. We therefore see that Rothbard's application summary differed in a significant way from what he had outlined elsewhere. Elsewhere he specified that criminally derived property had to be used or “homesteaded” to become owned: “Any criminal titles to property should be

²⁰⁴ *Ibid*, p. 66.

²⁰⁵ *Ibid*, p. 67.

²⁰⁶ This criticism also stands with regards to Rothbard's original formulation of (c1).

invalidated and turned over to the victim or his heirs; if no such victims can be found, and if the current possessor is not himself the criminal, then the property justly reverts to the current possessor on our basic 'homesteading' principle."²⁰⁷ (Here we take "possess" and "homestead" to mean "occupy" and "use".)

This distinction is significant because without specifying that to become legitimately owned an item must be homesteaded, or voluntarily transferred from a homesteader, there is no link with the rest of Lockean theory. Under Lockean theory, all legitimate ownership derives from the original homesteading of unowned natural resources. Rothbard wrote on page 40 of *Ethics*:

[A]ll ownership on the free market reduces ultimately back to: (a) ownership by each man of his own person and his own labor; (b) ownership by each man of land which he finds unused and transforms by his own labor; and (c) the exchange of the products of this mixture of (a) and (b) with the similarly-produced output of other persons on the market.²⁰⁸

He also wrote: "...all legitimate property-right derives from every man's property in his own person, as well as the 'homesteading' principle of unowned property rightly belonging to the first possessor."²⁰⁹

Apart from producing resources from nature or exchanging resources (including labour) one owns with producers, there is one other legitimate way persons can obtain property: they can receive gifts. However, gifts also trace back to the homesteading of natural resources. Rothbard writes: "In the case of a gift, also, the process of acquisition reduces back to production and exchange – and again ultimately to production itself, since a gift must be preceded by production, if not directly... then somewhere down the line."²¹⁰ If it was the case that a person could keep a stolen watch that they were gifted, without having to use it, then there would obviously be no link back to a legitimate first user or homesteader, and we would obviously be outside of Lockean theory. We would be in the so-called utilitarian world of simply upholding established property rights which were not founded in legitimate homesteading: a world which, as we saw in Chapter 1, Rothbard decried.

We have shown that according to Rothbard's own method, where property is criminally derived and the victim cannot be found, it is those that labour on, or simply use, the property that own

²⁰⁷ *Ibid*, p. 60.

²⁰⁸ *Ibid*, p. 40. On the same page he near verbatim repeats this: "In the free society we have been describing, then, all ownership reduces ultimately back to each man's naturally given ownership over himself, *and* of the land resources that man transforms and brings into production." *Ibid*. See also p. 38.

²⁰⁹ *Ibid*, p. 60.

²¹⁰ *Ibid*, p. 38.

it – not necessarily the title-holders. Thus were it to be found that any housing, or land, or workplaces or other property were criminally derived, it would not necessarily revert back to the owners, unless they could show that they had laboured on the property before the occupiers, the users, or the workers. An obvious implication for the UK is that the legitimacy of aristocratic land titles are brought into question. As we discuss in Chapter 4, these titles originate in land theft rather than in Lockean homesteading. It is also not clear how far aristocrats or their ancestors have laboured on their land. Therefore, at first glance, it seems that the occupiers and users of the land on aristocratic estates, rather than the aristocrats themselves, should be the owners. Note that this is implicit in Rothbard's claim that the feudal lord Jones does not own the land that his ancestor stole, but rather the tiller does.

It is important to highlight these implications because they are not usually acknowledged. The problem of addressing criminally derived property is not often acknowledged by Rothbardians, but when it is, the homesteading requirement is overlooked. A rare example of an article on applying Rothbard's approach to restitution is Block's article on slave reparations. Block claims to be a libertarian in the Lockean tradition and to base his approach to reparations on the homesteading principle.²¹¹ However, Block then quotes Rothbard's above application summary of the innocent homesteader approach as the correct method to apply to reparations.²¹² He thus concludes that in lieu of a claim from a slave descendant over a percentage of the ex-slave farm (correlating to the estimated percentage of slave labour their ancestor did on the farm), the heirs of slave estate owners are the legitimate owners of farms which were previously slave estates.²¹³ One problem with Block's analysis is that he does not specify that the slave-owner heir only has a legitimate claim if he or one of his ancestors actually laboured on the farm. In fact the person with the best claim is the person that can trace back ancestry to someone that laboured on the farm. This could be the descendant of a sharecropper or wage labourer. By assuming the current title-holder is the legitimate owner Block is outside of Lockean theory.

There may be other significant forms of redistribution required under Rothbard's actual innocent homesteader approach (e.g. to address holdings that derive from corporate procurement or subsidies²¹⁴). However, we will not be discussing such possibilities further. The purpose of this section has not been to argue that according to Rothbard's scheme much criminally derived property should go to workers, occupiers, and users. This is just an interesting

²¹¹ Block, *op cit*, p. 53.

²¹² *Ibid*, p. 57.

²¹³ *Ibid*.

²¹⁴ For a somewhat similar argument see Rothbard, Murray N., 'Confiscation and the Homestead Principle', *The Libertarian Forum* Vol. 1, No. 6, June 15, 1969.

aside. The purpose of this section has simply been to clarify Rothbard's innocent homesteader approach, and clarify that there is some attempt to link all ownership to Lockean homesteading.

3.3 Problems with Rothbard's innocent homesteader approach

In this section we look at three problems with Rothbard's actual (clarified) innocent homesteader approach when it comes to addressing injustice. Firstly, Rothbard's approach allows thieves to benefit from their crimes. Secondly, Rothbard's approach leaves victims of monopoly (particularly land monopoly) without redress. Thirdly, Rothbard's approach is unable to address exploitation. After presenting these problems, we argue that a Lockean version of the English law of restitution does not suffer from such problems, and is therefore a more coherent theoretical approach to addressing injustice in holdings.

1. Rothbard's scheme indirectly supports thieves

In this sub-section we argue that Rothbard attempts to make an exception to his own approach to homesteading in order to prevent his approach being able to justify thieves keeping their property. However, his exception fails to prevent thieves benefitting from their theft.

Rothbard classes stolen property²¹⁵ as unowned if the original owners (the theft victims) cannot be found. He does not explain what he means by "cannot be found" or who is to judge whether or not a victim cannot be found. He takes an intergenerational approach to justice and is likely referring to slave descendants, the descendants of dispossessed Native Americans, and other descendants of historical crimes. However, it is also conceivable that victims of more contemporary crimes could not be found. For example, the victim of a theft within the last decade could have emigrated to some unknown place. Or the victim may have died recently with no identifiable heirs. In such scenarios, where victims or their heirs cannot be identified, then stolen property is considered unowned. We can note that this is a technical use of the word "unowned" which is different from every day usage. For example, aristocratic land in the UK is considered owned even though it is widely known to date back to the 1066 Norman Conquest land grab. That is, it is both stolen and considered owned. Under normal terminology, to "own" something means to have control over the use of the object and be able to exclude others from using it. For Rothbard, however, ownership only refers to ownership that is legitimate according to the homestead principle. It seems that stolen property is still owned by the legitimate owners,

²¹⁵ Rothbard writes as if he is considering criminally derived property in general. However, he is not. He is only considering stolen property and property which derives from theft. He is not considering property which derives from other actions which he considers criminal, such as the imposition of patents, or tariffs, for example.

according to Rothbard, until they die. When they “disappear” – for example, they die – then the property becomes unowned. Thus he writes: “the disappearance of the victim means that the stolen property comes into a proper state of no-ownership.”²¹⁶ For Rothbard, in line with the homestead principle, the first person to use unowned property becomes its legitimate owner.

In a vacuum Rothbard’s approach to ownership and homesteading outlined in the paragraph above implies that if the thief is the first person to use an unowned stolen item – i.e. a stolen item whose legitimate owners cannot be found – he should be considered the homesteader and thus legitimate owner. Rothbard considered this implication unacceptable. Therefore, in order to solve this problem, he made an additional stipulation: thieves cannot homestead the unowned loot they possess, as the “criminal cannot be allowed to keep the reward of his crime”.²¹⁷ For Rothbard, as thieves are to be deprived of their loot, the next person to use their stolen item should be considered the legitimate homesteader and owner. Rothbard does not spell this out, but it is clear that this can include people that are gifted the property by the thief, buy or rent the property from the thief, and presumably – although this is less clear – steal the property from the thief.

One problem with this approach is that allowing people that are gifted stolen items, buy stolen items, or rent stolen items, to be considered the legitimate homesteaders of the items can help thieves benefit from their crime. Just because one is not directly in possession of an item, it does not mean that one is not benefitting from being able to steal the said item and then transfer it to whom one wishes. One of the benefits (or rewards) of owning property under Lockeanism is that owners can transfer their property to whom they wish. For example, if we allow a land thief, Jones Sr. to give stolen land to his son, we would be legitimising his ownership privilege of being able to give the land to his son, which he gained by stealing the land. Thus indirectly, by legitimising Jones Jr’s title, we would be rewarding Jones Sr.²¹⁸ Note that it may be the case that Jones Jr. would get the land upon the death of Jones Sr. In this case Jones Sr. would not benefit whilst dead. However, when alive he would have gotten the benefit of knowing his gift would be legitimated. Also, we can imagine scenarios where Jones Sr. gave the land to Jones Jr. not as a part of his will upon death, but just as a normal gift whilst Jones Sr. is still alive. Thus Jones Sr. would be alive to witness Jones Jr. get ownership of the gift. Jones Sr. could potentially

²¹⁶ Rothbard, *Ethics*, p. 58.

²¹⁷ *Ibid.*

²¹⁸ Rothbard has also explained that there are usually psychic benefits to giving gifts. *Ibid*, p. 37-38.

also benefit directly from Jones Jr.'s ownership over the land. For example, Jones Jr. may allow Jones Sr. to use the land in some beneficial manner.

Additionally, allowing people to keep stolen property that they have innocently bought is also of benefit to thieves, as it raises the value of stealing. The less likely it is that an item can be confiscated from customers, the easier the thief will find it to sell the item. Similarly, allowing renters to be considered homesteaders of stolen property where the theft victims cannot be found, all other factors being equal, should also raise the rental value of stolen property. Thus we see that the same reason Rothbard gives for disallowing a thief from homesteading what they steal – that thieves should not benefit from their crime – can also be used to object to the recipient, purchaser, or renter of a stolen item from being considered a legitimate owner.

2. *The innocent homesteader approach disregards certain victims of monopoly*

A second problem with the innocent homesteader approach is that it overlooks a certain type of victim of the injustice of monopoly. In *Ethics*, Rothbard discussed the crime of land monopoly. He asked us to imagine that Crusoe is on his island. If Crusoe were to claim the whole island as his own – even parts which Crusoe himself had not used and homesteaded – and tried to exclude Friday from joining him on the island, Crusoe would be “illegitimately aggressing” against Friday.²¹⁹ Note that here the crime is separate from theft, as it does not necessarily involve taking property already owned by somebody else. It involves preventing people homesteading unowned property. In this context, as mentioned in the previous chapter, Rothbard also criticised what he referred to as “Columbus complex” whereby people claim monopoly ownership over land they have not laboured on.²²⁰ As seen above, Rothbard also acknowledged how the crime of land monopoly effects tillers which are given rental access to stolen land. He claimed that it was illegitimate for land monopolists to charge such rent. Presumably under Rothbard's scheme, rental payments should be reimbursed to those unjustly forced to pay them.

However, there is a type of victim of land monopoly the innocent homesteader approach is unable to address. To see this, let us imagine that the Smith family are tilling the land when Jones comes along and imposes rents. This is the first crime, and is effectively a form of theft. In reaction to this, the Smiths move away and soon all die with no heirs, so they are taken out of our equation with regards to the just owners of the land. Let us imagine that after the Smith family moves away, Jones advertises that the land is available to let to tenant farmers. Tillage

²¹⁹ *Ibid*, p. 47.

²²⁰ *Ibid*.

rights will go to the highest bidder. All of the local villagers want a piece of the land, but are prevented from homesteading it by Jones's criminal ownership. Some locals make bids for the land, but are rejected. Other locals want the land but don't think they will be able to afford the rent. In the end only one farmer, Green, is given access to the land by Jones, as he makes the highest bid.²²¹ We can notice that after stealing the land from Smith, the second crime Jones committed here was to have excluded other people from homesteading the land after Smith's death. Jones was not entitled to prevent other people from using the land. This is an example of the crime of land monopoly. Under Rothbard's scheme, the victims of monopoly may not be entitled to redress. In particular, as soon as Green begins tilling the land, he becomes the legitimate homesteader and owner (with latent ownership rights to be realised when the criminal feudal lord Jones is taken out of the picture), and thus the victims of Jones's monopoly will be left without justice.

3. *The innocent homesteader approach cannot address exploitation*

The innocent homesteader approach is also unable to deal with exploitation. For our purposes exploitation refers to a person using the artificially weak bargaining position of a violently oppressed person to gain a benefit from that person. We suggest that there are two broad categories of exploitation: (i) exploitation of buyers by sellers, and (ii) exploitation of sellers by buyers. Exploitation of buyers by sellers occurs when a seller of an item sells a good at a higher price than they would be able to if the purchaser did not have his or her choices restricted by violence. As an example, we can imagine a government imposes a widget tariff which allows a domestic company to raise prices – at least in the short term. The buyer of the tariff-protected widget is violently oppressed because he or she is legally prevented from purchasing the good from a foreign seller at a free market price.²²² Rothbard objected to tariffs, acknowledging that they put sellers in the position to exploit buyers.²²³ However, under the innocent homesteader approach there is no way for the exploited widget buyer to gain redress from the seller. Under the innocent homesteader approach the only perpetrators of injustice that should have their gains taken from them are thieves.

²²¹ Tawney has documented that this kind of process was actually somewhat common in medieval and early modern England. See Tawney, R. H., *The agrarian problem in the sixteenth century*, London, New York: Longmans, Green and Co., 1912, pp. 78-79.

²²² The foreign seller of widgets is also oppressed (by facing sales restrictions), but not exploited. See Ch. 7, section 2 for introductory comments on overseas victims of aggression.

²²³ Rothbard, Murray, N., *Man, Economy and State, with Power and Market*, 2nd Edition, Auburn, Alabama: Ludwig von Mises Institute, 2004, p. 1102; p. 1103, footnote 26.

It can be noted that under Rothbard's broader scheme, it may be the case that the buyer of tariffed goods can gain compensation, but this compensation would have to be paid by the perpetrator of the aggression, which would be the government which imposed the monopoly – not the seller who simply benefitted from the aggression but committed no aggression themselves. A problem here is that the government agents which impose the monopoly (aggression) may not have the ability to pay significant compensation as they did not receive income from the tariff. The income from the tariff went to the domestic widget producer in increased sales, who is not liable to compensation payments, as the domestic producer committed no aggression. Thus Rothbard's broader anti-criminal system appears to be very weak at addressing exploitation of buyers.

In terms of exploitation of sellers, we can look at the sale of labour in wage labour relationships when such sales take place at an artificially low wage price due to the worker suffering violent oppression. As an example, let us imagine that Smith has his land stolen. This puts remaining property owners in the position to exploit Smith's labour. If a property owner, who we will call Thatcher, knows that Smith is a landless proletarian and thus desperate for money, Thatcher can offer him the use of her property or "means of production" to produce commodities. Thatcher can pay Smith only a fraction of the value he produces for her, thus extracting surplus value from Smith. We suggest that this is exploitation insofar as Thatcher pays Smith less than Smith would have worked for (he may have refused to work for Thatcher, full stop) had he not suffered the aggression of having his land stolen. Thatcher would have used Smith's artificially weak bargaining position to gain a benefit from him. Rothbard did not acknowledge the possibility of the exploitation of wage labourers, but it is clear that the same principle of extracting value from persons in artificially weak bargaining positions is at play here, as is at play with tariffs. Nevertheless, under the innocent homesteader approach there is no way for Smith to get redress from Thatcher. Again, it can be noted that under Rothbard's broader scheme it may be possible for Smith to claim compensation from the land thieves for the land theft and the ensuing consequences. However, there is more chance of Smith being more fully redressed if he is also able to seek redress from Thatcher.

Beneficiaries of injustice and the law of restitution

To summarise, the innocent homesteader approach fails to prevent thieves benefiting from their crimes, it allows people to maintain ownership of land or other items at the expense of victims of monopoly, and it allows people to keep the gains of exploitation. Our task is to attempt to lay out a theoretical framework which addresses these problems. Fortunately, we

suggest that there is actually already a well-known theoretical framework which is specifically designed to address these kinds of problems. All of the above problems can be described as a failure to prevent persons gaining from injustice. The innocent homesteader approach allows thieves and their associates to gain from theft, it allows recipients of monopolised property to keep it at the expense of victims of monopoly, and it allows exploiters to keep the proceeds of exploitation. In the Western legal tradition, there is a law which is specifically designed to prevent persons gaining from injustice and it is known as the law of restitution. In the next part of this chapter we outline this law and lay out our plan and method for investigating some of its implications.

3.4 A Lockean law of restitution

We suggest that the above problems highlighted with Rothbard's approach can be solved by replacing Rothbard's innocent homesteader approach with a Lockean law of restitution. Virgo explains that according to the English version of the law of restitution the aim is to "deprive the defendant of a gain rather than to compensate the claimant for a loss."²²⁴ If this is the case, under a Lockean version of the law of restitution, all of the forms of property that are gained outside of Lockean justice should be liable to restitution.

Not only does the law of restitution have a potentially broader scope than Rothbard's innocent homesteader approach, but it has a far stronger pedigree in natural law theory. As opposed to Rothbard's innocent homesteader approach, which Rothbard himself seems to have invented largely on his own, the law of restitution has always been at the core of natural law. Modern restitution law, as practised in a number of Western legal systems, dates back to at least Ancient Rome, and was promoted by Aquinas as the tool for addressing injustice in holdings.²²⁵ Rothbard himself claimed to favour a legal system based on restitution, noting approvingly that "restitution to the victim has great precedent in law", being the dominant approach to justice in parts of colonial America and Europe in the Middle Ages.²²⁶ Nevertheless, Rothbard only very selectively heeded restitutionary ideas and seemed to subordinate them to his broader innocent homesteader approach. For Rothbard, restitution should only come into play as a way of

²²⁴ Virgo, Graham, *op cit*, p. 3.

²²⁵ For a roots in Roman law, and comparisons between contemporary laws of restitution in European legal systems, see: Samuel, Geoffrey, *op cit*. Virgo traces the ideas back to Aristotle: Virgo, Graham, *The Principles of the Law of Restitution*, Third 3rd Ed., Oxford: Oxford University Press, 2015, p. 5. Aquinas dedicated a whole chapter of his *Summa Theologica* to restitution. See: Aquinas, St. Thomas, *Summa Theologica*, translated by The Fathers of the English Dominican Province, 1947, online at Internet Sacred Text Archive [website], <http://www.sacred-texts.com/chr/aquinas/summa/> (accessed 23 Nov, 2018), Second Part of the Second Part, Question 62.

²²⁶ Rothbard, *Ethics*, p. 87.

remedying theft. Thus, if somebody steals \$15,000 they should have to pay \$15,000 in restitution.²²⁷ However, the word “restitution” is usually used in a far more broad way than used by Rothbard, who only applied it to the crime of theft. A whole body of law has been developed on the subject. In the English legal system, gains due to all forms of injustice (as defined by the government and justice system) are liable to restitution.

Let us look at how restitution works in more detail. We will be focussing on the English law version of restitution as outlined by jurist Graham Virgo, but the principles are extremely similar internationally. As we noted, Virgo explains that in English law the aim of restitution is to “deprive the defendant of a gain rather than to compensate the claimant for a loss.”²²⁸ It is worth dwelling on this distinction for a moment. We are only interested in investigating restitutionary claims as opposed to compensatory claims, as we are only interested in ways in which current holdings have been unjustly acquired. Compensatory claims can arise when injustices (torts) are done to a claimant, whilst no property has been acquired by the defendant. Car accidents are a well-known example. Compensatory claims could also arise due to such things such as environmental and property damage done by those emitting pollution, by armies engaging in wars, and by various government regulations which damage overseas businesses whilst not generating clear restitutionary claims. Whilst looking into Lockean compensation claims is surely of academic interest, it is not our focus. We will be focusing on restitution.

Let us continue summarising Virgo’s description of the law of restitution. Restitutionary remedies can be paid either as personal restitutionary remedies or proprietary restitutionary remedies.²²⁹ Under personal restitutionary remedies the defendant must pay the “value of the benefit to the claimant” rather than transfer the benefit itself.²³⁰ Under proprietary restitutionary remedies the claimant gains a property right in an asset held by the defendant.²³¹ Restitutionary remedies take two main forms. The first is restoring what the claimant has lost. Restitution takes this form when the defendant obtains a benefit at the expense of the claimant. Restitutionary remedies may secondly take the form of disgorgement. This is when a defendant must transfer unjust gains to a claimant, resulting in the claimant gaining something of value they never held before. Disgorgement works as a deterrent and a preventative against

²²⁷ *Ibid*, pp. 86-88.

²²⁸ Virgo, Graham, *op cit*, p. 3.

²²⁹ *Ibid*, p. 4.

²³⁰ *Ibid*.

²³¹ *Ibid*.

defendants gaining from wrongdoing. It can also be a form of corrective justice as it requires the defendant to disgorge gains that result from doing wrong against a claimant.²³²

Restitutionary remedies are awarded in three circumstances according to Virgo. Let us look at each in turn. Firstly is the reversal of unjust enrichment. In the broadest sense, unjust enrichment refers to a situation in which a defendant becomes enriched in “circumstances of injustice”.²³³ This covers all circumstances in which restitution may be required. However, in a narrower, more substantive sense as used by Virgo, unjust enrichment entails four things: “(a) the defendant must have been benefited or received an enrichment; (b) the enrichment must have been at the claimant’s expense; (c) the enrichment must have been received in circumstances of injustice, meaning that the claim falls within one of the grounds of restitution; (d) the defendant is not able to rely on a defence which defeats or reduces liability.”²³⁴ Restitution must be paid if the first three criteria are met and there is no defence which removes liability. The second circumstance in which restitution is paid is to prevent a wrongdoer from profiting from his or her wrong. At times it is the case that victims of wrong should get compensation according to their loss. However, it may be the case that the response is measured in terms of the defendant’s gain, rather than the victim’s loss, in which case the award is a form of restitution.²³⁵ The third circumstance in which restitutionary claims arise is to vindicate property rights with which the defendant has interfered. Virgo explains: “Where the claimant has a proprietary right to an asset which has been received by the defendant, the claimant may seek to obtain a restitutionary remedy to vindicate that right, regardless of whether it previously existed or has been created by operation of law.”²³⁶ Such restitutionary claims take two forms:

(1) Where the defendant received property in which the claimant has a proprietary interest and the defendant had retained that property or its proceeds, the claimant can obtain a proprietary restitutionary remedy in respect of that property itself, the cause of action being the vindication of the claimant’s continuing property rights.

(2) Where the defendant received property in which the claimant had a proprietary interest at the time of receipt but that interest has since been lost, the only restitutionary remedy available to the claimant is a personal one, representing the value of the property which the defendant has received. But the cause of action can still be the vindication of property

²³² *Ibid*, p. 5.

²³³ *Ibid*, p. 8.

²³⁴ *Ibid*, p. 9.

²³⁵ *Ibid*, p. 10.

²³⁶ *Ibid*, pp. 11-12.

rights, since the claimant can show that he or she had a proprietary interest in the property received by the defendant at the time of the receipt.²³⁷

Note that a claimant maybe have multiple grounds on which to claim restitution from a defendant (e.g. both unjust enrichment and vindication of property rights) and be able to choose which grounds to make the claim on.

It should also be noted that what counts as “unjust enrichment” and prevention of a defendant benefitting from a wrong will look different in different times and places, depending upon the legal regime in which restitution is applied. For example, Aquinas famously argued that money lenders should pay back the interest on their loans in restitution, which we could retrospectively see as him viewing interest on loans as a form of gaining unjust enrichment or profiting from a wrong.²³⁸ This is clearly different to contemporary English restitution law.

The problem for our purposes is that there is no Lockean version of the law of restitution. Existing laws such as the English version, are unsuitable for three reasons. Firstly, existing restitution laws obviously do not address Lockean injustices of government policy. For example, tax is unjust according to Lockeanism, but is not addressed by existing state-imposed laws of restitution. Secondly, the Lockean injustice of resource monopoly is not considered a crime under existing legal systems, so restitution law does not address this problem. Thirdly, whilst restitution laws (e.g. the English restitution law) do acknowledge the injustice of exploitation, they define it in a different way to the Lockean version, which we outlined above. Therefore whilst the broad principle of restitution might be able to address problems with Rothbard’s innocent homesteader approach, no existing law of restitution is suitable for purpose.

We suggest that these problems can be addressed with a Lockean version of the law of restitution. This law is be based upon the broad underlying principles of the English law of restitution but would have three differences. Firstly, as opposed to English restitution law, we include all government actions that are incompatible with Lockeanism (i.e. *all government actions*) as injustices. For example, tax collection must be addressed by the Lockean law of restitution, as all taxation is illegitimate according to the Rothbardian strand of Lockean we are considering.²³⁹

Secondly, we will introduce a Lockean law of resource monopoly. According to this law it is unjust to exercise ownership over a holding when there is evidence that ownership does not

²³⁷ *Ibid*, p. 12.

²³⁸ Aquinas, St. Thomas, *op cit*, Q78, Sins Committed in Loans.

²³⁹ See: Rothbard, *Ethics*, and Rothbard, *For a New Liberty*.

trace back (including via voluntary transfer) to legitimate homesteading. Those guilty of resource monopoly – even unknowingly – owe restitution to the victims. The victims are those unjustly barred from homesteading resources which would otherwise be unowned and available for homesteading. Where the victims are identifiable, then the identifiable victim should be owed the monopolised holding in restitution. For example, if Crusoe prevents Friday homesteading part of an island, Friday is owed part of the island in restitution.

How do we assess how much of the island Friday should get? Cowen explains that restitution involves a “comparison... between what has happened and what would have happened had the injustice not taken place. The information portrayed by this comparison is then used, in combination with other moral arguments, to produce a restitution[ary] sum.”²⁴⁰ He also adds “Rights theories... define aggression relative to a baseline state of affairs of ‘what would have happened,’ had the ostensibly aggressive act not occurred.”²⁴¹ We suggest that this “what would have happened” approach to restitution suggests that the crime of resource monopoly should take into account what Friday would likely have had were it not for Crusoe’s aggression. We can imagine that this may not be so straightforward in practice. There is the problem that even if we can reasonably assume that Friday would have homesteaded part of the island were it not for Crusoe, we cannot know how much of the island, so we cannot objectively know how much Friday is owed. As Cowen has clarified, we have to attempt to make a reasonable stipulation of what would have happened had the theft not occurred. There is no objectively correct counterfactual to an occurrence of injustice. Rather, it is something that has to be determined by those making judgements on justice and injustice. Cowen has written that when an injustice occurs:

...there can be no empirical guide to choosing the appropriate counterfactual. By construction of the query, there is no empirical investigation of "what would have happened, if X had not occurred." The investigation itself must stipulate what is postulated in lieu of X and its underlying causes. We can ask, "if Y had happened in lieu of X, what would have been the consequences of Y?" But this procedure cannot determine Y as the relevant alternative, as opposed to Z. That remains a matter of stipulation and thus we face an ineradicable indeterminacy.²⁴²

In practise, we suggest that when making judgements on restitution for monopoly, Lockean legal institutions would have to estimate what Friday would have had were it not for the

²⁴⁰ Cowen, *op cit*, p. 19.

²⁴¹ *Ibid*, p. 22.

²⁴² *Ibid*, p. 26.

Crusoe's aggression – just as losses (*lucrum cessans*) are estimated in cases where compensation is required for road traffic accidents and the like. Restitution for monopoly requires an attempt to make holdings as close to what they would have been had the aggression not taken place.

Where the victim is less clearly identifiable, the monopolised holding should be divided amongst those considered the most effected. Let us switch from discussing the Crusoe and Friday scenario to a scenario involving several people. Let us return to the example of Jones, Smith and Green, discussed above. In this scenario, Jones takes the land from Smith, who then disappears. Jones then unjustly bars all other persons from accessing the land – i.e. he engages in land monopoly – until allowing the highest bidder, Green, to rent the land as a tenant farmer. According to the Lockean law of restitution those who were unjustly barred by Jones from the land whilst Jones looked for a high-paying tenant are owed the land in restitution. This might be local villagers for example, that are considered most likely to have homesteaded the empty land if it had suddenly become available (e.g. if Smith had suddenly died with no heirs). Again, deciding who is owed how much land may not be so simple. We suggest that some inclusive process would be needed in order to assess the claims of different local people. Where it is entirely unknown who the victims are, the monopolised holding should be divided equally amongst all members of the effected society as they have all been unjustly barred from homesteading the monopolised holding.²⁴³ For example, in the case of Smith's stolen land the members of the whole society in question should gain ownership of it. We suggest that there is precedence for such an approach in English law, whereby unclaimed recovered proceeds of crime are confiscated and auctioned off by the government, with the revenues going to the state. A similar thing could occur in a Lockean society, except the revenues from selling confiscated items would be divided amongst all persons in the society.

Three points must be made here. Firstly, the claims of the villagers or other people owed restitution due to Jones's resource monopoly have priority over Green's claim. If Green refuses to give them the land in restitution, he becomes a monopolist. We expand on the implications of this point in the next chapter. Secondly, above when we said that Smith's stolen land should be redistributed equally amongst all members of "the society", it was not entirely clear which society we meant. The whole village? The country? The world? Who decides? Here we must return to Cowen's reminder that there is no objectively correct form of restitution. The restitutionary remedy must be stipulated. In this context we are going to (somewhat arbitrarily) follow English legal precedent and say that in lieu of good reasons otherwise, all unjustly held

²⁴³ We discuss what equal ownership might look like in Ch. 7, section 3.

items with unknown rightful owners should be distributed in an egalitarian manner amongst the population of the relevant country. We count the UK as one country unit in our discussion in the rest of the dissertation. Thus in the case of unjustly held items in England, Northern Ireland, Scotland, and Wales, all items should be redistributed amongst all persons in the UK, as is close to what happens when the revenues gained from auctioning off the proceeds of crime in these nations goes to the UK government. The third point we must make here is that if all persons in a country gain equal shares of ownership in recovered unjustly held items, it is not the case that items *need to* be auctioned off as is the case under English law. Once all people in the society get an equal share of ownership, they can democratically vote upon what happens to the item. It might make sense for items intended for individual use such as watches to be auctioned off, but it might make sense for certain resources to remain under multiple ownership. For example, a particular piece of land could remain under multiple ownership and used as a public park. We further discuss the possibilities arising from multiple ownership in Chapter 7 (section 3).

We suggest that not only would this law of monopoly prevent victims of monopoly from being overlooked in a Lockean justice system, but it would also solve the problem of thieves benefiting from their crimes. We suggest that when a thief steals a holding, such as a watch, they should be considered to be monopolising the holding. This is similar to Anglo-American law in which handling stolen goods is treated as a separate offence to stealing. As legal theorist Stuart Green has discussed, handling or possessing stolen property is considered unjust as it deprives a victim of their property.²⁴⁴ Monopoly is a different crime to both stealing and handling, but it entails unjustly depriving a person from homesteading unowned resources. Thus if Jones steals a watch from Smith, and gives the watch to Jones Jr., and Smith subsequently dies with no heirs, we can say that Jones Jr is a monopolist and is preventing the would-be homesteaders of Smith's watch (those who would have homesteaded it were it not monopolised) from homesteading it. The stolen watch should be owed in restitution to the victims of monopoly, and if these victims are not clearly identifiable (i.e. we do not know who would have homesteaded it were it not for Jones's monopoly), the watch should be divided equally amongst all members of the society.

The third change we must make in order for our Lockean law of restitution to function coherently is that we must introduce a Lockean version of the law of exploitation. All that is required is a slight alteration of the English law on exploitation. Under the English law, exploitation is defined as the "abuse of power" or influence by a defendant to gain a benefit

²⁴⁴ Green, Stuart P., 'Thieving and Receiving: Overcriminalizing the Possession of Stolen Property', *New Criminal Law Review: An International and Interdisciplinary Journal*, Vol. 14, No. 1, Winter 2011, pp. 35-54, p. 42.

from a claimant.²⁴⁵ Virgo explains that transactions can be considered unjust “where the defendant has unconscionably exploited his or her superior bargaining position to the detriment of the claimant who is in a much weaker position.”²⁴⁶ Transactions are vulnerable to being voided if the claimant can show that they were in a weak bargaining position, with poverty and ignorance being considered an example of a weak bargaining position. Virgo highlights the example of *Fry v Lane* where a contract was voided as the claimant was poor and ignorant, meaning that “the temptation of receiving money immediately might mean that such a person did not consider the consequences of transacting with the defendant.”²⁴⁷ There does not need to be fraud at play in a contract: “where the defendant has transacted with somebody who is poor and ignorant, then, at least where the transaction is at a considerable undervalue, it will be presumed that the defendant had acted unconscionably and he or she will bear the burden of proving that the transaction was fair, just and reasonable.”²⁴⁸ It should be noted that the concept of exploitation is deeply rooted in the natural law tradition. In the Middle Ages it was considered a part of the natural law tradition that exploiting the weaker bargaining position of another person was immoral and required the exploiter to pay restitution. Such exploitation was known as usury.²⁴⁹ The most well-known example of usury was receiving interest on loans. Aquinas described receipt of interest on loans as usurious but he also argued that a merchant that added more than the cost of his labour to his price for a product was acting unjustly and owed restitution.²⁵⁰ As explained by Tawney in his *Religion and the Rise of Capitalism*, the term usury had a wide applicability in the Middle Ages:

The essence of the medieval scheme of economic ethics had been its insistence on equity in bargaining—a contract is fair, St. Thomas had said, when both parties gain from it equally. The prohibition of usury had been the kernel of its doctrines, not because the gains of the money-lender were the only species, but because, in the economic conditions of the age, they were the most conspicuous species, of extortion. In reality, alike in the Middle Ages and in the sixteenth century, the word usury had not the specialized sense which it carries today... The truth is, indeed, that any bargain, in which one party obviously gained more advantage than the other, and used his power to the full, was regarded as usurious.²⁵¹

²⁴⁵ Virgo, *op cit*, p. 255.

²⁴⁶ *Ibid*, p. 277.

²⁴⁷ *Ibid*, p. 283.

²⁴⁸ *Ibid*, p. 283.

²⁴⁹ Aquinas, St. Thomas, *op cit*, Q78, Sins Committed in Loans.

²⁵⁰ *Ibid*, Q77, Sins Committed in Buying and Selling.

²⁵¹ Tawney, *op cit*, pp. 186-87. See also, Carson, *Studies*, pp. 86-87, for a discussion of how rents and capitalist profit more broadly can be considered usurious.

We suggest that an approach to exploitation or usury which is in line with Lockeanism looks at whether one party's bargaining position is artificially weak due to being violently oppressed, as discussed above.

3.5 Plan and method for applying the theoretical framework

In the rest of this study we conduct a historically-grounded thought experiment to look into the broad implications of this Lockean law of restitution with particular regards to a case study country – the contemporary UK. To do this, we play two roles: those of Lockean investigator and Lockean judge. In the role of Lockean investigator we will be assessing historical and sociological literature (secondary sources) for evidence of Lockean injustices that have taken place, and continue to take place, in the UK. In the role of Lockean judge, we attempt to deduce reasonable restitutionary claims which emerge from these injustices if we apply the Lockean law of restitution. For example, we deduce that any identifiable historically stolen land should be redistributed in an egalitarian manner if the legitimate owners cannot be identified, in line with the law as we have outlined it in this chapter.

The next chapter (Chapter 4) discusses what we suggest are the main broad implications of the law. We begin with a discussion of the historical record of land theft in the UK, and the implications for land redistribution and redistribution of items made from unjustly held land. We secondly discuss the implications of addressing the injustice of the tax system – which we classify as a form of theft. We thirdly discuss the implications of government regulations insofar as they contribute to exploitation. In Chapters 5 and 6 we are concerned with the theory and practise of exploitation in seemingly free market transactions – particularly wage labour relationships, but also credit relationships.

In the role of Lockean investigator we highlight documentary evidence of Lockean monopoly and exploitation. With regards to documenting monopolised land, we suggest that to show all land in the UK is currently monopolised, we only have to point to moments in history when it was initially monopolised (for most of the UK – after the 1066 Norman invasion, for Northern Ireland – the 1603 invasion) and show that it has never since gone through a Lockean restitution process. Due to the extent of such a research project and the time constraints on this study, we will not be making use of primary sources which historians use (first-hand accounts of historical events, government land records dating back to at least The Domesday Book, the wills of landowners, and rent, tithes and tax records, etc.), but will be basing our discussion on secondary sources: published books and academic articles which contain information relevant to our question. The legitimacy of our findings therefore rests upon the accuracy of these

sources. When it comes to the history of the UK's land holdings, as we have noted, historians base their claims upon a variety of sources and we will assume that academic rigour has been followed in assessing these sources in the publications we cite. We acknowledge that new findings can always overturn previous understandings, and that some people will be less convinced than others by the findings in the sources we cite. This is the nature of historical analysis and is unavoidable. However, we suggest that it is still possible to make some preliminary conclusions based on these sources. Particularly as the historical facts we discuss are not particularly contested.

A second problem with regards to our discussion of historical events, is that it may show the bias of this author. It is possible that we overlook evidence which contrasts with our bias, or over-emphasise evidence which supports it. Our conclusions (e.g. that all property in the UK appears to be unjustly held) may also reflect our bias rather than an actual assessment of the events we discuss. We suggest that such bias is unavoidable from any author. The best an author can do is state those biases. Hence, we clarify here that this author is partial to the socialist cause of creating a classless society through the reallocation of ownership over the means of subsistence and production. The sources cited, the way facts are presented, and the assessments made, will inevitably reflect that bias to some extent.

In terms of the theoretical discussion, we attempt to base our claims upon precedent from existing restitution laws and legal scholarship on restitution theory. Drawing on such sources will hopefully give more credibility to the arguments made. If the arguments we make have precedence in existing legal practise and theory, then they cannot be rejected as the mere postulations of the author. Rather, it must be acknowledged that the arguments have some broader merit.

Chapters 5 and 6 discuss Lockean exploitation in seemingly free market situations. We pay particular attention to wage labour. This discussion ultimately does not impact our overall conclusion as outlined at the end of Chapter 4, but it may be of academic and wider social interest to have an account of Lockean exploitation. The topic is dealt with at some length due to the fact that this is a subject over which the author believes there is much academic confusion, and there is so much relevant literature to respond to. Let us briefly outline our argument and how we will defend it. It is part of the socialist tradition to argue that had systematic land theft in England not occurred, the majority of the population would not have

become proletarianised.²⁵² That is, there would not be a large population of landless persons who work for capitalist employers in a way which provides surplus value to those employers. The implicit argument here is that wage labourers, at least during agrarian capitalism and the industrial revolution, were being paid at an “undervalue” rate, in the language of English exploitation law. As they were unjustly barred from ownership of their own means of subsistence, the implicit argument is that they were being exploited on Lockean grounds. We make this argument explicit and respond to liberal counter-arguments.

There are two types of argument we respond to. The first are theoretical arguments that capitalist profits and interest are the result of free market forces. Drawing upon economic theory literature – particularly that of Carson – we argue that from a Lockean perspective, these theoretical claims do not work if there is evidence that workers are working at an artificially low wage due to being the victims of oppression. This is an entirely theoretical argument based on critical engagement with theories of capitalist profit. Following from this, we claim that there *is* evidence (provided in Chapter 4) that workers in the contemporary UK are unjustly barred from ownership over the means of subsistence and production. Therefore the surplus value gained by capitalist employers can be reasonably presumed to be the result of exploitation. The same goes for the interest that creditors receive.

In Chapter 6 we respond to historical claims from so-called liberal historians that the wage labour system in England arose due to population pressures on the land. We use secondary historical sources to point out that this so-called liberal argument fails to take into account various forms of land monopoly and economic oppression, which artificially reduced the ability of the peasantry to remain as independent producers. Part of our method is simply to point to the Lockean injustices (e.g. illegitimate land rents) that so-called liberal historians themselves acknowledge occurred, but fail to see the significance of. We also draw on additional secondary sources.

It may also be asked how we chose our case study country – the contemporary UK. This is primarily due to the fact that there is so much historical research done on the UK, particularly England, on one of the forms of injustice we are particularly interested in investigating – wage labour exploitation. We decided to treat the UK as one unit rather than focus only on England

²⁵² Dimmock, Spencer, *The Origin of Capitalism in England 1400-1600*, Chicago: Haymarket Books, 2014; Carson, *Studies*, Chapter 4; McNally, David, *Against the Market: Political Economy, Market Socialism, and the Marxist Critique*, London: Verso Books, 1993, Chapter 1; Dobb, Maurice, *Studies in the Development of Capitalism*, Fourth Edition, London: Routledge & Keegan Paul Ltd., 1950, Chapter 6; Marx, *Capital*, Chapters 26 and 27.

because we wanted to follow English legal precedent by having restitution take place on a UK scale. Also, it would have been awkward to discuss imported goods from other parts of the UK. The problem with treating the UK as one unit is that much of the research we draw upon focusses only on specific nations within the UK rather than on the UK as a whole. Where this is the case (particularly with regards to historical land theft) we have attempted to address each nation separately.

3.6 Conclusion to chapter

In Chapter 2 we provided an outline of the Lockean theory we are discussing in this dissertation: people own themselves and any unowned resources they labour on or receive in voluntary transfer from a legitimate owner. We also noted that Lockean theory requires an approach to addressing injustice in holdings but that previous approaches have been problematic. This chapter was concerned with: (1) clarifying the requirements for a coherent theoretical framework for addressing injustice in holdings; (2) laying out that theoretical framework; and (3) discussing a research plan and methods for looking into the implications of this framework.

In order to clarify the problems a coherent theoretical framework for addressing Lockean injustice in holdings has to overcome, the first sections of this chapter were concerned with clarifying and identifying problems with the current most popular framework: Rothbard's innocent homesteader approach. The first section of the chapter was concerned with clarifying this innocent homesteader approach. Having done this, we explained that there are multiple problems with it. The first problem we identified with the innocent homesteader approach is that it seems to be of benefit to thieves. Whilst Rothbard stipulated that thieves cannot homestead their loot, he believed the persons that the thief transfers their loot to can homestead it. So can people that use the loot whilst the item is under the ownership of the thief. This could include family members or renters of the items. In this way the innocent homesteader approach actually facilitates thieves benefiting from their crimes in multiple ways. Firstly, they benefit from having their gifts to people – including family members – legitimatised. Secondly, allowing the purchasers or renters of stolen items to be considered legitimate homesteaders – all other things being equal – raises the sale and rental value of the stolen item to the thief. The second problem with the innocent homesteader approach is one of oversight. It is unable to address all the victims of monopoly. For example, for Rothbard, when a piece of land is monopolised, the next innocent homesteader becomes the legitimate owner without the prior monopoly victims getting redress. The third problem with the innocent homesteader approach is that it is unable to address exploitation. This is when one person uses the artificially

weak position of a violently oppressed person to gain a benefit. Under Rothbard's scheme exploiters get to keep their wealth.

In response to these problems we have suggested an alternative approach to addressing injustice: a Lockean version of the law of restitution – a law found in Western legal theory dating back to at least the Romans. This is a field of law which aims to prevent people gaining from injustice. We argued that whilst the underlying principles of the law of restitution are useful to our task, there are problems with existing restitution laws, such as English restitution law. Firstly, they overlook Lockean injustice perpetrated as part of state policy. Secondly, they do not recognise the injustice of resource monopoly. Thirdly, whilst exploitation is acknowledged and addressed, it is not the Lockean version of exploitation. A Lockean version of the law of restitution would address injustices perpetrated as part of state policy, it would address resource monopoly, and it would address the Lockean version of exploitation.

After laying out the Lockean law of restitution as our theoretical framework for addressing injustice, we laid out our plan and method for investigating the implications of this law, particularly for a case study country – the contemporary UK. In the remainder of this dissertation we will attempt to play the role of Lockean investigator and Lockean judge. We will highlight documented Lockean injustices and attempt to propose restitutionary remedies in line with the Lockean law of restitution, as laid out in this chapter. Where it is unclear what restitutionary judgements should be made, we will attempt to follow precedence in existing restitution laws. Through a combination of analysis of secondary sources and drawing upon legal precedent, we will attempt to deduce possible restitutionary claims arising from Lockean injustice.

Chapter 4: Implications of the Lockean law of restitution for a case study country: the contemporary UK

4.1 Introduction to chapter

The previous chapter introduced a Lockean law of restitution – a theoretical framework for addressing injustice in holdings whereby persons are deprived of the proceeds of Lockean injustice. As well as theft, the law would also have to deal with Lockean monopoly, and Lockean exploitation. In this chapter we look at the implications of this theoretical framework for a case study country: the contemporary UK. After this introduction, the second part of the chapter is concerned with resource monopoly. In particular we look at the history of land theft and monopoly in the UK. We argue that according to the Lockean law of restitution *all* land in the contemporary UK is unjustly held, as it has been historically monopolised and has not gone through a Lockean restitution process. The same goes for all items made from that land. Additionally, a significant amount of the imported items into the UK are unjustly held as they are made from monopolised resources.

The third part of the chapter is concerned with unjustly gained monetary incomes. There is legal precedent in US restitution law that the incomes derived from using unjustly held resources are themselves unjust and must therefore be owed in restitution to the legitimate owner. We suggest that from this principle, it is reasonable to stipulate that three forms of income in the contemporary UK are unjust. Firstly, the income derived from renting out or selling unjustly held UK land. Secondly, incomes derived from renting out or selling unjustly held manufactures made from monopolised resources. Thirdly, any income in which unjustly held resources are required in the production process (for example, unjustly held oil for a delivery driver).

The second form of monetary income we discuss is taxation. We argue that all income derived from taxation is unjust and is owed in restitution to the taxpayers (and those taxpayers may owe their tax money in restitution if it was unjustly gained). We also note that in the UK tax income does not only come from the UK government. UK companies also receive procurement money from overseas governments and investment from foreign sovereign wealth funds. We also suggest that secondary income gained by individuals and companies derived due to the receipt of tax money is also unjustly held. For example, when companies use incomes derived from taxes (e.g. subsidies) to invest in new inventions, the resulting revenues should be considered unjustly held. We next argue that all items built with state money, such as roads and buildings are also owed in restitution to taxpayers. This includes those items which have been privatised.

The third form of unjust monetary income we discuss is that which is exploitative because buyers are pressured by regulations into purchasing goods or services which they would not do otherwise or would not pay as much for. We provide the examples of caps on doctor training places which limit the number of doctors, artificially increasing the money that doctors can charge. We also point to the problem of captured markets described by Johnson – the main example being the law which forces drivers to buy car insurance from registered companies if they wish to drive. Finally, we point to the problem of intellectual property which allows patent and copyright holders to gain artificially high incomes.

After discussing these broad categories of unjustly gained monetary income we argue that when it is spent, unjustly held money becomes an ever larger percentage of the total money in circulation until all money in a country's economy becomes unjustly held. Furthermore, any items bought with that unjustly held money can be considered to be the proceeds of injustice, and should therefore be considered unjustly held, and owed in restitution. As we do not know who would own which items were they not bought with unjustly held money, they should all be redistributed in an egalitarian manner.

4.2 Land monopoly

Due to their different pasts, we will deal with the separate countries in the UK territory separately, starting with England. How much land is illegitimately held in England? We noted in the methodology that any land which is stolen or monopolised is to be considered illegitimately held and then owed in restitution. The land in question must therefore be turned over to either identifiable victims or divided out equally amongst all members of the society in question. If this restitution does not happen and the land is transferred to a third party, that third party becomes an illegitimate owner. How far is such illegitimate ownership prevalent in contemporary England?

Before answering this, let us first clarify what we mean by “monopolised”. We explained in the Chapter 3 that we are defining monopoly as ownership over a resource which is not based in homesteading or voluntary transfer going back to homesteading. This is a satisfactory first approximation, but problems arise from this definition – particularly the “ownership” component of the definition. In Chapter 2, following Vallentyne, Steiner, and Otsuka, we defined “ownership” as a bundle of *rights* over objects. A problem is, that when discussing rights in Chapter 2, we discussed rights in terms of ethical entitlements, as conceived of by natural rights theorists. However, in actual history – at least in the medieval England – rights have taken the form of *legal* entitlements. Therefore when talking about ownership in medieval England we

must ask who had *legal* rights over the land. Furthermore, when asking if the land was monopolised, we must ask whether that legal ownership emerged through legitimate Lockean means – homesteading or voluntary transfer tracing back to a homesteader. Let us remind ourselves of the (legal) rights which make up ownership:

(1) *control rights* over the use of the object; (2) *rights to compensation* if someone uses the object without one's permission; (3) *enforcement rights* (to prevent the violation of these rights or to extract compensation owed for past violation); (4) *rights to transfer* these rights to others (by sale, rental, gift, or loan); and (5) *immunity to the nonconsensual loss* of any of the rights of ownership.²⁵³

Who possessed these rights in medieval England? We suggest that in the aftermath of the 1066 Norman invasion, and for several centuries thereafter (perhaps until the English Civil War), the only person with such ownership rights over land in England was the monarch. Everybody else was merely a *tenant* under the threat of eviction upon failure to pay rent. Miller and Hatcher have explained this point well. They concur with Maitland that in medieval England the social, economic and legal relations took “a pyramidal or conical shape.”²⁵⁴ Miller and Hatcher add:

At its apex was the king, with the mightiest noblemen or barons just below him, lesser barons still further below, and so on down to the base constituted by the mass of the peasantry. Each tier in this hierarchy was composed of the ‘men’ of the tiers above, a relationship of personal dependence enshrined in the notion of homage. Furthermore, the tiers in the pyramid were linked by an intricate network of services and obligations, some arising from the personal dependence of man on lord. At the same time, these services and obligations were also based on the giving and receiving of land, so that the ‘man’s’ dependence on his lord was reinforced by the fact that, in relation to that lord, he was also a dependent tenant.²⁵⁵

In this context, the greater landlords – whether lay or ecclesiastical – are referred to as the “tenants-in-chief” with various duties (military, religious, or financial) to the king.²⁵⁶ The lord’s rights to their tenancies were not absolute. Free tenants (as opposed to villeins) could and did on occasion successfully petition the king when a lord broke agreements and annexed tenant holdings.²⁵⁷ However, this is also not to say that the free tenants had ownership rights over the

²⁵³ Vallentyne, Steiner and Otsuka, *op cit*, pp. 203-204.

²⁵⁴ Miller, Edward, and John Hatcher, *Medieval England – Rural society and economic change 1086-1348*, Oxon: Routledge, 2014, p x.

²⁵⁵ *Ibid*, p. x.

²⁵⁶ *Ibid*, p. 16.

²⁵⁷ *Ibid*, p. 38.

land.²⁵⁸ They remained tenants, with the obligation of rental payment to the lords. According to Miller and Hatcher, “freehold in the modern sense did not exist in the Middle Ages, for all land was held of someone else who, in virtue of his lordship, was entitled to demand rent and service from its holder.”²⁵⁹ Furthermore, no tenants – free or not – had course of redress when the king annexed their land, as happened when “a considerable number of men” were displaced by William I in Downton, Wiltshire, to make way for New Forest hunting grounds.²⁶⁰ A modern trend in liberal scholarship is to imply that private property ownership existed in medieval England. For example Bruce Campbell claims that legal changes in the twelfth century gave peasants “legally secure and defensible property rights in land.”²⁶¹ However, he immediately contradicts himself by acknowledging: “Land, for instance, was not a chattel. At no point in the Middle Ages was it owned outright and exclusive of the rights of others. Only the monarch – from whom, under feudal property law, all land was ultimately held – was an exception.”²⁶²

We can therefore say that at least from 1066 onwards, all land in the UK was unjustly monopolised. Note, however, that unjust monopoly seems to have actually taken place sooner than 1066. It appears that the broad patterns of land allocations did not change much after William’s land grab. Sydney Madge estimated that in 1065 the Crown owned 20.5% of England, the barons, 50.7% and the Church, 28.8%. These figures stayed almost the exact same after William’s invasion. The only difference was that now “there was a different Crown and a different set of barons, and a different set of monks, the latter two in various stages of usurping the native Anglo Saxons.”²⁶³ Therefore the Norman invasion merely replaced one regime of land monopoly with another.

Which restitutionary claims arise from this history? We suggest that the answer is clear. The land of England was evidently monopolised from at least 1066, so from at least this time onwards it became owed in restitution to those who would have owned it were it not for the

²⁵⁸ Historians sometimes write of English tenants “buying” and “selling” land during the medieval and early modern period (E.g. Campbell, Bruce M. S., *The Agrarian Problem in the Early Fourteenth Century*, *Past & Present*, No. 188, Aug 2005, pp. 3-70, p. 41 (hereafter referenced as: ‘The Agrarian Problem’) but such language is misleading. Rather, tenants paid for the tenancy rights.

²⁵⁹ Miller and Hatcher, *op cit*, p. 12. Hilton has also explained: “As far as peasant holdings were concerned, the word “free” seems to have had a concrete and specific reference to the absence of (freedom from) labour services.” (Hilton, R. H., ‘Freedom and Villeinage in England’, *Past & Present*, Vol. 31, Issue 1, July 1965, pp. 3–19, p. 13). The free tenants were still tenants, but were not obliged to carry out forced labour.

²⁶⁰ Miller and Hatcher, *op cit*, p. 4.

²⁶¹ Campbell, Bruce M., ‘Factor markets in England before the Black Death’, *Continuity and Change*, Vol. 24, Issue 1, 2009, pp. 79–106, p. 79.

²⁶² *Ibid*, p. 82.

²⁶³ Madge quoted in Cahill, Kevin, *Who Owns Britain*, Edinburgh: Canongate Books, 2001, p.22.

monopoly. It should have gone back to either the pre-1066 owners (insofar as they were legitimate) or if these could not be found, it should have been divided equally amongst all of the people in the country (meaning all the people in the land mass of the contemporary UK – as explained in Chapter 3). As it was, this did not happen, and has never happened, so land has remained unjustly held by those that have gained ownership of it. Those who have historically gained ownership of land have ignored the prior claim of those owed the land in restitution and therefore themselves became land monopolists. Thus, because we can say that all land is unjustly held and we do not know who would own any particular piece of land were it not for the history of land monopoly, we must conclude that all land should be redistributed in an egalitarian manner.

Some might point to the fact that much of the land in England is now owned by farmers that work it themselves, so they should be considered the just owners. However, this would not take into account two things. Firstly, this argument does not take into account the question whether the purchasers had the right to buy the land. Secondly, it overlooks the question of whether the farmers (or their ancestors) who paid for the land, justly held the money they paid for the land with. We come back to the question of unjust sources of monetary income in the second half of this chapter. For now we deal with the question of whether the current owners, or their ancestors had the right to buy the land they work on. In line with the law of restitution, we suggest that farmers who have purchased their land did not necessarily have the right to buy it, as it was owed by the previous owners in restitution to third parties. We suggest that there is only one circumstance in which a person has had the right to buy land since 1066. That is if they could convincingly show that they would have been the owner of the land had it not been for historical monopoly. For example, if they could show that they were the descendants of the people that justly owned the land pre-1066. This is because, in 1066 at the latest, the land became owed in restitution. This means that it became owed to those that would have held it were it not for the monopoly.

It might be argued that the people who have purchased land and own it today may have been the ones owed it in restitution. We accept that if those people who purchased their land were the ones that would have owned it were it not for the imposition of feudalism, then they should be considered legitimate owners. However, we also suggest that the burden of proof should be on the person that claims to be the person most likely to have received the land in restitution and thus the legitimate owner. This is because we have already shown that the land was monopolised, and according to the Lockean law of monopoly, once a holding becomes unjustly owned – i.e. monopolised – it becomes owed in restitution. Therefore, in lieu of convincing

evidence that land has come back into legitimate ownership by going back to the individual(s) it was owed to in restitution, all land should be considered unjustly held and must be divided in an egalitarian manner. Also note that the land having come back into legitimate ownership in such a manner would be a necessary but insufficient condition for concluding that any current land titles today are just, as current titles could also be delegitimised by showing that the land had subsequently become unjustly owned again, for example, by being purchased with unjustly held money – a topic we discuss in the second half of the chapter.

We suggest that the same argument we have just laid out for England also apply to the other countries in the UK: Wales, Scotland and Northern Ireland. Let us consider Wales first. The Normans took over parts of Wales upon their conquest of England, whilst other parts of Wales remained under the domination of native Welsh aristocrats, princes and kings. However, in the late thirteenth century under Edward I, the Crown took complete ownership of the land. Firstly, by the treaty of Montgomery in 1267, Llywelyn was conferred with the title of Prince of Wales. Under this arrangement, Roderick explains, all other princes became his “tenants-in-chief”, whilst Llywelyn “remained as the only Welsh tenant-in-chief of the crown.”²⁶⁴ After a war between Edward I and Llywelyn, the treaty of Conway (1277) was signed under which Llywelyn maintained his Prince of Wales title and his reign over five minor lords of Snowdon, but all other princes in the country became tenants-in-chief to the English Crown.²⁶⁵ Thus we can say that by the late thirteenth century at the latest, *all* land in Wales was monopolised and owed in restitution.

Ireland’s land monopoly occurred in a more piecemeal manner. The Crown first established earldoms in the medieval period in parts of the country. Then in the mid-sixteenth century Henry VIII introduced the “surrender and re-grant” system whereby all Irish lords not under the English Crown were to surrender their land and gain it back as free-hold tenants.²⁶⁶ Resistant Irish lords were quashed in 1603 when the country was fully conquered. All Irish land titles from this point onwards, including in Northern Ireland which is what we are concerned with here, ultimately emanated from the authority of the English Crown.²⁶⁷ That is, the land became monopolised. That the land has not been through a Lockean restitution process means that the land in Northern Ireland is unjustly held.

²⁶⁴ Roderick, A. J., ‘Feudal Relations between the English Crown and the Welsh Princes’, *History*, Vol. 37, Issue 131, 1952, pp. 201-212, p. 201.

²⁶⁵ *Ibid*, p. 211.

²⁶⁶ Becket, J. C., *The Making of Modern Ireland 1603-1923*, London: Faber and Faber, 1981, p. 18.

²⁶⁷ *Ibid*, pp. 23-24.

The contemporary state of land monopoly in Scotland began with the English educated king David 1 (1124). He introduced feudalism (although his father, Malcom III had introduced barons, earls and lords), by awarding feudal charters to French knights and native earls and lords which would support him and paid homage.²⁶⁸ Not only was this development based on Anglo-Norman law, but was populated by Anglo-Norman immigrants. Wightman explains that the “new class of landowners was almost entirely foreign.”²⁶⁹ He further adds that Scottish land was treated in the same way as colonial Australia later would be, under the concept of *terra nullius* – land belonging to no one – with land titles only considered legitimate if granted by the Crown. He adds “The first land grab in Scotland was thus a process of colonisation by foreign forces aided and abetted by a process of internal colonisation whereby the native nobility was co-opted into the feudal system.”²⁷⁰ Houston has explained that in the seventeenth century all of the land in Scotland was owned by less than 5,000 landlords. He explains that rights of the landlords “were far more ‘individualistic’, even absolute, than in England” with no customary restraints upon their treatment of tenants.²⁷¹ He adds: “A judgement of the Court of Session in 1744 stated bluntly what had long been plain: ‘It is the privilege of property that the proprietor can be put under no restraint.’”²⁷²

It is sometimes believed that the Highlands were a different case from the rest of Scotland, but this is not the case. The Highland chiefs had been given the right of the modern right of private property, and thus “In fact Highland tenants had virtually no concrete rights at all under the traditional system, apart from those accorded voluntarily by chiefs for their own reasons”.²⁷³ It was this lack of rights to land which would lay the ground for the brutal clearance of the Highlands in the eighteenth and nineteenth centuries. “When landowners ceased to be chiefs and began to see their status as dependent on getting and spending money outside their estate – when they became mere landlords, concerned with cutting a figure in Edinburgh or London – their good will evaporated.”²⁷⁴ We therefore suggest that like other parts of the UK, all land in Scotland was stolen and monopolised, and thus needs to go through a restitution process. That this has not happened means that all land is held unjustly. In lieu of contradictory evidence, none of the titles which derive from post-feudal purchases of the land can be deemed

²⁶⁸ Wightman, Andy, *The Poor Had No Lawyers: Who Owns Scotland (And How They Got It)*, Edinburgh: Birlinn Ltd., 2013, eBook edition, Chapter 3.

²⁶⁹ *Ibid*, Chapter 3, Location 421.

²⁷⁰ *Ibid*, Location 439.

²⁷¹ Houston, Rab, ‘Custom in Context: Medieval and Early Modern Scotland and England’, *Past & Present*, Vol. 211, Issue 1, May 2011, pp. 35–76, p. 45.

²⁷² *Ibid*.

²⁷³ *Ibid*, p. 58.

²⁷⁴ *Ibid*, p. 59.

legitimate. Furthermore, as we do not know who would own the land had it not been for the history of monopoly, all of it must be redistributed in an egalitarian manner. We therefore see that all land in the UK is unjustly held and must be divided equally amongst all persons in the UK. We discuss a possible method for achieving this equal division in the third part of Chapter 7.

An additional point should be made here. There is also an offshore government monopoly over the searching for, and mining of oil and other resources in UK sovereign waters. The Continental Shelf Act 1964 puts control of Britain's offshore resources under the Crown.²⁷⁵ Meanwhile, licences for searching and drilling are regulated by the Secretary of State under the Petroleum Act of 1998.²⁷⁶ As we discussed in the methodology, it is only by labouring on a piece of property that one becomes the legitimate owner. Thus the UK government has facilitated artificial monopoly ownership rights over parts of the sea bed. This land needs to be redistributed in an egalitarian way.

4.3 Restitution of manufactures made from unjustly held resources

If all unjustly-gained items must go through a restitution process to become justly held, then ostensibly all items produced from unjustly held land and natural resources are also unjustly held until those items go through a restitution process. To see this we can turn to Kinsella's argument that creating useful new items is not a necessary or sufficient condition for coming to own the item. Rather, whether one legitimately owns an item one creates depends on whether one owned the resources one uses in order to produce the item. This can be seen in part as a retort to Rothbard's claim that the sculptor should own the sculpture, which we have quoted in previous chapters. According to Kinsella:

One cannot create some possibly disputed scarce resource without first using the raw materials used to create the item. But these raw materials are scarce, and either I own them or I do not. If not, then I do not own the resulting product. If I own the inputs, then, by virtue of such ownership, I own the resulting thing into which I transform them.

Consider the forging of a sword. If I own some raw metal (because I mined it from ground I owned), then I own the same metal after I have shaped it into a sword. I do not need to rely on the fact of creation to own the sword, but only on my ownership of the factors used to make the sword. And I do not need creation to come to own the factors, since I can

²⁷⁵ *Continental Shelf Act 1964*, c. 29, section 1 (UK), online at: <https://www.legislation.gov.uk/ukpga/1964/29/section/1> (accessed: 24 Nov 2018).

²⁷⁶ *Petroleum Act 1998*, c. 17, section 3 (UK), online at: <https://www.legislation.gov.uk/ukpga/1998/17/section/3> (accessed: 24 Nov 2018).

homestead them by simply mining them from the ground and thereby becoming the first possessor. On the other hand, if I fashion a sword using your metal, I do not own the resulting sword. In fact, I may owe you damages for trespass or conversion. Creation, therefore, is neither necessary nor sufficient to establish ownership.²⁷⁷

By extension, if the sword-maker then transfers that sword to someone else, then the recipient does not become the just owner of the sword. It is owed in restitution. The relevant research project arising from this discussion is which land has been historically stolen and which items are created from stolen land.

If it were the case that we did not have to consider manufactures made with resources from overseas, the task for restitution would be somewhat simple. All UK-sourced items are either monopolised natural resources, or made from such, and should therefore be redistributed in an egalitarian way (in lieu of evidence that something else should happen to particular resources). However, in reality we have to consider that many items are made in whole or in part from overseas resources. How does this impact our approach to restitution? Let us imagine for a moment that we had established that all resources overseas are unjustly monopolised, as they are in the UK. Then it appears that the solution would be, in part, somewhat simple. We could say that all manufactures in the UK are made from unjustly held resources so are themselves unjustly held.

We will not dwell on the question of how restitution would work in such a scenario. Instead we will note that we have not empirically established that all items in the world are monopolised. Whilst there is evidence of much historical land monopoly (particularly in the history of state formation and colonisation), in lieu of further research into global resource monopoly, we must assume that there may be parts of the world that are not unjustly monopolised and that some manufactures in the UK are made in whole or in part from non-monopolised resources. This means that we cannot say that all items in the UK are unjustly held on the specific grounds of being made from monopolised resources. In fact, we cannot assume that any particular manufacture is unjustly held on the grounds of it being made from monopolised resources without investigation into the history of that particular item.²⁷⁸

²⁷⁷ Kinsella, Stephan, N., *Against Intellectual Property*, Auburn, Alabama: Ludwig von Mises Institute, 2008, pp. 37-38.

²⁷⁸ Although we argue in the second half of the chapter that it is reasonable to assume that all items in the UK are unjustly held on the grounds that they have been bought with unjustly held money.

4.4 Revenues derived from unjustly held land

Which restitutionary requirements emerge from the payments to owners of unjustly held land? We discuss only rents and payments for land purchases here, and return to the question of charges for products made from unjustly held land below. It has been established in restitution law that charging for access to resources that one does not justly own, generates restitutionary claims. In the case of *Edwards v Lee's Administrators* in Kentucky, US, the defendant, (Edwards) discovered a cave (the "Great Onyx Cave") under his land. He started a business giving guided tours through it and it became a popular tourist attraction. However, a third of the cave was under the land of the claimant (Lee), who successfully sued for damages. The claimant was rewarded a third of the net profits made from the cave. There was no actual damage done to the property of the claimant but it was ruled that the defendant had used the claimant's property unjustly.²⁷⁹ Therefore, we suggest that, liability-reducing defences aside, all income derived from renting out, or selling unjustly held items should itself be considered unjustly held and owed in restitution. This includes rental and land sale income for land.

However, it is difficult to say what this means in application. Who have been the recipients of such revenues? Aristocrats, property speculators, property developers, local councils, and homeowners all receive revenues from land sales. In some cases we suggest the unjust revenues may be easier to calculate than others. For example, if bare land is sold, it is clear that all the revenue received is unjust. However, often it is the case that land is sold as part of a package - notably, when a house is sold. In the case of house sales it is estimated that on average 70 percent of house value comes from the land, but it is impossible to be specific.²⁸⁰ Therefore it may be impossible in practise to objectively assess which forms of revenues are owed in restitution. Nevertheless, according to the Lockean law of restitution, attempts at restitution have to be made. Such restitution has to be based on subjective evaluations.

Note that a question arises of who restitution is owed to. Let us consider a UK aristocrat who rents out a piece of land. The equivalent of Lee (in the case of *Edwards v Lee's Administrators*) in this scenario are the persons who justly own the land instead of the aristocrat. This is the whole of the UK population, because the land is owed in restitution but we do not know who would have owned it were it not for historical land monopoly. However, there is a complicating factor. It is conceivable that the rent payer is owed their rental fee back in restitution as they

²⁷⁹ Virgo, *op cit*, p. 355.

²⁸⁰ Isaac, Anna, 'Our green and expensive land: why the UK's £10 trillion price-tag adds to its housing problem', *Telegraph*, 5 Oct 2017, online at: <https://www.telegraph.co.uk/business/2017/12/05/green-expensive-land-uks-10-trillion-price-tag-adds-housing/> (accessed 24 Nov 2018).

are being exploited. That is, it is plausibly the case that they are paying more for land than they would if all the land in the UK were not monopolised. We do not delve deeper into this question here. We argue below (section 4.8) that for practical purposes it is not important who particular restitutionary payments are owed to. It is more important to identify the array of reasons persons may owe restitution to *someone*. Thus for our purposes the important thing to note is simply that the aristocrat owes their rental income in restitution to *someone*. He cannot keep it. Nevertheless, in lieu of developing an argument that the renter of the aristocrat's land is paying an exploitative price, we will suggest that the aristocrat owes his fee to all people in the UK in an egalitarian manner.

If revenues from renting out or selling unjustly held land are owed in restitution, so are the revenues from renting out or selling items made from unjustly held land. For example, all items made from UK resources are unjustly held and any revenues made from renting them out or selling them are also unjust. However, some imported items may not be sourced from monopolised resources, so cannot automatically be said to be unjustly held in the way that all land in the UK is. Therefore it appears to be the case that we cannot say that all revenues generated from renting out or selling items (e.g. houses) in the UK are unjust on grounds we have discussed so far (although they may be unjustly held for other reasons).

4.5 Revenues from using unjustly held items

We suggest any income generated by the use of unjustly held items should also be owed in restitution to the true owners of the items. For example, if a business person uses unjustly held petroleum as an input into a production process, then the share of the revenues generated by using that petroleum become unjustly held by that business person. This is what the ruling of *Edwards v Lee's Administrator's* implies whereby Edwards was not selling the cave but was using the property of Lee to generate revenue. It can be noted here that in the case of *Edwards v Lee's Administrators* that it was somewhat simple to see how much of Edwards's revenues were gained unjustly – the percentage of the cave owned by Lee. However, in the case of a delivery driver that fuels his van with unjustly held petroleum, how do we calculate the percentage of the revenue which came from using that petroleum? Presumably the answer is all of it. In the case of *Edwards v Lee's Administrators*, Edwards could have still made some revenue from guiding people through the part of the cave he owned. However, without unjustly held petroleum, it is not clear that a delivery-driver could engage in any deliveries or make any revenues from such. Thus where petroleum is unjustly sourced and therefore unjustly held, the implication is that all of the revenues of all the businesses that depend upon that petroleum are

also unjustly held. Note that this likely goes for much, if not all oil imported into the UK, as it tends to be held under government monopoly. As an example we can consider the biggest source of UK oil imports – Norway, which supplied 21 million metric tons of oil to the UK in 2017 – over a quarter of oil used.²⁸¹ A Norwegian government primer on the country’s oil industry explains: “In May 1963, Einar Gerhardsen’s government proclaimed sovereignty over the NCS [Norwegian Continental Shelf – the oil region off the coast of Norway]. New regulation determined that the State owns any natural resources on the NCS, and that only the King (government) is authorized to award licences for exploration and production.”²⁸² As with monopolised UK oil, the oil produced in the NCS is unjustly held. It remains unjustly held until it has gone through a restitution process. Thus all people that own NCS-sourced oil, including those in the UK, do so unjustly.

4.6 Income derived from taxation

Income derived from theft is owed in restitution. According to Lockeanism, when the government takes taxes from citizens, this is a form of theft. Thus, liability-reducing defences aside, all revenues derived from tax money should be owed in restitution. This means recipients of tax-funded wages (i.e. wages of state employees or people that work for state contractors), revenues from state procurement contracts, subsidies, interest on sovereign debt, and state benefits should owe those incomes in restitution. State spending accounts for approximately 41 percent of GDP.²⁸³ Liability-reducing defences aside, all of this needs to be redistributed as a form of restitution. This money should be paid back to taxpayers (bar taxpayers who have paid their taxes with incomes derived from the government). Note that any taxpayers who earned their tax money in unjust ways (through land rents, benefitting from regulations, etc.) will need to give their returned tax money away in restitution.

²⁸¹ Statista, ‘Origin countries of imported crude oil and natural gas liquids to the United Kingdom (UK) in 2017’, *Statistica* [website], <https://www.statista.com/statistics/381963/crude-oil-and-natural-gas-import-origin-countries-to-united-kingdom-uk/> (accessed 24 Nov 2018). For consumption stats, see: Statista, ‘Oil consumption in the United Kingdom from 1990 to 2017’, *Statistica* [website], <https://www.statista.com/statistics/264411/oil-consumption-in-the-united-kingdom/> (accessed 24 Nov 2018).

²⁸² Government of Norway, ‘Norway’s oil history in 5 minutes’, *Government of Norway* [website], <https://www.regjeringen.no/en/topics/energy/oil-and-gas/norways-oil-history-in-5-minutes/id440538/> (accessed 24 Nov 2018).

²⁸³ Office of National Statistics, ‘UK Perspectives 2016: Spending on public services in the UK’, *Office of National Statistics* [website], 25 May 2016, <https://www.ons.gov.uk/economy/governmentpublicsectorandtaxes/publicsectorfinance/articles/ukperspectives2016spendingonpublicservicesintheuk/2016-05-25> (accessed 25 Nov 2018).

Transfers of tax money to companies or individuals also generate secondary revenues. For example, one form of subsidy is research and development grants. If a product is invented with the use of a research and development grant, does that mean that the revenues accruing to the company from that product are unjustly derived? Should all the revenues derived from selling that product be owed in restitution to taxpayers? This author cannot see why this is not the case. Which revenues this actually applies to would need further empirical research.

Transfers from overseas state actors

Note that it is not only the UK state that UK citizens receive revenues from. UK companies receive lots of money from overseas governments. One of the largest UK manufacturing exports is arms and weapons components.²⁸⁴ All of these exports are sold to governments which have gained their money through taxation. All of the revenues gained by workers or investors in the UK arms industry are unjustly held. Sovereign wealth funds also invest heavily in a large number of UK-based companies. A study by the London School of Economics found evidence that investment by the Norwegian sovereign wealth fund, NGPF – G has reduced unemployment in the UK. According to the authors the company had “buffered any negative effect of the 2008 financial crisis on employment in its investee firms.”²⁸⁵ However, any wages going to workers from sovereign wealth funds are unjust according to Lockeanism and must be owed in restitution.

State held property

When the state takes tax money it does not just get transferred to individual recipients. It also becomes embodied as state held property such as hospitals, schools, roads and other forms of infrastructure. We suggest that state held property should also be returned to taxpayers, or where the infrastructure was paid for by taxpayers that can no longer be found, should be divided equally amongst members of society. Furthermore, people that paid their taxes with unjustly earned money should have to redistribute state property that they receive equally amongst all members of society. An additional thing to consider is that in the UK many formerly government-owned resources have been privatised. This includes much of the water system, the energy grid, and rail. This property is currently held unjustly. According to Lockean theory it

²⁸⁴ Stone, Jon, ‘Britain is now the second biggest arms dealer in the world’, *Independent*, 5 Sep 2016, online at: <https://www.independent.co.uk/news/uk/home-news/britain-is-now-the-second-biggest-arms-dealer-in-the-world-a7225351.html> (accessed 25 Nov 2018).

²⁸⁵ Goergen, Marc, Noel O’Sullivan, Geoffrey Wood and Marijana Baric, ‘How Norway’s sovereign wealth fund protected UK jobs after the 2008 crisis’, *London School of Economics* [website], <http://blogs.lse.ac.uk/businessreview/2018/06/27/how-norways-sovereign-wealth-fund-protected-uk-jobs-after-the-2008-crisis/> (accessed 25 Nov 2018).

is a good thing that state-owned holdings have become privately-owned. However, the method of privatisation followed in the UK has been illegitimate. The process generally followed is competitive bidding with preferential shares for workers. The property should have gone through a legitimate Lockean homesteading process as described with regards to current state held property.

4.7 Regulation and exploitation

As discussed in the methodology, regulations place unjust restrictions on people. We gave the example of tariffs. It is difficult to assess the restitutionary claims arising from tariffs in the UK. One reason is that at the time of writing, the UK is in the European Union (EU), which imposes joint tariffs on outside countries. Therefore if the EU imposes a tariff on cars, it could be a car producer in any EU country – not just the UK – which gains the benefits. Even if the UK imposed tariffs unilaterally it may be difficult to know how far a particular producer benefitted from a tariff. We can imagine a particular car producer releasing a new model at the same time as a tariff is introduced and we would have little idea how far the subsequent sales were due to the tariff or the demand for the new model. With these points in mind we will not attempt any detailed discussion of the restitutionary claims arising from tariffs. Instead we will simply note that EU tariffs are currently approximately 5 percent and generate unknown amounts of unjustly gained revenues for UK-based companies.²⁸⁶

There are a range of other significant forms of regulation. Charles Johnson has pointed out that “regulatory protectionism” significantly distorts markets in capitalist countries.²⁸⁷ He describes this phenomenon as:

the proliferation of commercial regulations, government bureaucracy and red tape, business license fees, byzantine tax codes, government-enforced professional licensure cartels and fees (for everything from taxi-driving to hair braiding to interior design) - all of which, cumulatively, tend to benefit established businesses at the expense of new upstarts, to protect those who can afford the fees and lawyers and accountants necessary to meet the requirements from competition by those who cannot, and generally do the poor out of entrepreneurial opportunities, independent professions and more autonomous alternatives to conventional wage labor.²⁸⁸

²⁸⁶ World Trade Organization, International Trade Centre and UNCTAD, *World Tariff Profiles 2018*, Geneva: World Trade Organization, 2018, p. 8.

²⁸⁷ Johnson, Charles, ‘Markets Freed from Capitalism’ in *Markets Not Capitalism: Individualist Anarchism against Bosses, Inequality, Corporate Power, and Structural Poverty*, eds. Chartier, Gary, and Charles W. Johnson, London: Minor Compositions, 2012, pp. 59-82, p. 73.

²⁸⁸ *Ibid.*

One example Johnson discusses is the problem of captured markets in which people are forced to buy certain things if they wish to participate in society. He provides the example of the compulsory car insurance market in which all drivers must buy insurance from an approved provider.²⁸⁹ We can also look at the example of professional licensure. Dean Baker has explained that in most countries, “the actual practice of issuing and controlling licenses is generally designed more to restrict the number of doctors, lawyers, architects, etc., than to ensure the quality of the services these people provide.”²⁹⁰ Baker argues that the result is to drive up wages for the protected professions. In the UK, medical licensure also works to drive up pay in the medical sector. Significantly, the number of doctor training places is capped, contributing to shortages.²⁹¹ There is evidence that the shortages contribute to increased doctors’ wages. It is reported that in the NHS, shortages lead to dependence upon locum doctors who are able to charge far higher pay rates, with £1200 pay for one shift not being uncommon.²⁹² It can be noted that the wages of NHS doctors are paid by the state, and thus – as discussed above – their incomes are illegitimate anyway. However, it is certainly reasonable to assume that training caps and shortages also contributes to higher rates of pay for private doctors. Insofar as their wages are higher than they would be without the training pay caps, their income is illegitimate.

Johnson mentions a number of other significant regulations. For example, patents and copyright create artificial dependence upon intellectual property title-holders. However, it should here be noted that there are debates over the legitimacy of intellectual property. Kinsella argues that intellectual property in no way fits in with Lockean homesteading rules. It actually gives inventors the right to an ownership share in other people’s property (such as their paper and ink that they may wish to use to copy a book).²⁹³ This is illegitimate according to Lockeanism. Rothbard has argued that whilst it is illegitimate for intellectual property to be enforced by the state, in a genuine Lockean free market, it would be possible to have a form of copyright. Items from mousetraps to books could be sold on the grounds that the purchaser does not sell it or reproduce them.²⁹⁴ Kinsella has responded by arguing that whilst such deals would be

²⁸⁹ Johnson, *op cit*, p. 65.

²⁹⁰ Baker, Dean, *op cit*, p. 25.

²⁹¹ Lay, Kate, ‘Medical school numbers must double to combat NHS doctor shortage’, *The Sunday Times*, 25 June 2018, online at: <https://www.thetimes.co.uk/article/medical-school-numbers-must-double-to-combat-nhs-doctor-shortage>
[gd88fbtzt](https://www.thetimes.co.uk/article/medical-school-numbers-must-double-to-combat-nhs-doctor-shortage-gd88fbtzt) (accessed 25 Nov 2018).

²⁹² Forster, Katie, ‘One in 30 locum doctors earn £1200 for ten-hour NHS shift, reveal new figures’, *Independent*, 2 May 2017, online at: <https://www.independent.co.uk/news/health/locum-doctors-nhs-120-an-hour-liaison-figures-staff-shortage-hospitals-a7713331.html> (accessed 25 Nov 2018).

²⁹³ Kinsella, *Against Intellectual Property*.

²⁹⁴ Rothbard, *Ethics*.

legitimate, they could not apply to third parties to the contracts, who should be able to make and sell copies of the products. For example, if Brown sees a mousetrap Black has bought from Green under the copyright contract of not reproducing or selling it, Brown should still be able to reproduce the mousetrap as he is under no such contract. Therefore, for Kinsella copyright in a Lockean society would be unenforceable.²⁹⁵

If we accept Kinsella's argument, this delegitimises large parts of the revenues generated in modern economies. In *The Conservative Nanny State* Baker has explained that the business model of tech firms and the media file industry (music downloads, e-books, etc.) depends upon copyright laws which prevent consumers selling copies of products.²⁹⁶ The International Intellectual Property Alliance estimates that copyright and patents accounted for between 7 percent and 12 percent of the size of the US economy in 2015 depending on how the measurement is done.²⁹⁷ There are no comparable estimates for the UK economy, but surely a significant amount of income has been derived due to intellectual property laws.

We have mentioned just a few of the major forms of regulation here. We have not discussed regulations around employment law, trade union regulation, drug laws, and a host of others. There is a vast literature on the impacts of different regulations.²⁹⁸ We will not be discussing these as our aim here is not to provide a comprehensive overview of all of the ways in which regulations contribute to restitutionary claims. Rather, our aim has simply been to show that regulations contribute to some significant extent to the array of ways in which people receive unjust monetary incomes.

4.8 How unjust incomes come to permeate and saturate all incomes over time

Let us consider a secondary problem which emerges from unjust monetary incomes. Unjust incomes permeate and saturate all incomes over time. To see this let us imagine that an aristocrat makes all of his money from renting out land. Let us also imagine he employs staff such as an estate manager. Should the estate manager's wages be considered unjustly gained? We suggest that the answer is yes. We established above that a thief's loot cannot become legitimately held by somebody that the thief transfers it to. We suggest that this includes a thief's loot in the form of money. We also suggest that aristocratic rents amount to being an

²⁹⁵ Kinsella, *Against Intellectual Property*.

²⁹⁶ Baker, *op cit*.

²⁹⁷ Siwek, Stephen, *Copyright Industries in the U.S. Economy: The 2016 Report*, Berkley, Ca.: International Intellectual Property Alliance, 2016, p. 2.

²⁹⁸ E.g. see Baker, *op cit* and Johnson, *op cit*.

unjust form of wealth acquisition similar to stolen wealth. We therefore suggest that it would be unjust for the recipient of an aristocrat's loot to keep it.

Note that it is already established in English restitution law that recipients of stolen money should not be able to keep it. For example, in the case of *Lipkin Gorman (a firm) v Karpnalee Ltd*, a partner of the Lipman Gorman solicitor firm stole money from the company and spent it at a casino. It was ruled that the casino owed the money back to the firm.²⁹⁹ Virgo explains that the claimant firm had a continuing proprietary interest in the money from the moment it was stolen.³⁰⁰ By extension, when an aristocrat unjustly gains rental income, we suggest that the persons owed the rental fee in restitution (we have argued above that this is everybody in the UK) gain a propriety interest in that fee. When the aristocrat transfers the money to an estate manager, the legitimate owners of the money *maintain* a proprietary interest in it. The estate manager cannot keep it.

If it is illegitimate for the estate manager to keep the loot they are paid by the aristocrat, what about other third parties that the aristocrat transfers money to? What about workers such as plumbers that the aristocrat hires temporarily to engage in repair work? (We will set aside the problem that the plumber's income might be unjustly gained for other reasons, such as using unjustly held tools.) Should such repair workers get to keep the aristocrat's loot that he transfers to them? What about the grocer that the aristocrat buys food from? We suggest that none of these third parties who the aristocrat transfers his money to should be considered the legitimate owners of the money. This raises the next question. Should the recipients of the unjustly held money that the estate manager, the plumber and the grocer spend – say, at a theatre – be considered the just owners of the money they receive? Again, we suggest not, as the unjust revenues that the estate manager, plumber and grocer held were owed in restitution. We therefore see that unjustly-gained money can permeate through a society.

Two additional points need to be made here. Firstly, we suggest that when a theatre-goer pays for a ticket, the percentage of that theatre-goer's overall income which derives from an aristocrat should be considered to be the percentage of the ticket price which should be considered to have derived from the aristocrat. For example, assuming that the only income of the estate manager is his wage from the aristocrat, then *all* money received by the theatre from this estate manager should be considered to have come from the aristocrat (and thus should be considered unjustly derived income). However, the plumber, for example, receives income from

²⁹⁹ Virgo, *op cit*, p. 13.

³⁰⁰ *Ibid.*

clients apart from the aristocrat. We therefore cannot say that all of the money the plumber spends at the theatre is the loot of the aristocrat. We therefore suggest that the percentage of the plumber's revenue that comes from the aristocrat's loot (e.g. 10 per cent) should be considered the percentage of the ticket revenue that is unjustly gained by the theatre – and thus owed in restitution.

With this observation in mind, we suggest that all money in societies with long established systems of significant unjust revenue generation (e.g. tax systems) comes to be unjustly derived. To see that this is a reasonable presumption, we can imagine a time in history when much of the money people earned was "clean". However, the earnings of those clean workers would soon become further and further diluted with "dirty" money. To see this, we can imagine that there were workers who did not receive income from the sale or rent of unjustly held land or items made from unjustly held land, who did not use tools made from unjustly held land, who were not protected by any regulations, and were not paid by the state. This might have been a street performer, for example. However, we can imagine that the money she received, would be significantly, say 50 per cent, derived from such "dirty" sources. Therefore 50 per cent of her money would be dirty. Let us now imagine our street performer, who we will call *A*, pays to see another street performer, *B*. If *A* is one of only two people to pay for *B*'s performance, and the other patron is an aristocrat – with both paying the same amount – *B* may think that 50 per cent of her own income is clean (the money received from *A*) and 50 per cent is dirty (the money received from the aristocrat). However, this would be wrong, because 50 percent of the money *A* gave to *B* would be unjustly derived itself. Thus 75 per cent of *B*'s income would be unjustly derived. The same problem arises for all of *B*'s apparently "clean" patrons. They would have been receiving part of their money from workers in the dirty part of the economy, and thus a percentage of their money would now be dirty. As the clean workers continue to receive money from both dirty workers and clean workers who derived their money in part from dirty workers, the percentage of dirty money held by workers in clean jobs would continue to increase until all of the money in the clean part of the economy would be dirty (or unjustly derived). Considering the long history of injustice in holdings in our case study country, we suggest that such an occurrence likely occurred at some point far back in history. Thus we suggest that all money can be reasonably presumed to be unjustly held and should be owed in restitution.

Who is money owed to in restitution?

As it appears that all money derives from injustice, but it is impossible to specify what is owed to who, we must provisionally conclude that all money must be redistributed in an egalitarian

manner. However, a problem arises here. We cannot simply say that all money should be redistributed equally amongst all people in the UK. This would be to overlook the restitutionary claims on money from people overseas. Overseas people have two claims. Firstly, they have claims upon restitution for payment of resources which they rightly owned. For example, if somebody pays for unjustly held oil in the UK which is imported from a monopolised overseas oil well, then the money paid for that oil rightfully belongs to the true owners of the oil well. Secondly, overseas persons are owed tax money which has found its way into the UK through the various forms of procurement and investment we mentioned. However, we suggest that such international claims must be made by individual claimants from overseas. In lieu of such individual claims, we suggest that all money should be redistributed in an egalitarian manner amongst all people in the UK, for reasons laid out in Chapter 3.

4.9 Goods bought with unjustly held money

We suggest that goods bought with unjustly held money can be considered to be unjustly held. This is not on the grounds that the true owner of the money gains a proprietary interest in the goods bought. We have argued above that the proprietary interest of the true owner of unjustly gained money stays with the actual money which was acquired unjustly. Rather, the principle at play here is that persons should not be able to benefit from a wrong.³⁰¹ Without owning (i.e. monopolising) unjustly held money, the spender of unjustly held money would not have been able to acquire the goods they did. Therefore, by possessing goods bought with unjustly held money, they benefit from a wrong – i.e. they gain the benefit of acquiring goods by monopolising unjustly held money. We suggest here that the legal precedent of Proceeds of Crime Act 2002 is relevant here. Virgo explains that according to this Act, the primary question is: “Has the defendant benefited from general criminal conduct if he or she has a criminal lifestyle or, if he or she does not have a criminal lifestyle, has the defendant benefited from particular criminal conduct?”³⁰² Where a defendant has been found to live a criminal lifestyle it is assumed that “any property transferred to the defendant within six years of the proceedings being commenced is the proceeds of crime” with the onus being on the defendant to rebut these assumptions.³⁰³ Under a Lockean law system, there is no “crime” per se (if by crime we mean breaking the laws of the state).³⁰⁴ Rather, there are injustices which generate

³⁰¹ In English restitution law, the words “profit and “benefit” are use somewhat interchangeably. E.g. Virgo, *op cit*, p. 526.

³⁰² *Ibid*, p. 536.

³⁰³ *Ibid*, p. 536.

³⁰⁴ On the point about “crime” being an offence against state law, see: Chartier, Gary, *Anarchy and Legal Order*, Cambridge: Cambridge University Press, 2013, pp. 3-4, p. 216.

restitutionary or compensatory claims. We suggest that holding and spending unjustly held money counts as an injustice which generates such claims. Therefore following from the precedent of the Proceeds of Crime Act 2002, we suggest that as all money in the UK can be presumed to be unjustly held, all items paid with it can be presumed to be the proceeds of *injustice* (rather than “crime”), and thus the purchasers do not have a right to keep the items bought with such money. As we do not know who would own the items were it not for the unjust money holders buying them, they should be redistributed in an egalitarian manner amongst persons in the UK. Again, we take precedence here from the English legal system in which recovered proceeds of crime are auctioned off with the money going to the government. We make one change: instead of such items going to the government, we suggest that they should be divided equally amongst all persons in the country.

Note that as we mentioned in the last chapter, goods may be unjustly held on multiple grounds. Thus as well as being unjustly held due to being purchased with unjustly held money, items may simultaneously be unjustly held due to being made from monopolised resources. This raises the prospect of conflicting restitutionary claims. In particular, persons from overseas may have restitutionary claims on goods made from their resources. In such circumstances we suggest that the overseas claims should take precedence. This is because restitutionary claims based upon being the true owner of the resource emerge prior to an item becoming owed in restitution (to persons in the UK) because the owner acquired it with unjustly held money.

4.10 Conclusion to chapter

In this chapter we have discussed a number of Lockean injustices and the arising restitutionary claims. The first part of the chapter was concerned with land theft and monopoly, and the restitutionary claims arising from such, whilst the second part of the chapter was concerned with unjustly gained money and the restitutionary claims arising from such. In the first part of the chapter we explained what it meant for land to be monopolised. We argued that where a person owns land without having homesteaded it or gaining it via voluntary transfer tracing back to homesteading, that person is monopolising the land they own. We then argued that the monarchs in England monopolised all land in the country from 1066 onwards and thus all land in England can be said to have become owed in restitution. That has never gone through a Lockean restitution process means that it remains unjustly held and still must go through such a restitution process. Because we do not know who would own the land were it not for historical monopoly, it should all be divided in an egalitarian manner amongst all persons in the UK. The same goes for all land in Wales, Ireland and Scotland, which we argued has also been unjustly

monopolised by the Crown. Furthermore, all UK coastal oil has also been monopolised by the UK government.

We next argued, following Kinsella, that all manufactured items made from UK resources are also unjustly held, as all manufactures made from unjustly held sources are themselves unjustly held. However, we also said that because many manufactures in the UK are also made from overseas natural resources, in lieu of showing that all natural resources overseas are monopolised, we cannot say that the manufactures made from overseas resources are also unjustly held. Therefore we cannot presume that all items in the UK are unjustly held on the grounds that they are made from monopolised resources, as there is a possibility that they are made from justly held overseas resources. In lieu of showing that all natural resources overseas are monopolised, the question of whether manufactures in the UK are unjustly held on the grounds that they are made from monopolised natural resources can only be addressed by looking at each item on an individual basis – something that appears impossible and something we definitely do not attempt in this dissertation.

In the next part of the chapter we began discussing unjustly gained money. We firstly considered money gained from renting out or selling unjustly held land, or selling or renting out items made from unjustly held land, or using items made from unjustly held land in any other way in order to make money. We argued, following the precedent set out in *Edwards v Lee's Administrators* that the money gained from using unjustly held resources should be considered unjustly held and should be owed in restitution to the true owner(s) of that resource. Where we do not know who the true owner of the resource is, the money should be divided equally amongst all persons in the UK.

We then considered money gained through the tax system. We argued that taxes can be considered theft according to Lockeanism, so all money received through the tax system can be deemed to be unjustly held. This includes the wages gained by workers for the state, subsidies and procurement money received by private companies. We also suggested that the money made by companies from inventions created with government research and development support should be considered unjustly held. Furthermore, we noted that it is not only the UK government that persons in the UK receive money from. We noted that UK-based companies and individuals receive money from overseas governments via procurement contracts and sovereign wealth fund investment.

After discussing these broad categories of unjustly gained monetary income we argued that when it is spent, unjustly held money becomes an ever larger percentage of the total money in

circulation until all money in a country's economy becomes unjustly held. Furthermore, any items bought with that unjustly held money can be considered to be the proceeds of injustice, and should therefore be considered unjustly held, and owed in restitution. As we do not know who would own which items were they not bought with unjustly held money, they should all be redistributed in an egalitarian manner.

Chapter 5: A Lockean theory of exploitation

5.1 Introduction to chapter

In the previous chapter we looked at the restitutionary claims which arise from land theft and monopoly, taxes, and exploitative incomes gained due to regulations. In this chapter we take a look at the exploitative incomes that arise as a symptom of the artificial concentration of land and other property, described in the previous chapter. In particular we show that the Lockean law of restitution completes Marx's implicit argument that in countries with a history of land theft and monopoly, the arising wage labour relationships can be considered to be exploitative on Lockean terms, as well as on Marxian terms.

The first section of this chapter is concerned with outlining Marx's argument as presented in *Capital*. His argument was based on the labour theory of value: the idea of the classical political economists that the exchange value of reproducible goods under free market conditions comes from the labour required to produce them. He argued that the surplus value kept by capitalist employers is the difference between the value of what labourers produce with their labour, and the wages they are paid for their labour-power (the cost of keeping them alive as labourers at a socially acceptable standard of living). He referred to the rate of surplus value production as the rate of exploitation. Therefore, the production of surplus value is now commonly known as Marxian (or Marxist) exploitation. However, we claim that Marx implicitly argued that Marxian exploitation was also Lockean exploitation in his case study countries.

Marx argued that wage labourers enter capitalist wage labour relationships because they lack means of subsistence and production. He also argued that wage labourers – at least in England and the US – lacked means of subsistence and production (notably land), because of land monopoly. In England there had been centuries of land expropriation by the upper classes. Thus much of the population had been forced into the wage labour market. Meanwhile in the United States, land speculation had concentrated land ownership with similar results. Therefore, we can see that insofar as Marx's historical claims were correct, the wage labourers' he discussed choices to work for capitalist employers can be seen to have been made under a system of unjust, oppressive property concentration. Their capitalist employers can be said to have benefitted from their artificially weak bargaining position. Therefore, according to the Lockean law of exploitation, the surplus value the capitalist employers extracted from those wage labourers can be seen to have been exploitative and owed in restitution.

After laying out Marx's broad implicit argument, we clarify two points. Firstly, we address some confusion in the academic literature on wage labour exploitation.³⁰⁵ The crucial question when considering if a wage labour relationship is exploitative – at least in Lockean terms – is not whether or not the employer gained his or her capital in an unjust manner. Rather, the crucial question is whether the worker is working at an artificially low wage due to suffering unjust oppression – such as having his or her land stolen, or being unjustly barred in some other way from owning his or her rightful means of subsistence and production. We point out that Marx implicitly argued this. This is a new theoretical clarification in the literature. Secondly, we clarify that Marx thought that wage labourers in his case study countries suffered the oppression of being unjustly barred from ownership of the means of subsistence and production. However, we also point out that for this argument to work, he would have needed to outline a theory of how to address injustice in holdings (such as the Lockean Law of restitution). He did not outline such a theory, so his implicit argument that historical land theft and monopoly created a situation of unjust oppression for the nineteenth century wage labourers he discussed, remained incomplete.

We then suggest that Marx's argument that wage labour relationships can be said to be exploitative when labourers are unjustly barred from owning property, applies to the contemporary UK. We explain that in the UK, according to the Lockean law of restitution, workers are unjustly barred from owning their own means of subsistence and production. This is because – as discussed in Chapter 4 – all property in the UK should be redistributed in an egalitarian manner according to the Lockean law of restitution. If this occurred, then ownership of the means of subsistence and production would be widely dispersed and there would no longer be a class of propertyless proletarians. Capitalist wage labour relationships as currently known would not exist and capitalist employers would not gain surplus value from employees – or at least nowhere near as much as they do now. Following precedence from the English law of restitution, we can say that wage labourers are currently paid an undervalue rate and we can presume in lieu of further evidence that the surplus value capitalist employers receive is exploitative, and should be owed in restitution.

After arguing that wage labour relationships in the UK are exploitative, we then explain that the argument does not depend upon accepting the labour theory of value. Even if we disregard the labour theory of value, the question remains why labourers do not get the full income generated

³⁰⁵ Remember, unless otherwise stated, when we use the term “exploitation”, unless prefixed with “Marxian”, we are referring to Lockean exploitation.

by the products they produce. That labourers negotiate with capital from an artificially weak bargaining position still works as an explanation.

5.2 Marx, surplus value, and primitive accumulation

In *Capital*, Marx presented a number of arguments pertaining to the capitalist wage labour system and to the way this system is interpreted and presented by bourgeois political economists.³⁰⁶ Whilst much of the book focused on what he considered the harmful consequences of this system (terrible working conditions, inequality, poverty, etc.), the book also implicitly contained perhaps a more powerful argument – that the surplus value yielded by the capitalist wage labour relationship is illegitimate on Lockean grounds. This argument has previously remained implicit or has been developed in what we suggest is an incomplete manner. Let us look at the argument.

Following Adam Smith and David Ricardo, Marx adhered to the so-called labour theory of value. Here it is important to bear in mind what a theory of value was supposed to do according to classical economists. It was supposed to explain the equilibrium price towards which commodities gravitate in a competitive market.³⁰⁷ According to the theory, supply and demand have short term impacts on price, but high prices should encourage more producers to enter the market, thus reducing prices, whilst low prices should have the obverse effect. Thus prices should gravitate towards an equilibrium, which the classical economists referred to as “value”. This value should be equal to the cost of production, with the only real cost of production being the exertion of labour.³⁰⁸ Adam Smith expressed the idea as follows:

The value of any commodity... to the person who possesses it, and who means not to use or consume it himself, but to exchange it for other commodities, is equal to the quantity of labour which it enables him to purchase or command. Labour, therefore, is the real measure of the exchangeable value of all commodities. The real price of everything, what everything really costs to the man who wants to acquire it, is the toil and trouble of acquiring it. What everything is really worth to the man who has acquired it, and who wants

³⁰⁶ Marx, *Capital*.

³⁰⁷ Meek, Ronald, *Studies in the Labour Theory of Value*, Lawrence and Wishart, London, 1973, p. 11; Carson, *Studies*. As noted by Polanyi, the originator of the labour theory, Adam Smith, assumed that humans naturally organise themselves into competitive market societies due to a natural propensity to engage in barter, truck and exchange. However, drawing upon anthropological research, Polanyi showed that this is not the case. Rather, market societies have been imposed by state violence. Polanyi, Karl, *The Great Transformation: The Political and Economic Origins of Our Time*, Boston, Massachusetts: Beacon Press, 1944. More recently, David Graeber has made a similar argument to Polanyi. Graeber, David, *Debt: The First 5,000 Years*, New York: Melville House, 2011.

³⁰⁸ Carson, *Studies*.

to dispose of it or exchange it for something else, is the toil and trouble which it can save to himself, and which it can impose upon other people. What is bought with money or with goods is purchased by labour as much as what we acquire by the toil of our own body. That money or those goods indeed save us this toil. They contain the value of a certain quantity of labour which we exchange for what is supposed at the time to contain the value of an equal quantity. Labour was the first price, the original purchase-money that was paid for all things. It was not by gold or by silver, but by labour, that all the wealth of the world was originally purchased; and its value, to those who possess it, and who want to exchange it for some new productions, is precisely equal to the quantity of labour which it can enable them to purchase or command.³⁰⁹

David Ricardo later expanded on this idea in his book *Principles of Political Economy and Taxation*. He opened the book with the statement: "The value of a commodity, or the quantity of any other commodity for which it will exchange, depends on the relative quantity of labour which is necessary for its production, and not as the greater or less compensation which is paid for that labour."³¹⁰ Carson has explained that, "From this principle, it followed that income accruing to the owners of land and capital was a deduction from this exchange-value created by labor, and that wages varied inversely with profit".³¹¹ Ricardo wrote:

If the corn is to be divided between the farmer and the labourer, the larger the proportion that is given to the latter, the less will remain for the former. So if cloth or cotton goods be divided between the workman and his employer, the larger the proportion given to the former, the less remains for the latter.³¹²

Below we will explain that our argument does not depend on accepting the labour theory of value, but first let us look at the implications drawn from the theory with regards to wage labour exploitation. Marx was far from the first socialist writer to see radical implications in this theory.³¹³ The early British industrial working-class movement drew on Ricardo, with a variety of so-called Ricardian socialists taking inspiration from his conclusions. One of these, Thomas Hodgskin, wrote in 1822 in *Labour Defended against the Claims of Capital*, "Wages vary inversely as profits, or wages rise when profits fall, and profits rise when wages fall; and it is therefore profits, or the capitalist's share of the national produce, which is opposed to wages, or the share

³⁰⁹ Smith, Adam, *op cit*, p. 28.

³¹⁰ Ricardo, cited in Carson, *Studies*, p. 14.

³¹¹ Carson, *Ibid*.

³¹² Ricardo, cited in Carson, *Studies*, p. 14.

³¹³ For discussion of the Ricardian socialists see Carson, *Studies*.

of the labourer."³¹⁴ Hodgskin had argued that labourers create all commodities and deserve to own them all. He believed that some form of unequal exchange lay at the root cause of the profits capitalists made. He did not explicitly explain what lay at the root of this unequal exchange but implied it was the anti-union and anti-strike laws operating at the time. He argued against the laws which made unions and strikes illegal. If striking was legal, Hodgskin believed workers would strike to raise wages towards the value of what they produced, leaving no profits for capitalists. If capitalists wanted to stay with their companies they could stay as workers – they would not continue to receive capital gains. In response to labour organising, capitalists could disinvest or take their paper money overseas in capital flight. However, if they did this, they would not be able to take most capital goods (machinery and stock) overseas, nor the workforce – and in this scenario workers could and should take over the workplaces and continue production.³¹⁵

Marx, in turn, was inspired by the Ricardian socialist interpretation of classical political economy. Engels explained:

Insofar as modern socialism, no matter of what tendency, starts out from bourgeois political economy, it almost without exception takes up the Ricardian theory of value. The two propositions which Ricardo proclaimed in 1817 right at the beginning of his *Principles*, 1) that the value of any commodity is purely and solely determined by the quantity of labour required for its production, and 2) that the product of the entire social labour is divided among the three classes: landowners (rent), capitalists (profit), and workers (wages)--these two propositions had ever since 1821 been utilized in England for socialist conclusions, and in part with such pointedness and resolution that this literature, which had then almost been forgotten and was to a large extent only rediscovered by Marx, remained unsurpassed until the appearance of *Capital*...³¹⁶

In his book *Capital*, Marx began, following Ricardo, by explaining that the exchange value of commodities in a market derives from the labour required to produce them. However, also following Ricardo, he noted that labourers do not get paid according to the value of what they

³¹⁴ Hodgskin cited in Carson, *Studies*, p. 15. For original see Hodgskin, Thomas, *Labour Defended against the Claims of Capital: Or the Unproductiveness of Capital proved with Reference to the Present Combinations amongst Journeymen*, with an introduction by G. D. H. Cole, London: The Labour Publishing Company Ltd., 1922, pp. 27-8.

³¹⁵ *Ibid.*

³¹⁶ Engels cited in Carson, *Studies*, for original see Engels, Frederick, 'Preface to the First German Edition,' in *The Poverty of Philosophy: Answer to the Philosophy of Poverty by M. Proudhon*, by Karl Marx, Paris and Brussels: Progress Publishers, 1955, translated from the French by the Institute of Marxism Leninism, 1955, online at Marx/Engels Internet Archive, available at: <https://www.marxists.org/archive/marx/works/1847/poverty-philosophy/pre-1885.htm> (accessed 03 Sep 2017).

produce. Rather, labourers earn a wage. Ricardo had explained that labour is a commodity like any other and the price labourers receive for that commodity as a wage equals not the value of what that labour produces, but the amount required for maintaining labourers and their families at a socially acceptable standard of living so that they can keep labouring and reproduce the labouring class. Thus the value of labour correlates to the value of food, clothing and other socially required necessities for workers and their families.³¹⁷ Marx rephrased this description of the wage labour relationship, saying that it is more correct to say that labourers are paid the value of their “labour-power” rather than the value of their “labour”.³¹⁸ Meanwhile, the difference between the value of what labourers are paid for their labour-power, and the value of what labourers actually produce, Marx called “surplus value” and is kept by the capitalist employer as profit.³¹⁹

One of the questions Marx was interested in, in *Capital*, was how this capitalist wage relationship came about. That is, why do wage labourers systematically accept a wage at the level of the value of their labour-power? In other words, how did labour-power become widely commodified? The surface answer for Marx was that wage labourers have no means of production of their own.³²⁰ The implication is that if they owned their own means of production labourers could either be self-sufficient producers or they could sell their own products rather than their labour-power.³²¹ However, the question remained, why is it that there is a large population of persons without their own means of production? And why do they exist alongside well-off property owners? Marx was primarily concerned with how this had happened in his main case study – England.

This question has been answered in two main ways. One answer, dating back to Locke (as we saw in Chapter 1), disregards historical evidence and explains this historical development as a natural, peaceful process. Marx summarised this story as follows:

In times long gone by there were two sorts of people; one, the diligent, intelligent, and, above all, frugal elite; the other, lazy rascals, spending their substance, and more, in riotous living... Thus it came to pass that the former sort accumulated wealth, and the latter sort had at last nothing to sell except their own skins. And from this original sin dates the poverty

³¹⁷ Ricardo, *op cit*.

³¹⁸ Marx, *Capital*, chapter 6.

³¹⁹ *Ibid*, chapter 9.

³²⁰ *Ibid*.

³²¹ See Carson, *Studies*, on this point too.

of the great majority that, despite all its labour, has up to now nothing to sell but itself, and the wealth of the few that increases constantly although they have long ceased to work.³²²

Marx rejected this explanation as “insipid childishness” which was merely “preached to us in the defence of property”. The actual historical record showed that “conquest, enslavement, robbery, murder, briefly force, play the great part.”³²³ This primitive accumulation, or divorcing of the labourers from the means of production, in contrast to the fairy-tale of the bourgeois political economists and historians, consisted of peasants being violently expropriated. Marx continued, “And the history of this, their expropriation, is written in the annals of mankind in letters of blood and fire.”³²⁴ Marx then went on to explain, with detailed historical documentation, the process of expropriation of the peasants in England since the last third of the fifteenth century. We briefly summarise his argument here and then come back to the historical argument in the next chapter.

Drawing upon the work of previous historians, Marx argued that serfdom had “practically disappeared” by the end of the fourteenth century.³²⁵ Whatever the feudal titles were, the vast majority of the population were effectively free proprietors, paying a nominal quitrent. Wage labour was carried out by peasants in their leisure time on large estates or by a tiny number of wage labourers that were themselves like free-holding peasants, having arable land of four or more acres. Both of these groups also had usufruct access to the common for grazing cattle and finding fire wood and timber.³²⁶ However, in the late fifteenth century began a period of expropriation of peasant land and commons by feudal lords, converting arable land into sheep pasture to fuel the wool export industry. During the sixteenth century Reformation came a new wave of expropriation as the large estates of the Catholic Church were expropriated by royal favourites or sold to speculators – leading to tenants being driven out or suffering rent increases. After the Stuart restoration in the seventeenth century feudal titles were converted into the modern right of private property, removing customary rights of tenants. With the Glorious Revolution came a further wave of ruling class land theft and the final stage of annihilating the independent peasantry was the parliamentary enclosure of the commons,

³²² Marx, *Capital*, p. 359.

³²³ *Ibid.*

³²⁴ *Ibid*, p. 360.

³²⁵ *Ibid*, p. 361.

³²⁶ As we discuss in the next chapter, Marx’s summary of medieval times appears to have been somewhat idyllic.

beginning in the eighteenth century.³²⁷ Marx summarised this overall historical enclosure process as follows:

The spoliation of the church's property, the fraudulent alienation of the State domains, the robbery of the common lands, the usurpation of feudal and clan property, and its transformation into modern private property under circumstances of reckless terrorism, were just so many idyllic methods of primitive accumulation. They conquered the field for capitalistic agriculture, made the soil part and parcel of capital, and created for the town industries the necessary supply of a "free" and outlawed proletariat.³²⁸

It should also be noted that Marx did not only draw attention to land theft. In the accumulation of capital, Marx also drew attention to a number of other actions which are criminal under Lockeanism. He wrote:

The discovery of gold and silver in America, the extirpation, enslavement and entombment in mines of the aboriginal population, the beginning of the conquest and looting of the East Indies, the turning of Africa into a warren for the commercial hunting of black-skins, signalled the rosy dawn of the era of capitalist production.³²⁹

He added: "Colonial system, public debts, heavy taxes, protection, commercial wars, &c., these children of the true manufacturing period, increase gigantically during the infancy of Modern Industry."³³⁰ However, his main focus was on the history of land theft. The implicit argument in his discussion of English history was that a class of wage labourers only existed due to land monopoly. Or, put another way, the employers of wage labour only had wage labourers to gain surplus value from, due to the land monopoly. Marx somewhat clarified this – although in his opaque writing style – in the final chapter of *Capital*, in which he discussed wage labour in the colonies. We now turn to a discussion of his attempt to make this clarification.

5.3 Marx, the colonies, and Lockean exploitation

In the last chapter of *Capital*, Marx implicitly argued that if workers were not victims of land monopoly, wage labour would not exist, or if it did exist, it would likely not be profitable for employers, as labourers could push up their wages. He opens the chapter with the statement that, "Political economy confuses on principle two very different kinds of private property, of which one rests on the producers' own labour, the other on the employment of the labour of

³²⁷ *Ibid.*

³²⁸ *Ibid*, p. 366.

³²⁹ *Ibid*, p. 376.

³³⁰ *Ibid*, p. 380.

others. It forgets that the latter not only is the direct antithesis of the former, but absolutely grows on its tomb only.”³³¹ Here, in his own opaque manner, Marx is arguing that capital (property which can be used to extract surplus value) is incompatible with a society of independent producers that own land through labouring on it. There must be a class of landless workers for the capitalist wage labour system to function.

Marx also tried to provide empirical evidence for this claim by way of looking at the process of colonisation. Marx recounts a story, told by a colonist politician called E.G. Wakefield, about another colonist called Mr Peel. Mr Peel, it is explained, went to Australia with “means of subsistence and of production to the amount of £50,000” as well as 300 working class people including men, women and children.³³² E.G. Wakefield explained that upon arriving in Australia, “Mr Peel was left without a servant to make his bed or fetch him water from the river”.³³³ This story was representative of a wider process in the colonies, E.G. Wakefield explained. “If all members of the society are supposed to possess equal portions of capital... no man would have a motive for accumulating more capital than he could use with his own hands. This is to some extent the case in new American settlements, where a passion for owning land prevents the existence of a class of labourers for hire”.³³⁴

Marx explained that Wakefield was wrong to use the word “capital” in this manner. Marx rejected the notion that capital could exist in a society of independent producers that owned their own means of subsistence.³³⁵ For Marx, “capital” is a unique form of property, as the problems the colonists faced showed. Marx said, “We know that the means of production and subsistence, while they remain the property of the immediate producer, are not capital. They become capital only under circumstances in which they serve at the same time as means of exploitation and subjection of the labourer.”³³⁶ Marx explained that the capitalist mode of production was difficult in the colonies because, “the bulk of the soil is still public property, and every settler on it therefore can turn part of it into his private property and individual means of production, without hindering the later settlers in the same operation.”³³⁷ So nobody would do wage labour for capitalists. Indeed, Wakefield had complained, “Where land is very cheap and

³³¹ *Ibid*, p. 385.

³³² E.G. Wakefield, quoted in Marx, *Capital*, p. 385. For original see: Wakefield, Edward Gibbon, *England and America. A comparison of the social and political state of both nations*, Volume 2, New York: Harper and Brothers, 1862, p. 33.

³³³ Wakefield in Marx, *Capital*, p. 385, or vol. ii. p. 33 in Wakefield.

³³⁴ Wakefield in Marx, *Capital*, p. 386 or Wakefield, *England and America*, vol. i, p. 17.

³³⁵ Marx, *Capital*, Chapter 33.

³³⁶ Marx, *Capital*, pp. 385-6.

³³⁷ Marx, *Capital*, p. 386.

all men are free, where everyone who so pleases can easily obtain a piece of land for himself, not only is labour very dear, as respects the labourer's share of the produce, but the difficulty is to obtain combined labour at any price."³³⁸

The problem for the American colonists was similar to that in Australia. Labourers would disappear from the capitalists and become independent peasants or artisans. Wakefield explained that most ex-labourers did not only engage in farming but also in some form of cottage manufacturing:

No part of the population of America is exclusively agricultural, excepting slaves and their employers who combine capital and labour in particular works. Free Americans, who cultivate the soil, follow many other occupations. Some portion of the furniture and tools which they use is commonly made by themselves. They frequently build their own houses, and carry to market, at whatever distance, the produce of their own industry. They are spinners and weavers; they make soap and candles, as well as, in many cases, shoes and clothes for their own use. In America the cultivation of land is often the secondary pursuit of a blacksmith, a miller or a shopkeeper.³³⁹

The suggestion of E.G. Wakefield, therefore was government pre-emption of the land, to put up its price so high, "as to prevent the labourers from becoming independent landowners until others had followed to take their place."³⁴⁰ In fact, Marx noted, what happened in the United States was slightly different to Wakefield's suggestion. As we discussed in Chapter 1, private speculators took much of the land in the country. Furthermore, immigration into the United States from Europe threw "men on the labour-market there more rapidly than the wave of emigration westwards [could] wash them away."³⁴¹ In addition, taxes were imposed on labourers, artificially increasing their need for money. Nevertheless, Marx explained in the concluding paragraph of *Capital* that Wakefield had discovered the "secret" of capital, "that the capitalist mode of production and accumulation, and therefore capitalist private property, have for their fundamental condition the annihilation of self-earned private property; in other words, the expropriation of the labourer".³⁴² We can see, therefore, that for Marx, property only became capital (i.e. property which can be used to extract surplus value) in his case study countries once labourers were unjustly (in Lockean terms) deprived of the means of independent subsistence and production.

³³⁸ Wakefield in Marx, *Capital*, p. 386, or Wakefield, *England and America*, vol. i. p. 247.

³³⁹ Wakefield in Marx, *Capital*, p. 387, or Wakefield, *England and America*, vol. i, pp. 21-22.

³⁴⁰ Wakefield in Marx, *Capital*, p. 388, or Wakefield, *England and America*, vol. ii, p. 45.

³⁴¹ Marx, *Capital*, p. 389.

³⁴² *Ibid.*

There have been two types of criticisms of Marx's argument. One is that the labour theory of value that Marx used as the basis of his theory is incorrect. The second is that Marx's historical analysis is problematic. We respond to criticisms of the use of the labour theory of value later in this chapter. We also discuss the relevant historical debates around proletarianisation in Chapter 6. However, first we clarify the significance of Marx's implicit Lockean exploitation argument and look at how it can be applied to the contemporary UK.

5.6 Clarifying the significance of monopoly ownership

According to the Lockean law of exploitation, wage labour relationships are exploitative if the wage labourers are in an artificially weak bargaining position due to suffering unjust oppression. The crucial question is not whether or not the capitalist owns his or her capital justly or not. It is whether the wage labourer is being unjustly barred from ownership (or possession) over his or her means of subsistence and production. Whether the capitalist justly owns his or her capital is not necessarily relevant. To see this, we can imagine a society in which all ownership titles are legitimate but there is a pool of landless proletarians. Then a capitalist steals a piece of land from a legitimate owner, and turns it into a capitalist farm which employs wage labourers. If the previous legitimate owner had kept the land as his or her own private nature reserve, and had employed no wage labourers, then we can imagine that the capitalist land thief had actually *increased* the bargaining power of the workers in that society by increasing the number of jobs available. The capitalist's income would be unjust, and owed in restitution to the victim of land theft, but it is not clear that the capitalist would be exploiting the wage labourers, as the labourers could not be said to have been in an artificially weak bargaining position due to oppression. They would actually be in an artificially *strong* bargaining position due to the capitalist's oppression of the legitimate land owner. If justice were done and the capitalist gave the land back to the legitimate landowner or his or her heirs (assuming some such person could be found), the bargaining position of the labourers would be even weaker. This example hopefully shows that wage labour exploitation takes place when labourers are unjustly barred from owning their own means of subsistence and production, and not necessarily when the capitalist they work for owns his or her capital unjustly.

Therefore, when it comes to discussing exploitation, the primary significance of the historical expropriation of peasants in our actual world is not that those that did the expropriating or their descendants gain illegitimate incomes by employing wage labourers to work on unjustly held capital. It is that capitalist employers (i.e. employers that extract surplus value from their

workers) are exploiting wage labourers who are at an artificially weak bargaining position due to land monopoly, rooted in historical injustice. Failing to understand this leads to incorrect conclusions about the legitimacy of wage labour relationships. Notably, there is confusion about the possibility of what Cohen calls “cleanly generated capitalist relationships”.³⁴³ Cohen notes that Marx’s historical discussion works as a self-ownership-based critique of capitalist relationships that are a result of historical violence or “dirty histories”.³⁴⁴ However, Cohen claims that cleanly-generated capitalist relationships are immune to this critique. Cohen describes cleanly generated capitalist relationships as follows:

In a cleanly generated capitalist relationship there is, as there always is in a capitalist relationship, a capital-lacking worker on one side and a capital-endowed capitalist on the other, but the relationship is cleanly generated in that here the differential endowment is the upshot of a history which begins with equal capital endowment in a context of self-ownership and which reaches its capitalist stage as a result of no force or fraud but of the greater frugality and/or talent of those who come to have all the capital.³⁴⁵

Cohen is correct here if we are speaking in abstract terms. However, how far cleanly generated capitalist relationships exist in our actual world is far from clear. Yet Cohen simply asserts that cleanly generated capitalist relationships represent a significant challenge to Marx’s argument in our actual world. Cohen’s explanation of this challenge is as follows: “[T]here is enough cleanliness in actually existing capitalism to discommode a critique of it which rests on the bourgeois self-ownership principle. (Banks will advance capital to people who are manifestly endowed with entrepreneurial talent even when they can put up only modest collateral.)”³⁴⁶ This one phrase about banks is the extent of Cohen’s explanation of the challenge posed by cleanly generated capitalism in our actual world.

Cohen is suggesting that if a working class person takes out a bank loan and begins a business, then the capitalist wage relationships which emerge are not unjust. Let us set aside the issue of whether the money loaned from the bank is “clean” or not. We suggest Cohen’s claim misses the key issue Marx pointed to with regards to exploitation. The question is whether our talented entrepreneur will be employing wage labour. If he or she will be, then if the wage labourer is a victim of continuing land monopoly – or other forms of monopoly ownership over the means of subsistence and production – and the reason the wage labourer accepts the job with the

³⁴³ Cohen, *Self-Ownership*, p. 161.

³⁴⁴ *Ibid.*

³⁴⁵ *Ibid.*

³⁴⁶ *Ibid*, p. 163.

capitalist employer is this illegitimate monopoly, then the wage relationship, insofar as it is profitable for the employer, is illegitimately exploitative and usurious. As we discussed in Chapter 3, the capitalist would be using the artificially weak bargaining position of the proletariat to gain a benefit from that proletariat.

The “cleanly-generated capitalist relationships” claim seems to be somewhat pervasive. John E. Roemer, a leading theorist on exploitation, including Marxist exploitation³⁴⁷ (not the Lockean exploitation we are discussing), has made a similar argument. He acknowledged that much capital accumulation has historically occurred through “robbery, plunder, and enclosure”.³⁴⁸ However, he has added the following:

[I]t must be admitted, contra Marx, that there are many instances of capital accumulation through hard work or inventiveness, and it is not obvious (at least from Marx’s arguments) why the hiring of workers to labor on this honestly accumulated capital, and their consequent exploitation, should be considered an instance of injustice. We have no argument from Marx that the existence of [Marxian] exploitation and profits is *as such* condemnable: and it is noteworthy that Marx was sensitive to this problem, for he spent many pages of *Capital* arguing that the accumulation of capital came about through robbery of one form or another, rather than honest hard work or ingenuity.³⁴⁹

Whist Roemer is correct that Marx never provided an argument that Marxian exploitation is *as such* unjust, Marx did implicitly argue that where wage labourers are in an artificially weak bargaining position due to being unjustly barred from ownership of the means of subsistence and production, that capitalist wage relationships can be considered unjustly exploitative on Lockean grounds. However, perhaps his opaque writing style made the argument unclear. Furthermore, as we discuss below, Marx left the argument somewhat incomplete (and Marx may not have clearly recognised his own implicit argument).³⁵⁰

³⁴⁷ Roemer, John, E., *A General Theory of Exploitation and Class*, Cambridge, Massachusetts: Harvard University Press, 1982.

³⁴⁸ Roemer, John, ‘Socialism revised’, *Philosophy & Public Affairs* 45, no. 3, 2017, pp. 261-315, p. 272.

³⁴⁹ *Ibid*, pp. 272-73.

³⁵⁰ As Geras has discussed, Marx attempted to present his ideas in morally neutral terms. However, Marx simultaneously seems to have held to an anti-Lockean theory of justice in holdings similar to mutualism. See, Geras, Norman, ‘The Controversy about Marx and Justice’, in *Marxist Theory*, ed. A. Callinicos, Oxford: Oxford University Press, 1989. Marx’s near mutualist leanings can be seen in the following comment in his *Capital Volume III* discussion of land prices: “From the standpoint of a higher socioeconomic formation, the private property of particular individuals in the globe will appear just as absurd as the private property of one man in other men. Even an entire society, a nation, or all simultaneously existing societies taken together, are not the owners of the globe. They are simply its possessors, its beneficiaries, and have to bequeath it in an improved state to succeeding generations, as *boni paires familias*.” (Marx, Karl, *Capital: A Critique of Political Economy, Volume III, The Process of Capitalist Production as a Whole*, Ed. Friedrich Engels, New York: International Publishers, 1894, p. 567.)

Roemer talks about “honestly accumulated capital”. Yet, as we noted above, Marx argued in *Capital* that means of production only become “capital” when workers have no alternative but to work for the owners of those means of production. When Wakefield the colonist proposed charging a government fee for virgin land to the west of the American colonies, this would have turned the east coast land into capital, as it would create a situation where labourers were not free to become independent producers. However, whilst land to the west was freely available for settlement, the east coast property was not capital as it could not be used to extract surplus value. Wage labourers could choose not to work for the property owners. Marx’s implicit argument is that if there was a tax on virgin land (i.e. if land was illegitimately monopolised), *even if* the east coast land holders had gained their land through legitimate homesteading,³⁵¹ they still would have been benefitting from the land monopoly, as that monopoly would put labourers at an artificially weak bargaining position. Thus whilst the property (or means of production) that the east coast land owners owned may hypothetically have been “honestly accumulated”, once force is used, even by a third party (e.g. the government), to influence workers to work on that property at an artificially cheap wage, the surplus value extracted from the labourer should be considered exploitative on Lockean grounds. By extension, all wage labour relationships can be considered exploitative, where the wage labourer is put in an artificially weak bargaining position due to being the victim of monopoly.

In *Mutualist Political Economy*, Carson makes a similar point to Marx’s implicit argument. Carson reviews Marx’s history of expropriation in England and also draws on further secondary historical literature in support of Marx’s historical claims. After emphasising the continuity of the landed class and the industrial capitalist class, and the dependence of the early industrial capitalists upon the old ruling class, Carson makes the following important observation:

But whatever their class origins, the industrial capitalists of the nineteenth century benefited massively from the previous coercion of the landed and mercantilist oligarchies. The prejudicial terms on which the British laboring classes sold their labor were set by the expropriation of their land, and by authoritarian social controls like the Laws of Settlement and the Combination Law.³⁵²

Marx seems to have held this view of justice despite rebuking Proudhon for promoting a mutualist notion of justice in holdings (see Marx, *Capital*, Chapter 2, footnote 2, p. 64). We can speculate that a combination of aiming to present his ideas in a morally neutral manner, and his bias towards a near mutualist notion of justice in holdings, influenced Marx to not acknowledge the implicit Lockean argument he was making.

³⁵¹ In reality, the genocidal violence through which much east coast land was taken must be acknowledged. See Stannard, *op cit*.

³⁵² Carson, *Studies*, p. 183.

This is extremely close to the Lockean theory of exploitation which we are attempting to clarify. Carson here is implying that the history of land monopoly puts contemporary wage labourers in an artificially weak bargaining position. However, perhaps because he was writing from a mutualist perspective, he did not make this argument explicit. Note also that to make such an argument explicit, Carson would have had to explain, in Lockean terms, how *historical* expropriation of their ancestors created a situation of *contemporary* injustice in holdings for the nineteenth century labourers. As we have discussed, and discuss later in this section, making the link between historical injustice and contemporary injustice requires one to be explicit about one's approach to addressing injustice in holdings. Like Marx, Carson did not do this.

Whilst Carson at points seems to have been extremely close to clarifying Marx's implicit Lockean exploitation argument, even he seems to have fallen into the trap of accepting the "cleanly generated capitalist relationships" theory. In response to Carson's book, Walter Block, a reviewer, raised a challenge. Carson responded as follows:

Block presents a counter-challenge: what if the employer is a former employee, who saved up a labor-fund from his own wages, and then his fellow employees asked him to bear the risk of a new enterprise? Would I consider this exploitation? No, aside from the caveat that the rate of return he demanded would be influenced by the state's market entry barriers for banking. And if my aunt had testicles, I'd consider her my uncle!³⁵³

Setting aside the issue of banking interest,³⁵⁴ we see that Carson believes a worker that works their way up and is asked to start a new business is not exploiting those that want to be employed by him. We suggest that this is an incorrect response. If the employer made profit from a wage labourer, it *would* be exploitation to the extent the wage labourers that asked him to employ them did so due to having their options artificially restricted by criminal monopolies. Asking a fellow employee to employ you in a new enterprise is not very different from the regular proletarian process of applying for jobs. In both cases, if the worker is only working for the employer or is working at an artificially low wage due to having their choices artificially restricted, that the employer did not cause the wage labourer to have his or her choices artificially restricted does not change the fact that the employer benefits from the latter's choice restriction, as Carson previously pointed out in *Mutualist Political Economy*.

³⁵³ Carson, *Carson's Rejoinders*.

³⁵⁴ Carson argues that banking interest rates are artificially high due to monopoly regulations which exclude competitors from creating money. However, we argue below (footnote 382) that the banking monopoly actually allows banks to charge artificially low interest rates.

Illustration

To clarify the argument set out in the above paragraph, let us look at a simple illustration. Let us imagine that Smith is born into an agricultural society without owning his own means of production. There is unjustly held land owned by A, B and C which Smith would homestead and farm as an independent peasant if allowed to (A, B, and C are land monopolists and owe the land in restitution. Smith would be one of the beneficiaries of restitution.). However, A, B, and C or their agents violently and unjustly prevent Smith homesteading their unjustly held land. Smith therefore applies for a job with Thatcher, who has acquired some capital through just means. Thatcher gives Smith a job producing widgets. Smith must take 10 shillings worth of feedstock and fashion them into 25 shillings worth of widgets per day. That is, Smith must add 15 shillings worth of value to the materials with his labour. For this Smith is paid 5 shillings per day. Let us imagine that apart from the widget materials and the wage for Smith, Thatcher has no other expenses in producing the widgets, so gets 10 shillings per day profit. Meanwhile Smith uses his 5 shillings per day wage to pay for the necessities of life. Smith would prefer to still own his farm where he could produce 10 shillings worth of value per day with ease. If he worked extra hard and produced 15 shillings worth of value in a day, as he is doing for Thatcher, he would keep the whole 15 shillings.

What is the Lockean injustice in the wage labour relationship here? To answer this let us recall that under Lockeanism, the only two legitimate ways to acquire property are to either homestead unowned, unused resources, or to receive goods via voluntary transfer. In this scenario, the “good” Thatcher is receiving is completed widgets from Smith. Another way of saying this is that Thatcher is receiving 15 shillings worth of value from Smith’s labour, minus 5 shillings in wages, which means in sum 10 shillings surplus value. We will simplify this all by saying that Thatcher receives surplus value from Smith. Does Smith voluntarily transfer this surplus value to Thatcher? Ostensibly, yes. Smith is the one that asks Thatcher for the job. Thatcher does not force Smith into the job. However, we can see that Smith has been pressured by the violence of A, B and C into looking for a job. If it were not for the violence of A, B, and C, Smith would not be working for Thatcher. Thus his choice is artificially restricted.

Which restitutionary requirements emerge here? We suggest that when a benefit is transferred to a recipient by a victim under circumstances of violently restricted choice, the benefit does not justly belong to the beneficiary. We suggest that Thatcher is not committing violence but is receiving a benefit – surplus value – given under duress. Smith would not give Thatcher the surplus value were it not for the fact that he would die (due to A, B, and C’s violence) without

providing someone with labour. Therefore, Thatcher's surplus value (and assets deriving from such) has not been gained in line with Lockean voluntary transfer. Rather, it has been gained because of injustice, and is thus unjustly derived and illegitimately held. If Smith made 10 shillings surplus value for Thatcher, she owes him 10 shillings. If Smith and his heirs have disappeared, then the money should be divided equally amongst all members of society, for reasons highlighted in Chapter 3.

It may seem harsh that Thatcher should have to pay restitution. Did she not kindly give the use of her means of production to Smith? It can be seen this way. It can also be seen another way: she also exploited Smith's oppressed position (being unjustly prevented from homesteading land) to make profit out of him. Also, Thatcher has paid an undervalue price for Smith's labour-power. According to these criteria, she has acted unjustly according to the Lockean law of restitution. Had she wanted to be kind and help Smith she could have employed him without earning surplus value for herself.

Let us also clarify a further point on the land monopolists – A, B, and C. It is not the case that A, B, and C owe Smith restitution for the wage labour provided to Thatcher. It is Thatcher that reaped the benefit, so she should have to pay restitution. However, the unjust land that A, B, and C own are owed in restitution. Furthermore, A, B, and C may have to pay additional compensation for loss of earnings to Smith. But this brings us into the topic of compensation which is beyond the scope of our discussion.

Marx's incomplete second argument

Above we clarified Marx's implicit argument that where wage labourers are in an artificially weak bargaining position due to being unjustly deprived of ownership of the means of subsistence and production, the capitalist wage relationships they enter can be considered exploitative on Lockean grounds. His second implicit argument was that all wage labourers in his case study countries – nineteenth century England and the US – were unjustly deprived of ownership of the means of subsistence and production. For reasons we have mentioned, Marx may not have seen his argument in such Lockean terms.³⁵⁵ Nevertheless, under a Lockean reading, his discussion of mass land expropriation and monopoly *prima facie* paints a picture of unjust property concentration.

However, in order to make Marx's implicit argument complete, we need to employ a suitable approach to addressing Lockean injustice in holdings – the Lockean law of restitution. This is

³⁵⁵ See section 2.13 above and footnote 350.

because according to Lockeanism, the approach one takes to addressing injustice in holdings is crucial to judging who is owed what property, and hence, who is unjustly deprived of property. Notably, as we discussed in Chapter 3, if one holds to a Rothbardian innocent homesteader approach, it is often the case that titles which derive from historical injustice can be deemed legitimate, whereas this is not the case with the Lockean law of restitution. Therefore, without employing the Lockean law of restitution, Marx's implicit argument that nineteenth century proletarians in England and the US were unjustly deprived of property – due to historical land monopoly – is left incomplete. This also leaves the implicit argument – that the wage labour relationships these proletarians entered into were exploitative on Lockean grounds – incomplete. We do not defend Marx's implicit Lockean exploitation argument – as he presented it – with regards to his case studies (although we do discuss proletarianisation in England in Chapter 6). Instead we apply his implicit, incomplete argument to our case study, the contemporary UK. That is, we ask if the surplus value capitalists receive in the contemporary UK can be considered to be the proceeds of Lockean exploitation.

5.7 Application to the contemporary UK

Above we discussed the scenario of Smith being denied land by A, B, and C, and thus being artificially pressured into working for Thatcher. However, what would be the case if Smith happened to live in the contemporary UK? We have argued that all property is unjustly held, and should go through an egalitarian restitution process. Therefore, if Smith lived in the contemporary UK he would be owed an egalitarian share of the modern means of subsistence and production. In this scenario, if capitalists and landlords maintain private concentrated ownership of the means of subsistence and production, they are violently depriving Smith of his rightful property, just as A, B, and C were in our previous example. Furthermore, if Smith works for Thatcher (even if she is the one capitalist who somehow gained her property justly), in a way which provides surplus value, we could still say that Smith is being exploited by Thatcher. This claim depends upon the assumption that if Smith and all other wage labourers were given their egalitarian share of the means of subsistence and production – i.e. if socialism were achieved – then they would not choose to work for Thatcher (or any capitalist employer) – at least in a way which provides *as much* surplus value. Rather, labourers would work in ways in which they received the full value of their labour, either as sole producers or in combination with others, depending on the type of socialist society created.³⁵⁶ Depending on the type of egalitarian property redistribution and the nature of the resulting society, it may be possible that some

³⁵⁶ We discuss the type of societies which are possible in Chapter 7 (section 3).

wage labourers would continue to work for capitalist employers such as Thatcher, but if so, it would presumably be on far more preferential terms than is currently the case, as workers would own their own means of subsistence and production, either individually or in combination with others, so there would presumably be little or no need to look for a capitalist employer as is currently the case.

It might be argued that it is possible that people would still choose to work for the capitalist employers they do, even if we lived in a society of justly distributed property, if the wage their capitalist employers offered was more than they (workers) could earn as independent producers. Therefore, this argument might go, we cannot say that all surplus value generated by existing capitalist employers should be considered to be the result of exploitation. However, we argue that it is legitimate to conclude, as a first approximation, that all surplus value extracted from wage labourers in the contemporary UK is the result of exploitation and the onus should be on defenders of capital to show that particular capitalists would have still extracted surplus value from wage labourers in a society of Lockean justice. (How defenders of capital could go about doing this is unclear to this author). We suggest that there is precedence for our approach here in English law. As we noted earlier, under English law, when a defendant pays undervalue for a product from somebody that is poor and ignorant, the presumption is that they have engaged in exploitation. To repeat: “where the defendant has transacted with somebody who is poor and ignorant, then, at least where the transaction is at a considerable undervalue, it will be presumed that the defendant had acted unconscionably and he or she will bear the burden of proving that the transaction was fair, just and reasonable.”³⁵⁷ We suggest that in a situation where labourers are made artificially poor (by being denied the property owed to them in restitution),³⁵⁸ and are paid according to the value of their labour-power rather than the value of what they produce, they are receiving a wage considerably below the free market level – i.e. undervalue. Thus, in lieu of counter-evidence, there should be a presumption that all surplus value is the result of exploitation.

Note that our argument that wage labour in the contemporary UK can be said to be exploitative is dependent upon holding to a Lockean law of restitution. If it were the case that we instead employed a Rothbardian innocent homesteader approach to injustice in holdings, many wage labourers would not be owed property in restitution.³⁵⁹ We could therefore not say that all wage

³⁵⁷ Virgo, *op cit*, p. 283.

³⁵⁸ We could also say workers have been “ignorant” of the theory of Lockean exploitation, as it has only been expressed in this dissertation.

³⁵⁹ According to the innocent homesteader approach, wage labourers can only be considered oppressed if they can identify the specific piece of land their ancestors were expropriated from, and are unjustly

labourers in the country are owed an egalitarian share of the means of production, so we could not say that all wage labourers are unjustly barred from such ownership. Thus they could not be said to be bargaining with capital from an artificially weak position. We therefore see that the Lockean law of restitution makes Marx's implicit Lockean exploitation argument applicable to the UK.

5.8 Responses to opponents of the labour theory of value

Our above argument drew on Marx's implicit argument that wage labourers provide capitalist employers with surplus value due to Lockean exploitation. In turn, Marx's argument was built upon the labour theory of value. Marx's use of the labour theory of value may appear to be a problem for our argument because the labour theory of value is somewhat controversial.³⁶⁰ However, we suggest that even if we do not accept the labour theory of value, the question remains as to why wage labourers systematically do not receive the full income generated by the goods they produce.³⁶¹ Or, to approach the question from a different direction, we can ask how capitalists, *qua capitalists*,³⁶² systematically gain profit from the goods produced by labourers. We further suggest that the answer – for the contemporary UK – remains that wage labourers are in an artificially weak bargaining position due to being unjustly deprived of ownership over the means of subsistence and production. To see this, let us look at the explanations for systematic profits on capital, provided by opponents of the labour theory of value. We firstly consider the “waiting” theory put forward by Alfred Marshall, a founder of neo-

barred from reclaiming ownership over it. Or if they are owed property for one of the reasons suggested in Chapter 3.

³⁶⁰ For a summary of the critiques, see Elster, Jon, *Making Sense of Marx*, Cambridge: Cambridge University Press, 1985, pp. 127-141. We suggest Carson has successfully defended the labour theory of value – although a version more closely associated with Adam Smith and Benjamin Tucker, rather than Ricardo and Marx. See Carson, *Studies*. In his review of Carson's work, a prominent Austrian school economist (a school traditionally opposed to the labour theory of value), Bob Murphy, has acknowledged that Carson's labour theory is largely convincing. Murphy quotes Carson as follows: “A producer will continue to bring his goods to market only if he receives a price necessary, in his subjective evaluation, to compensate him for the disutility involved in producing them. And he will be unable to charge a price greater than this necessary amount, for a very long time, if market entry is free and supply is elastic, because competitors will enter the field until price equals the disutility of producing the final increment of the commodity.” Murphy then responds: “Except for his statement that ‘price equals the disutility,’ I think most Austrians would agree with the sentiments above. If this makes them adherents to a subjective labor theory of value, so be it.” Murphy, Robert, P., ‘The Labor Theory of Value: A Critique of Carson's Studies in Mutualist Political Economy’, *Libertarian Journal*, Vol. 20, No. 1, 2006, online at: <https://c4ss.org/content/39495> (accessed: 23 Nov. 18).

³⁶¹ Cohen explained that one can reject the labour theory of value (as he did) and still consider labourers to be exploited if they do not receive the full value of the goods they produce. Cohen, G. A., ‘The Labour Theory of Value and the Concept of Exploitation’, *Philosophy and Public Affairs*, Vol. 8, No. 4, Summer, 1979, pp. 338-360; Cohen, G. A., ‘More on Exploitation and the labour theory of value’, *Inquiry: An Interdisciplinary Journal of Philosophy*, Vol. 26, No. 3, 1983, pp. 309-331.

³⁶² That is, as capitalist investors. This means disregarding any role capitalists may play in management.

classical economics. We secondly consider the claim put forward in the Austrian school of economics, that systematic profits are: (1) due to labourers having higher time preferences than capitalists, and (2) a reward for capitalist risk taking. We argue that none of these theories represent a challenge to our claim that the difference between the value of the goods produced by labourers on the one hand, and what labourers are paid in wage on the other, is due to labourers' artificially weak bargaining position.

Capitalist waiting

Alfred Marshall, a founder of the so-called neo-classical school of economics, attempted to unite the subjectivist theory of value (the idea that the value of goods is solely created by subjective demand) with the idea that value is regulated by the cost of production. He argued that in the short run, prices are determined by subjective demand but that in the long run prices tend towards the cost of production. This is extremely similar to Ricardo's labour theory.³⁶³ However, Marshall made one significant change. He claimed that the "waiting" of the capitalist to consume his or her wealth (or "abstinence") should also be considered a real cost of production alongside labour.³⁶⁴ In making this claim Marshall was following on from J S Mill, who argued that profits are the reward of investing and abstaining from consumption in the same way that wages are the reward of labour. Marshall explained that the cost of capital was the return necessary to induce investment. Therefore for Marshall, the cost of production (hence exchange value), came from the combination of labour and waiting.³⁶⁵ This allowed Marshall to defend profit as a free market phenomenon whilst accepting cost as the long term basis of price. However, the question arises how far capitalists would gain from waiting to consume if there was not a class of landless proletarians to work on their capital. Revenues derived as a reward for waiting are gained unjustly if the wage labourer would not have created those revenues for the capitalist, were the wage labourer not suffering from unjust oppression. Thus the proponents of the waiting argument for capitalist profits still have to deal with the question of whether labourers are in an artificially weak bargaining position.

³⁶³ "It is the cost of production which must ultimately regulate the price of commodities, and not, as has been so often said, the proportion between the supply and demand: the proportion between the supply and demand may, indeed, for a time, affect the market value of a commodity, until it is supplied in a greater or less abundance, according as the demand may have increased or diminished; but this effect will be only of temporary duration." Ricardo, *op cit*, Chapter 30, section 1.

³⁶⁴ Marshall, Alfred. *Principles of Economics*, London, Macmillan and Co., Ltd, 1920, Library of Economics and Liberty [Online], <http://www.econlib.org/library/Marshall/marP48.html> (accessed: 02 Sep 2017), VI. VI. 3.

³⁶⁵ *Ibid*, see also Carson, *Studies*.

Introducing time preference and risk

The third approach to value is that it is entirely subjective. In *Ethics*, using a simple illustration, Rothbard discusses the two theories of profit put forward by subjectivist economists. These are time preference and risk.³⁶⁶ Rothbard asks us to imagine that a lumber seller, Jones, sells some logs to Polk, who will transport them to Johnson. Polk hires the labour services of X, Y and Z to transport the logs to Johnson. Rothbard asks us to imagine that Polk bought the logs from Jones for 40 ounces of gold, pays X, Y and Z 20 ounces of gold each, and sells the logs to Johnson for 110 ounces of gold. Polk thus gains 10 ounces of gold in profit. Rothbard then asks why X, Y and Z did not buy the logs from Jones themselves, and then sell them to Johnson for 110, thus making an extra 10 ounces of gold between them. He answers as follows:

Because (a) they didn't have the *capital*; in short, they hadn't saved up the requisite money, by reducing their previous consumption sufficiently below their income to accumulate the 40 ounces; and/or (b) they wanted money payment *while they worked*, and were not willing to wait for the number of months it took for the logs to be shipped and sold; and/or (c) they were unwilling to be saddled with the *risk* that the logs might indeed not be saleable for 110 ounces. Thus the indispensable and enormously important function of Polk, the *capitalist*, in our example the market economy, is to save the laborers from the necessity of restricting their consumption and thus saving up capital themselves, and from waiting for their pay until the product would (hopefully) be sold at a profit further down the chain of production... Furthermore, the capitalist, in his capacity as forecaster or *entrepreneur*, saves the laborer from the risk that the product might not be sold at a profit, or that he might even suffer losses.³⁶⁷

Here Rothbard is explaining the two sources of capitalist income that he laid out in more detail in his economic theory book, *Man, Economy, and State*.³⁶⁸ These are: firstly, interest due to time preference (Rothbard's (a) and (b) answers in the above quotation are both examples of time preference), and secondly, entrepreneurial profit gained due to engaging in risky investments. Let us look at these in turn.

³⁶⁶ Technically, in the Austrian school, interest is said to come from time preference, whilst "profit" refers only to the gains from entrepreneurial risk.

³⁶⁷ Rothbard, *Ethics*, p. 39.

³⁶⁸ Rothbard, *Man, Economy and State*.

Time preference

The Austrian school of economics views interest as emanating from “time preference” rather than waiting. In reality, as discussed by Carson, time preference and waiting are extremely similar. Both view income on capital investment as deriving from (all other things being equal) consumption today being more valuable than consumption tomorrow.³⁶⁹ Time preference is the natural phenomenon that people value present goods higher than future goods. Thus present goods exchange at a discount in comparison to future goods. Capital bears interest as a given sum of money is invariably worth more money in the present than in the future. When capitalists advance money for the factors of production including wages for labour, they earn future returns on their outlays. The systematic difference between wages and the value of the products produced by wage labourers can be considered a fee paid from wage labourers to capitalists, due to the wage labourers’ preference for current income and consumption over future income and consumption.³⁷⁰ According to Rothbard:

What has been the contribution of these product-owners, or "capitalists," to the production process? It is this: the saving and restriction of consumption, instead of being done by the owners of land and labor, has been done by the capitalists. The capitalists originally saved, say, 95 ounces of gold which they could have then spent on consumers' goods. They refrained from doing so, however, and, instead, advanced the money to the original owners of the factors. They paid the latter for their services while they were working, thus advancing them money before the product was actually produced and sold to the consumers. The capitalists, therefore, made an essential contribution to production. They relieved the owners of the original factors from the necessity of sacrificing present goods and waiting for future goods.... Even if financial returns and consumer demand are certain, *the capitalists are still providing present goods to the owners of labor and land* and thus relieving them of the burden of waiting until the future goods are produced and finally transformed into consumers' goods.³⁷¹

Böhm-Bawerk is generally regarded as having laid out the “*locus classicus*” in describing time preference, having systematically ruled out other theories of interest.³⁷² However, Böhm-

³⁶⁹ Carson, *Studies*.

³⁷⁰ Herbener, Jeffrey, *The Pure Time-Preference Theory of Interest*, Auburn, Alabama: Ludwig von Mises Institute, 2011.

³⁷¹ Rothbard, *Man, Economy and State*, p. 346.

³⁷² Rothbard, Murray, ‘Time Preference’ in *The Pure Time-Preference Theory of Interest*, ed. Herbener, Jeffrey, Auburn, Alabama: Ludwig von Mises Institute, 2011, pp. 59-66, p. 65.

Bawerk himself acknowledged that landless proletarians are likely to have time preference slanted more to the present than the wealthy. Thus he wrote:

It is undeniable that, in this exchange of present commodities against future, the circumstances are of such a nature as to threaten the poor with exploitation of monopolists. Present goods are absolutely needed by everybody if people are to live. He who has not got them must try to obtain them *at any price* [my emphasis]. To produce them on his own account is proscribed the poor man by circumstances; the only kind of production he could take up would be one yielding an immediate return, and this is not only unremunerative but almost impracticable under modern economic conditions. He must, then, buy his present goods from those who have them, either in the form of a loan, or, more usually, by selling his labour. But in this bargain he is... handicapped... by the position of compulsion under which he finds himself.³⁷³

For Böhm-Bawerk, proletarians' lack of resources to maintain themselves through long capitalist production runs is the only reason for their dependence on capitalists:

...in the loss of time which is, as a rule, bound up with the capitalist process, lies the sole ground of that much-talked-of and much-deplored dependence of labourer on capitalist... It is only because the labourers cannot wait till the roundabout process... delivers up its products ready for consumption, that they become economically dependent on the capitalists who already hold in their possession what we have called "intermediate products."³⁷⁴

As Carson notes, why so many people lack their own means of production is not explained by Böhm-Bawerk. Instead of taking a historical approach, Böhm-Bawerk took current resource distributions as a given.³⁷⁵ Carson, following Marx, explained that the reason lies in the historical state violence of primitive accumulation. Noting this point about state violence, Carson argued that the working class's time preference is artificially steep. Time preference is, "skewed much more to the present for a laborer without independent access to the means of production, or to subsistence or security. Even the vulgar political economists recognized that the degree of

³⁷³ Böhm-Bawerk, Eugen, V., *Positive Theory of Capital*, New York: G. E. Stechert & Co., 1930, p. 360 See also, *Rothbard, Man, Economy, and State*, p. 412-14 and pp.443-44, for further explanation of how poverty increases the steepness of time preference. On p. 444 Rothbard writes "each person has a time-preference schedule relating to his money stock. A lower money stock will cause a higher time-preference rate for any unit of money remaining in his possession, until finally his time-preference rate will rise to infinity when the money stock—or rather, the money for consumption—is low enough."

³⁷⁴ Quoted in Carson, *Studies*, p. 110. For original see, Böhm-Bawerk, *op cit*, p. 83.

³⁷⁵ Carson, *Studies*, p. 109.

poverty among the laboring classes determined their level of wages, and hence the level of profit".³⁷⁶

Carson accepts time preference as a phenomenon but explains that in a non-capitalist market society, where all people owned their own means of production, time preference would be, "an added form of disutility of present labor, as opposed to future labor. It is just another factor in the 'higgling of the market,' by which labor's product is allocated among laborers".³⁷⁷ He added;

In an economy of distributive property ownership, as would have existed had the free market been allowed to develop without large-scale robbery, time-preference would affect only laborers' calculations of their own present consumption versus their own future consumption.³⁷⁸

This point is extremely similar to our Lockean exploitation argument. He is implying that the history of land monopoly puts contemporary wage labourers in an artificially weak bargaining position. Our aim in this chapter has been to make this argument explicit and explain how the Lockean law of restitution helps to complete the argument. At least with regards to our case study country – the contemporary UK.

Risk

For the Austrian school there is one other factor underlying the difference between wages and the revenues generated by wage labour: the aversion of wage labourers to risk. Rothbard argued that labourers could make their own business investments, but in order to avoid the risk of losing their investment they may choose to work for a capitalist employer. The capitalist employer therefore takes on the risk of the investment and claims the reward if the investment is successful.³⁷⁹ The problem with this argument is similar to the argument for interest based on time preference. Just as time preference is artificially skewed to the present for expropriated proletarians, proletarians' ability to engage in risky investments and their threshold for risk are artificially low. Conversely, expropriated proletarians' willingness to allow an employer to take on the risk and rewards of production is artificially increased.

To return to Rothbard's log business scenario outlined above, we do not have enough information to know whether the wage labourers X, Y and Z are being exploited by Polk. Are they the victims of land monopoly or other monopolies over the means of subsistence and

³⁷⁶ Carson, *Studies*, p. 110.

³⁷⁷ *Ibid*, p. 111.

³⁷⁸ *Ibid*, pp. 111-12.

³⁷⁹ See Rothbard, *Man, Economy, and State*.

production? If so, is this a factor in their choice to work for Polk, at least at the wages, and under the conditions they do? If yes, then the wage labour relationships they enter can be presumed to be exploitative.

Exploitation through credit

The above arguments we have made for wage labour relationships being exploitative also apply to credit. In the mutualist banking tradition, particularly as expressed by Carson, it is argued that in a society of dispersed, mutualist, possession of property, and free competition in providing credit, interest rates would fall to zero, with charges only for the labour of administering credit.³⁸⁰ In such a society all would have property to use as loan security. The aim of a bank in such a society, would be simply to render the property of members liquid. Thus technically, there would be “no lending at all... The so-called borrower would simply so change the face of his own title as to make it recognizable by the world at large.”³⁸¹ Meanwhile, without banking regulations,³⁸² competition between lenders would reduce the interest rate to zero. Furthermore, in a society of mutualist property rights, people would have far lower time preference, as there would be no landless proletarians.³⁸³ A similar argument can be made from a Lockean perspective. If people in the UK were not unjustly barred from owning the property which they are owed under the Lockean law of restitution, interest rates would also be much lower, perhaps disappearing, as Carson argues would be the case under mutualism. The interest received by creditors – traditionally known as usurers – can therefore be assumed to be exploitative of Lockean grounds in the same way that the surplus value received by capitalist wage labour employers can be.

³⁸⁰ Carson, *Studies*.

³⁸¹ William Greene, quoted in Carson, *Studies*, p. 220. For original, see: Greene, W. B., *Mutual Banking*, New York: Gordon Press, 1974, online at: http://www.the-portal.org/mutual_banking.htm (accessed 04 Sep 2017).

³⁸² Carson also suggests that monopoly banking regulations work to increase interest rates by reducing competition in lending. We disagree with this argument. In fact, the banking monopoly seems to reduce the interest rate within an overall system of artificially high interest rates. An investigation by the New Economics Foundation argued that the banking monopoly actually allows banks to provide artificially cheap credit (estimating that the seigniorage powers of UK banks has contributed to a hidden subsidy of £23 billion or 1.23 % of the UK's GDP per year between 1998 and 2016). It is explained that this is because households are prepared to hold a bank's liabilities at a below-market (“market”) interest rate. The comparison is made with peer-to-peer lenders that cannot create legal tender so in order to lend money have to first borrow from savers and pay a competitive rate. Banks do not have to do this so can offer cheaper credit. See: Macfarlane, Laurie, et al, *Making Money from Money: Seigniorage in the Modern Economy*, New Economics Foundation [Online] and the Copenhagen Business School, Jan 2017, <http://neweconomics.org/2017/01/making-money-making-money/> (accessed 03 Sep 2017). With this said, it must be re-emphasised that the banking monopoly reduces interest rates *within* an overall system of artificially high interest rates.

³⁸³ Carson, *Studies*.

5.7 Conclusion to chapter

In this chapter we have argued that Marx's wage labour exploitation argument contained an implicit argument that capitalist profits in his case study countries were exploitative according to Lockean justice. We started by highlighting that Marx was part of a tradition of socialists that drew upon the labour theory of value expressed by Adam Smith and David Ricardo. According to this theory, the exchange value of reproducible commodities comes from the labour which goes into producing them. So-called Ricardian socialists such as Hodgskin argued from this insight that workers should justly receive all of the income from production. However, Hodgskin, writing at a time when labour organising was illegal, mistakenly believed that wage labourers systematically accept a wage at less than the value of what they produce due to anti-union regulation. Writing several decades later when labour organising was legal, Marx was interested in the question of why workers systematically accept a wage at less than the value of the products they produce. His explanation was that wage labourers were in an artificially weak bargaining position due to the history of various forms of historical unjust land acquisition in England and the US. The implication of his argument is that all the capitalist profits generated through the wage labour relationships in the countries he discussed, were exploitative on Lockean grounds, as the capitalists benefited from the unjust oppression of landless proletarians. However, to make such an argument complete, one needs to make one's approach to addressing injustice in holdings clear. Marx did not do this.

We also clarified that, at least from a Lockean perspective, the crucial question for assessing whether a wage labour relationship is exploitative or not, is not whether the capitalist owns his or her capital unjustly. Rather, it is whether the wage labourer enters the wage labour relationship due to being in an artificially weak bargaining position due to being unjustly deprived of ownership over the means of subsistence and production. Our argument here countered the idea that there can be non-exploitative wage labour relationships in a situation where the wage labourers are unjustly deprived of land ownership or other ownership of the means of subsistence and production. We further explained that because all persons in the UK are owed an egalitarian share of the means of subsistence and production (as discussed in Chapter 4), all proletarians negotiate wage labour relationships from an artificially weak bargaining position. Therefore all wage labour relationships in the contemporary UK can be considered exploitative according to the Lockean law of exploitation we outlined in Chapter 3.

We further explained that our argument does not depend upon the labour theory of value. Even if we reject the labour theory of value, the question remains why labourers do not get all of the

income derived from the goods they produce. Or, to look at the question another way, the question remains how capitalists, *qua capitalists*, systematically earn profit on the goods produced by labourers. We claimed that the artificially weak bargaining position of labourers remains a convincing argument in lieu of a better alternative. To show this, we considered alternative explanations of capitalist profit from economics schools that oppose the labour theory of value. The first alternative we considered was Marshall's "waiting" argument. Marshall, a founder of the so-called neo-classical school, agreed with the classical school that exchange value is determined by cost of production in the long term, but argued that labour is not the only real cost in production – the sacrifice that capitalists make by investing and waiting to consume later rather than consuming in the present is also a real cost. We responded by pointing out that if capitalists benefit from waiting due to employing oppressed wage labourers, then the profits capitalists receive are still unjust.

We next considered two explanations for capitalist profits from subjectivist economists. The first explanation put forward by such economists is time preference. This is the idea that goods are always worth more in the present than in the future. The difference between what workers are paid in wages and the revenues derived from what they produce, is what workers forgo as a fee to capitalist employers in order to avoid long term investments and receive wages in the present rather than sales revenues in the future. The problem with this argument is that time preference is artificially skewed towards the present if the labourer is unjustly deprived of the means of subsistence and production. A second explanation for capitalist profit that is provided by the subjectivists is that wage labourers wish to avoid risk. Instead of risking in investing in the factors of production they allow capitalists to do this, thus allowing capitalists to reap the rewards of the investment. However, we noted that in a society of unjust monopoly over the means of subsistence and production, labourers' ability and willingness to engage in risk is artificially reduced, whilst their willingness to allow an employer to take on the risk of investing in production is artificially increased. We can therefore see that none of the mainstream economics arguments for capitalist profits are incompatible with wage labour exploitation taking place. The unjust concentration of the ownership of the means of subsistence and production explains why capitalists are able to charge a price for waiting to consume their wealth. It explains why workers are prepared to pay capitalists a fee for up front wages. It also explains why workers cannot engage in risk, or wish to avoid it, and allow capitalists to engage in – and take the rewards of – risk in production. Finally, we added that capitalist creditors are also able to lend at artificially high interest rates due to the unjust oppression of victims of monopoly.

Chapter 6: The history of proletarianisation in England

6.1. Introduction to chapter

In the previous chapter we outlined Marx's argument that a landless proletariat existed in nineteenth century England due to centuries of expropriation of the peasants. In response to this claim – and similar claims from subsequent Marxist historians – so-called liberal economic historians have argued that proletarianisation has actually been a free market process. We suggest that this argument is unsustainable from a Lockean perspective. Why are we responding to this argument? This liberal argument does not challenge our claim in Chapter 5 that contemporary wage labour in the UK is exploitative. All persons in the UK – including wage labourers – are owed an egalitarian share of the property in the country. Therefore no matter what the history of proletarianisation in England is, all English (as well as Irish, Scottish and Welsh) persons in capitalist wage labour relationships can be presumed to be exploited. However, as mentioned in Chapter 1, responding to these liberal claims about historical proletarianisation can help us identify further evidence of unjust incomes circulating in the UK economy. If proletarianisation in England has historically been the result of oppression, then the resulting capitalist wage labour relationships can be said to have been exploitative, thus generating unjust capitalist incomes. Showing that proletarianisation has historically been the result of oppression will also lend further indirect support to our argument in Chapter 5 that contemporary capitalist wage labour relationships in the UK can be presumed to be exploitative. If it is the case that proletarianisation has historically been the result of oppression, then this strengthens our claim that capitalist wage labour would be avoided in the contemporary UK, were it not for the unjust concentration of property we have described.

This chapter takes the form of responses to multiple liberal historians who have discussed proletarianisation in England since the Middle ages. Our primary target of criticism is J. D. Chambers who is said to have laid out the broad theoretical framework in which subsequent liberal historians on the topic have written. However, we also respond to some of the subsequent historians who have fleshed out his claims for particular periods. The central claim of Chambers and subsequent liberal historians is that proletarianisation in England since the Middle Ages has occurred due to rural overpopulation. Lacking enough land to survive and prosper as independent farmers, they have sought wage labour employment.

The problem with this so-called liberal argument is that it depends upon overlooking or denying the land monopoly which the peasantry suffered under during the Middle Ages onwards. For the Medieval period, firstly, it requires overlooking the extent of the demesne land monopolised

by the landlords and secondly, it requires overlooking the exclusion of peasants from royal and non-royal forests and chases. It also requires overlooking the unjust rents which artificially increased the peasants' monetary requirements, made them artificially poor, and reduced their ability to invest in independent production, all combining to reduce their ability to remain as independent producers. Similar problems arise when considering proletarianisation in the early modern period. Claims that peasants freely chose to engage in wage labour depend upon ignoring the continued economic oppression peasants faced in land rents and mortgages as well as their continued confinement to artificially small plots of land as a holdover of the feudal era. The same goes for peasants up until the early industrial era, although by this time, the majority of the population was already proletarianised.

Note that the Marxist historian, Dimmock,³⁸⁴ has also recently responded to these liberal arguments, but has done so with a different focus than we have here. Dimmock, following Brenner and Marx,³⁸⁵ argued that the "prime mover" (a nebulous concept) of the transition from feudalism to capitalism, was peasant expropriation and rental increases on demesne land, rather than market forces and population growth. Our approach is different to Dimmock's in two ways. Firstly, we are not focused on identifying the cause of a transition from one social system to another, but are simply looking at whether wage labour relationships can be said to have been entered into under conditions of oppression throughout England's post-1066 history. Secondly, as we are not focussed on explaining a particular social transition, we do not attempt to identify the particular forms of oppression responsible for such a transition. Namely, we do not focus on expropriation *per se*. Rather we are concerned with the broad array of ways in which land monopoly has oppressed peasants and contributed to proletarianisation at all points of English history. This includes not just expropriation *per se* but also unjust land pre-emption, land rents, and mortgages. We suggest that our approach allows us to respond more thoroughly to the claim of liberal historians that wage labour relationships have been entered into freely historically in England. For example, as we will see, Dimmock agrees with so-called liberal historians that overpopulation was the cause of proletarianisation in the fourteenth century – something we dispute. Also, Dimmock does not respond to the claim of Chambers that proletarianisation of peasant land owners in the early nineteenth century cannot be explained by expropriation. However, we do respond to Chamber's claim by pointing out that the peasant

³⁸⁴ Dimmock, *op cit*.

³⁸⁵ Dimmock, *op cit*; Brenner, Robert, 'Agrarian Class Structure and Economic Development in Pre-Industrial Europe', *Past and Present*, No. 70, Feb, 1976, pp. 30-75; Marx, *Capital*.

land owners he refers to were suffering under unjust land mortgages and held artificially small plots due to historical injustice.

6.2. Chambers takes on Marxist historiography

This chapter primarily focuses on Chambers' article titled 'Enclosure and the Labour Supply in the Industrial Revolution'.³⁸⁶ In the article, written in 1953, Chambers claimed that wage labour has historically predominantly been the result of overpopulation. We choose Chambers' article to respond to as it is thought of as a "seminal paper", with subsequent liberal historians following the "analytic lead" laid out in it.³⁸⁷ However, where Chambers has had little to say, we also respond to other liberal historians who have fleshed out his overall argument.

Chambers' article was a response to the Marxist Maurice Dobb's book *Studies in the Development of Capitalism*. Dobb's book had restated Marx's argument that proletarianisation in England was a violent process of expropriation lasting several centuries, ending with the parliamentary enclosure movement. Meanwhile in the colonies it was the result of state land monopolisation and the imposition of cash taxes, leading colonial subjects to have to work for wages. With regards to England, Dobb discussed primary research particularly from Tawney (who focused on the sixteenth century) which highlighted the various forms of force used to expropriate the peasantry. The violent farmers of the demesnes (the landlord's land) would regularly evict peasants in order to take their land and convert it into sheep pasture.³⁸⁸ Like Marx, Dobb cited Thomas more, who in the early sixteenth century had described the process as sheep devouring men.³⁸⁹ In this context, Dobb concluded...

It is hardly surprising that the Tudor countryside should have been the scene of a pitiful host of refugees, the "vagabonds and beggars" of the official documents of the period: drifting into the boroughs to find such lodging and employment as they could or migrating to such open-field villages as would allow them to squat precariously; on the edge of common or waste.³⁹⁰

³⁸⁶ Chambers, *op cit*.

³⁸⁷ Crafts, N. F. R., 'Income elasticities of demand and the release of labour by agriculture during the British industrial revolution', in *The Economics of the Industrial Revolution*, ed. Joel Mokyr, Oxon: Routledge, 2011, pp. 151-164, p. 161. Allen makes similar comments in a 2004 history textbook: Allen, Robert, 'Agriculture during the industrial revolution, 1700–1850', in *The Cambridge Economic History of Modern Britain Volume I: Industrialisation, 1700–1860*, eds. Roderick Floud and Paul Johnson, Cambridge: Cambridge University Press, 2004, pp. 96-116, p. 101.

³⁸⁸ Dobb, *op cit*, p. 225.

³⁸⁹ *Ibid*, p. 225. For More's original description see: More, Thomas, *Utopia*, 1516, Internet Archive [website], <https://archive.org/details/pdfy-DABmlmj0ADOhLI7b> (accessed, 02/09/2017), pp. 43-45.

³⁹⁰ *Ibid* (Dobb), p. 226.

After discussing these sixteenth century expropriations Dobb turns to later processes of proletarianisation. He points out that in the late eighteenth and early nineteenth centuries, along with outright eviction, smaller peasants suffered from rent increases resulting in them losing land.³⁹¹ Meanwhile, the Parliamentary enclosure Acts were the final act in “dislodging... the army of cottagers from their last slender hold on the fringes of the commons.”³⁹² In this way semi-proletarians were converted into full proletarians.

Let us now turn to Chambers’ response to Dobb’s discussion of proletarianisation. Chambers begins his article by making clear that he does not deny that expropriation played a role in the emergence of a “residual population” of free labour, but is interested in the factors “in addition to enclosure and eviction, which accounted for its growth”.³⁹³ He begins his article by noting that there was “free labour force” in England in the year 1300, which is before the period of expropriation Marx and Dobb discussed.³⁹⁴ He mentions this point only briefly, but it is worth us dwelling on before returning to Chambers’ argument.

6.3 Considering liberal claims on proletarianisation in the pre-Black Death period

Recent historiography has affirmed that wage labour was a significant part of the British economy in the pre-Black Death era (before the mid-fourteenth century). Proletarianisation would occur when children did not inherit sufficient land from their parents³⁹⁵ or when peasants had to sell part or all of their land in order to pay off debts.³⁹⁶ However, problematically, it is often argued that wage labour during the feudal era was simply a matter of overpopulation. For example, Campbell has claimed that the land deprivation of the peasants was nothing to do with the feudal system of oppression. Rather, it was because the feudal lords were too soft on their subjects, which gave rise to population pressures on the land:

In so far as lords were the inadvertent agents of this adverse state of affairs, it was because their dealings with their tenants were typically more compliant than coercive. By yielding to tenant demands for access to land on terms that were so favourable to the tenants, lords created the preconditions for the subdivision and subletting that stoked population growth and thereby engendered the rural congestion that was the source of so much under- and

³⁹¹ *Ibid*, 227-8.

³⁹² *Ibid*.

³⁹³ Chambers, *op cit*, p. 320.

³⁹⁴ *Ibid*.

³⁹⁵ Campbell, Bruce M. S., ‘The Agrarian Problem’.

³⁹⁶ Davies, Mike, and Jonathan Kissonock, ‘The feet of fines, the land market and the English agricultural crisis of 1315 to 1322’, *Journal of Historical Geography* Vol. 30, Issue 2, April 2004, pp. 215–230, p. 219.

unemployment, with all the negative consequences that this implies for labour productivity, living standards and purchasing power.³⁹⁷

Marxist historians have accepted this broad overpopulation argument. According to Dimmock “wage dependency in 1300 was born out of overpopulation on politically constituted, densely populated peasant holdings; it was not the result of the expropriation of large numbers of peasants from the land.”³⁹⁸ However, the claim that land deprivation and proletarianisation in the pre-Black Death era was a result of overpopulation is extremely problematic to say the least. This claim ignores three highly significant factors: (1) that landlord demesne land made up approximately a third of arable land on the average manor, (2) the monopolies over the royal and non-royal forests and chase lands, and (3) that the wealth and productivity of the peasants was artificially capped by feudal rents, dues and taxes, thus reducing the ability of peasant holdings to absorb increases in population.

When discussing landless proletarians during the feudal period, the broad system of land monopoly and pre-emption of England has to be considered. With regards to land pre-emption, note that it is not necessary that any particular peasants were expropriated in order to have a situation of unnatural land scarcity. It is simply enough that families were not able to freely expand into land that should rightly have been available. Oppenheimer explained this point well. He contrasted “the State” which he defined as, “that summation of privileges and dominating positions which are brought into being by extra-economic power,” with “Society,” which was “the totality of concepts of all purely natural relations and institutions between man and man.”³⁹⁹ He also made a distinction between “economic means” of attaining wealth, that is, “one’s own labor and the equivalent exchange of one’s own labor for the labor of others,” and the “political means”: “the unrequited appropriation of the labor of others...” The state was the, “organization of the political means.”⁴⁰⁰ Oppenheimer completely rejected the idea that the class system had arisen through economic means, writing: “The class-state never originated in this fashion, and never could have so originated. History shows that it did not; and economics shows deductively, with a testimony absolute, mathematical and binding, that it could not”.⁴⁰¹ He continued...

The proof is as follows: All teachers of natural law, etc., have unanimously declared that the differentiation into income-receiving classes and propertyless classes can only take place

³⁹⁷ Campbell, Bruce M. S., ‘The Agrarian Problem’, p. 9.

³⁹⁸ Dimmock, *op cit*, p. 130.

³⁹⁹ Oppenheimer, *op cit*, p. xiv.

⁴⁰⁰ *Ibid*, p. 25.

⁴⁰¹ *Ibid*, p. 9.

when all fertile lands have been occupied. For so long as man has ample opportunity to take up unoccupied land, "no one," says Turgot, "would think of entering the service of another;" we may add, "at least for wages, which are not apt to be higher than the earnings of an independent peasant working an unmortgaged and sufficiently large property;" while mortgaging is not possible as long as land is yet free for the working or taking as free as air and water. Matter that is obtainable for the taking has no value that enables it to be pledged, since no one loans on things that can be had for nothing...The philosophers of natural law then, assumed that complete occupancy of the ground must have occurred quite early, because of the natural increase of an originally small population. They were under the impression that at their time, in the eighteenth century, it had taken place many centuries previous, and they naively deduced the existing class aggroupment from the assumed conditions of that long-past point of time. It never entered their heads to work out their problem; and with few exceptions their error has been copied by sociologists, historians and economists. It is only quite recently that my figures were worked out, and they are truly astounding.⁴⁰²

Oppenheimer went on to explain that the population of Germany in his day, 1935, was such a size that if living five to a family, each family would have ten hectares of agricultural land or twenty-five acres. Thus, he wrote, "not even in the Germany of our own day would the point have been reached where according to the theories of the adherents of natural law differentiation into classes would begin."⁴⁰³ He made similar calculations for the Danube States, Turkey, Russia and Hungary, which were less densely populated, thus producing even "more astounding results".⁴⁰⁴ Oppenheimer calculated that the world's population, almost two billion in his day, living in families of five, could each have eighteen and a half acres of land and still leave two-thirds of global land unoccupied. Therefore, it could not have been economic means that were responsible for the division of people into classes all over the world. He speculated that such a day when the world's fertile agricultural land would be occupied by economic means due to natural scarcity was very far off, and maybe would never come. Oppenheimer posited:

As a matter of fact, however, for centuries past, in all parts of the world, we have had a class-state, with possessing classes on top and a propertyless laboring class at the bottom, even when population was much less dense than it is to-day. Now it is true that the class state can arise only where all fertile acreage has been occupied completely; and since I have shown that even at the present time, all the ground is, not occupied economically, this must mean that it has been pre-empted politically. Since land could not have acquired "natural

⁴⁰² *Ibid*, pp. 9-10.

⁴⁰³ *Ibid*, p. 12.

⁴⁰⁴ *Ibid*.

scarcity," the scarcity must have been "legal." This means that the land, has been pre-empted by a ruling class against its subject class, and settlement prevented.⁴⁰⁵

In his book Oppenheimer then backs up this idea with a broad brush overview of different kinds of state systems through history. The key insight for our purposes is that it is not just *expropriation* that we should take into account when considering oppression with regards to land, but also *pre-emption*.

Land pre-emption seems to have been extremely widespread in late-thirteenth and early-fourteenth century feudal England. Firstly, it has been estimated that approximately a third of the arable land was under the private control of the landlords on the average manor. A study of over 1,000 manors in southern England in 1279 found the average manor to have 511 acres of arable land, of which 164 was demesne.⁴⁰⁶ This was land which peasants worked on either as part of feudal dues or for wage labour, but otherwise was outside of peasant use. It is certainly possible that much of this land would likely have come to have become owned by the lords via expropriation of existing peasant farm land – although this author is not aware of any studies which confirm this. Even if the lords did not gain the land by expropriating existing arable land (e.g. even if the demesne land came about through assarting – i.e. colonising new land from the forest), we can see that the monopoly over demesne land would have significantly reduced the amount of arable land available to peasants, and artificially reduced their production capacity. It is definitely conceivable that many of those peasants that engaged in wage labour would not have done so had they had access to this extra land to work on for themselves.

The second form of land pre-emption to keep in mind are the royal forests and chases as well as non-royal forests and chases. It should also be noted that the word "forest" during the medieval period did not only refer to woodland. It could include any type of land which was held outside of the common law. As well as woodland, this could include pasture, heath and even farmed land.⁴⁰⁷ It is estimated that royal forest alone covered one third of England under Henry II during the twelfth century.⁴⁰⁸ As well as acting as a hunting ground, this land monopoly allowed the king to charge those wishing to assart.⁴⁰⁹ It is unclear how much additional land was held in royal chase. It is thought that the term "chase" referred primarily to forest-type land

⁴⁰⁵ *Ibid*, pp. 13-14.

⁴⁰⁶ Clark, Gregory, 'The Cost of Capital and Medieval Agricultural Technique', *Explorations in Economic History*, Vol. 25, Issue 3, July 1988, pp. 265-294, p. 283.

⁴⁰⁷ Jørgensen, Dolly, 'The Roots of the English Royal Forest', in *Anglo-Norman Studies 32: Proceedings of the Battle Conference 2009*, ed. Chris Lewis, Woodbridge: Boydell Press, 2010, pp. 114-128. See pp. 114-115.

⁴⁰⁸ Miller and Hatcher, *op cit*, p. 34.

⁴⁰⁹ *Ibid*, p.4 and pp. 34-5.

held by non-royals, but upon returning to royal ownership would remain classified as chase land rather than forest.⁴¹⁰ Complicating matters, non-royals could also be granted forest land. Langton has documented that the hundred rolls land survey of 1279 recorded 175 non-royal forests and chases in total, although it is unclear how much of England's land area this covered.⁴¹¹ Rigby has suggested that so much land in England remained unsettled due to it being unsuitable for farming, but this overlooks the forest and chase monopolies. Miller and Hatcher have explained: "Woodland could often be turned into good arable and it was the effort of clearance, together with *legal and customary obstacles* [my emphasis] rather than the quality of the soil which explains why so much woodland was left untouched for so long."⁴¹²

How much land could have each peasants have had in 1300 if the land had not been pre-empted by the Crown and the lords? The highest estimates put population in the period at six million in 1300.⁴¹³ If we use Oppenheimer's method we can see that if the population in 1300 was divided into families of five, each family could have held at 18.3 acres (by dividing up 22 million acres between them), whilst leaving 10.2 million acres of common, forest, and waste (as England has a total land mass of approximately 32.2 million acres).⁴¹⁴ Estimates for the amount of land required in feudal England for a family of five range from 10 to 18 acres.⁴¹⁵ The highest estimate comes from Kitsikolopoulos, who argues that 18 acres would be needed in order for a farmer to be able to avoid abstaining from consumer goods such as beer and furnishings.⁴¹⁶ Thus it appears that the feudal peasantry could have had more than enough land to provide for themselves and their families without engaging in wage labour had they been allowed to expand into pre-empted demesnes, forest and chase land.

⁴¹⁰ Langton, J. 'Royal and non-royal forests and chases in England and Wales', *Historical Research*, Vol. 88, Issue 241, August 2015, pp. 381–401, p. 386.

⁴¹¹ *Ibid*, p. 394.

⁴¹² Miller and Hatcher, *op cit*, p. 33. On page 4 they also write: "From Norman times, moreover, efforts to colonize woodland were hampered by a special forest law designed to preserve whole areas of wood and heath for the king's hunting; this law not only punished poaching but made the colonist pay heavily for his enterprise. It did not prevent assarting, but it enhanced the cost."

⁴¹³ Campbell, Bruce M. S., 'The Agrarian Problem', p. 11. Campbell believes approximately 4.25 million people is a better estimate.

⁴¹⁴ 22 million acres, divided by 6 million people, multiplied by 5 (people per family) = 18.33 (acres per family). This leaves 10.2 million acres spare.

⁴¹⁵ Kitsikolopoulos, Harry, 'Standards of living and capital formation in pre-plague England: a peasant budget model', *The Economic History Review*, Vol. 53, No. 2, May 2000, pp. 237-261, p 248, 250. Note that it is estimated that the land required to actually grow enough grain for the raw calories needed for survival was only approximately 2.5 hectares or 6.1 acres. For this last statistic, see: Campbell, Bruce M. S., 'Land markets and the morcellation of holdings in pre-plague England and pre-famine Ireland', in *Property rights, land markets and economic growth in the European countryside (13th-20th centuries)* eds. G. Béaur, P. R. Schofield, J-M. Chevet, & M-T. Pérez-Picazo, Turnhout: Brepols, 2013, pp. 197-218, p. 200.

⁴¹⁶ Kitsikolopoulos, *op cit*, p. 248, 250.

The third problem with the claim that overpopulation was the cause of proletarianisation in feudal times is that it overlooks the problem of unjust rents and taxes which the peasants were burdened with. It is worth noting here that estimates of the peasant holdings needed in the feudal period take it for granted that rents and taxes were necessary outgoings. Kitsikolopoulos' estimate that a minimum of 18 acres was needed was based on the assumption that over 19 shillings a year were needed in order to pay feudal dues and taxes.⁴¹⁷ Had he not included this outgoing, approximately 4 less acres of wheat would be needed to be grown based on his estimations.⁴¹⁸ Therefore only 14 acres would have been needed for a family of five to make a living without foregoing basic consumer goods. Furthermore, a family with 14 acres would have less farming to do and have more leisure time and/or time to invest in more efficient production activities. With over 18.3 acres, plus access to common, according to all estimations, peasants would have had a significant surplus. This could have been use for additional consumption, absorbing population increases, or investment in improved farm productivity – or some combination of the three. As it was, not only did the economic oppression have the impact of immediately impoverishing tenant households, but it must also have worked as a disincentive to productive investment which could have increased the ability of households to support themselves and thrive. Boissonade claimed that “any improvement in the soil was but the pretext for some new exaction” for the parasitic landlords.⁴¹⁹

A number of scholars have suggested that had the peasantry been freed from feudal oppression, an alternative market economy based upon peasant-craftsmen and women, engaged in both agricultural production and independent, domestic, workshop-based industry could have emerged, similar to what happened to some extent in sixteenth century England among the better off yeomen.⁴²⁰ McNally has described these developments, explaining;

So widespread was industrial work in [agricultural] communities that about half of those who farmed the land in the early modern England appear also to have engaged in at least one form of industrial work. It is in these communities of ‘peasant-workers’ or ‘farmer-craftsmen’ that we discover some of the major roots of ‘industry before the industrial revolution’.⁴²¹

⁴¹⁷ *Ibid*, p. 249.

⁴¹⁸ Kitsikolopoulos estimates that 6 acres of wheat would generate 30s 1d in cash revenue per year (*ibid*, p. 249).

⁴¹⁹ Boissonade, P., *Life and Work in Medieval Europe*, London: Kegan Paul, Trench, Trubner & Co., 1927, p. 141.

⁴²⁰ See Carson, *Studies*, pp. 178-185.

⁴²¹ McNally, *op cit*, p. 26.

As an example, Sheffield was famous for metalworking. It had an estimated 600 smithies out of a parish population of about 5,000. The majority of smithies also engaged in some form of agricultural work. A similar pattern was present in the cloth-making industry in north-east Lancashire and Yorkshire. These areas were dominated by farmer-craftsmen. In Huddersfield, the wool industry was so intertwined with agriculture that the term “yeoman-clothier” has been used by historians to describe the “dominant figure” in industry from 1500-1700.⁴²² Additionally, the terms “yeoman” and “clothier” were interchangeable in Yorkshire during this period. This early-modern period has been described as web-like network of industry emerging in agricultural surroundings.⁴²³

It is useful here to think about the historical development of this yeoman/farmer-craftsman figure. “Yeoman” came to mean owner-occupier or substantial farmer in the early modern period. However, Dimmock reminds us that the word “yeoman” originally meant assistant to – or officer of – the lord.⁴²⁴ These were figures such as bailiffs, greaves and stewards who were the basis of a rural middle class as they were rewarded for their services with land grants charged at low or only nominal rents, allowing them to accumulate wealth.⁴²⁵ There is no obvious reason why such farmer-craftsperson figures could not have become the societal norm had the broader population not been subject to various types of rentier oppression.

It should be noted here that liberal scholars do acknowledge the feudal rents, but argue that they should not be considered unjust or exploitative. However, both of the reasons put forward for this argument are highly problematic. Firstly, it has been claimed that the feudal lords were actually providing a service of law enforcement, which they were justified in forcefully charging for, as it was a “public good” which all benefited from.⁴²⁶ Needless to say, this is an illegitimate argument according to Lockeanism, which only recognizes voluntary payments for services (including legal services).⁴²⁷ Secondly, it has been pointed out that peasants were able to engage in successful social struggle to prevent rent increases. Thus the lords did not get the full “market rate” for their land.⁴²⁸ For liberal scholars this means that the lords were not exploiting the peasants. In fact, multiple liberal scholars have gone even further than saying the lords did not exploit the peasants. According to one such scholar, Rigby, “one could say that it was the

⁴²² *Ibid.*

⁴²³ *Ibid.*

⁴²⁴ Dimmock, *op cit*, p. 111.

⁴²⁵ *Ibid.* Tawney, *op cit*, also makes this argument, p. 82.

⁴²⁶ Rigby, S. H., *English Society in the Later Middle Ages*, London: Machillon, 1995, p. 55.

⁴²⁷ See: Rothbard, *Ethics*, Chapters 22-24, and Chapter 29.

⁴²⁸ Rigby, S. H., *op cit*, p. 56.

peasants who ‘exploited’ the landlords’ resources, since the latter were prevented from obtaining an economic return on their property”.⁴²⁹ Clearly such claims are illegitimate from a Lockean perspective. It is unjust to charge for land that you violently monopolise even if you could get a higher price by allowing competitive bidding. Meanwhile, the claim that the peasants were actually exploiting their feudal masters only makes sense if one sees it as oppressive to resist violent plunder – an idea not found in Lockeanism (or presumably anywhere outside of liberal scholarship).

With these points in mind we can see that it is highly problematic to argue that proletarianisation was a natural concomitant of population growth in the pre-Black Death period. Without the feudal oppression the peasantry would have had far more land, would have been far more productive, and far wealthier. Peasant holdings could have been able to absorb population increases and feudal era proletarianisation need not have occurred.

6.4 Proletarianisation in the early modern period

Moving on, let us look at proletarianisation in the early modern period. Chambers only briefly addresses this period. He concurs with Marxist historians that significant expropriations took place from the fifteenth centuries until the late seventeenth century. He acknowledges that sixty villagers were “wiped out” in Leicestershire alone between 1450 and 1600, that this happened more widely throughout the country, and that these events “must have made a sizeable contribution to the army of the landless”.⁴³⁰ However, he argues that it was not a significant period of proletarianisation, based on reports from the time that there were labour shortages. Thus, he sees it as not important to focus on explaining proletarianisation during this period, and sees the industrial era as the relevant period of analysis. We will come back to Chambers’ discussion of industrial era proletarianisation below. Before that we will respond to further liberal claims about proletarianisation in the early modern period. Here it must be remembered that the overpopulation argument does not work for this period, as after the Black Death, which saw a population declined of perhaps 50 percent or more, the population of England did not reach 5 million until 1600, and it then remained at that level until about 1750.⁴³¹

Liberal scholars who address proletarianisation in this period, particularly before 1600, argue that it occurred due to market factors. French and Hoyle point out that it was not only landlords

⁴²⁹ *Ibid.* Campbell concurs with Rigby’s assessment. See Campbell, ‘The Agrarian Problem’, p. 24.

⁴³⁰ Chambers, *op cit*, p. 321.

⁴³¹ French, H. R., and R. W. Hoyle, *The Character of English Rural Society: Earls Colne, 1550-1750*, Manchester and New York: Manchester University Press, 2007, p. 23.

that bought land, but also peasants themselves. Sometimes this would result in engrossment by peasants and increased polarisation within the peasantry. They add that this “was a process internal to the peasantry, achieved by operation of the land market. It was not forced on the peasants by lords.”⁴³² We agree that it can reasonably be said that the lords did not force peasants to *buy* each other’s land. However, it is problematic to say that poorer peasants were not often forced by lords to *sell* land. Peasants with copyhold⁴³³ titles were certainly forced by the lords to choose between either selling⁴³⁴ land or paying illegitimate, extortionate rents under the threat of eviction or debtor’s jail. It was not only lords, but also the gentry-landlords which imposed such force. French and Hoyle’s own case study provides evidence of this. They describe how upon purchasing the manor of Earls Colne from the Earl of Oxford (for whom he had previously worked as a lawyer), the new landlord, Roger Harlakenden, proceeded to dramatically increase rents and fines, and have debtors thrown in jail. Commenting on increased fines from 1580-82, French and Hoyle comment, “it is clear that the manor was being squeezed for the maximum possible profits.”⁴³⁵

French and Hoyle also state that political factors do not explain why freeholder yeomen “disappeared” in the century after 1660.⁴³⁶ We suggest that this is incorrect. It is unclear exactly how French and Hoyle define “yeomen” so we will discuss the impositions that all freeholders faced. Firstly, it must be remembered that since the Middle Ages, freehold holdings were smaller than copyhold holdings. This is because freehold was so sought after by peasants (as freehold rents were lower than copyhold rents) that they would pay a premium for even small plots of it. In 1279, 59 per cent of freeholders held less than 6 acres, and over a third held an acre or less.⁴³⁷ The effects carried over into the early modern period. For example, in French and Hoyle’s case study manor, Earls Colne, in 1598 out of 35 freeholders, 21 held less than an acre. Only three people had over 11 acres.⁴³⁸ Secondly, peasants should have been able to gain rent-free land simply by homesteading it. However, instead, they were burdened with unjust land mortgages, which caused indebtedness and foreclosure of land until the nineteenth century, as

⁴³² *Ibid*, p. 25.

⁴³³ French and Hoyle (*ibid*), in the “Glossary” section of their book (no page number) define copyhold as follows: “Tenure of lands being parcel of a manor, ‘at the will of the lord according to custom of the manor’, by copy of the manorial court roll.”

⁴³⁴ To be more correct, selling the copyhold tenant rights, not ownership rights.

⁴³⁵ *Ibid*, p. 127

⁴³⁶ *Ibid*, p. 12. As Dimmock has discussed, French and Hoyle seem to believe all yeomen were small-scale owner-occupiers, but this is not the case. Many people labelled yeomen were actually large-scale tenant farmers working the demesne land of the lord and would eventually become known as capitalist tenant farmers. Dimmock, *op cit*, pp. 109-115.

⁴³⁷ Campbell, ‘The Agrarian Problem...’ p. 23, 28, 34.

⁴³⁸ French and Hoyle, *op cit*, p. 109.

we shall discuss further below (section 6.5).⁴³⁹ Thirdly, freeholders have been subject to tithes and various taxes, including the Land Tax started in 1680. Finally, it can be noted that two of the three impositions described above are forms of seigniorial charges which required freeholders to make cash payment and thus *forced* owner-occupiers to focus more on commodity production for the market (rather than producing for consumption) than they might have otherwise. This made them artificially vulnerable to commodity price fluctuations, poverty, indebtedness, and land loss in the manner Tilly explained occurred in France when peasants were forced to pay cash taxes.⁴⁴⁰ In combination, all of these impositions would have led to the sale of freehold land and to proletarianisation.

Perhaps not noticing this array of neo-feudal impositions (apart from the land tax), French and Hoyle claim that it is surprising that so many owner-occupier peasants ended up selling their holdings in the early modern period.⁴⁴¹ Attempting to solve the puzzle, they speculate that peasants may have seen four types of entrepreneurial opportunities that would arise from selling their land. Firstly, they point out that land prices were high – providing twenty-five to thirty years of rent. However, the claim that thirty years of rent was a motivation for selling seems highly speculative. Anybody who sold their land would either have to immediately purchase new land at a similar price or become a landless proletarian, working insecure, poorly paid jobs, and condemning their children to the same insecurity. Wrightson explains that wage labourers at the time were known as the “‘poor labouring people’ who worked, but whose domestic economies were ones of constant makeshift expedients, fraught with the perennial risk of tumbling into severe poverty in the event of any misfortune.”⁴⁴² Wages were low, and work was insecure. According to Wrightson, calculations of wage rates in the period are scarce, but one that has been made is that in 1540 a labourer in the building trade would have to work 214 days a year in order to afford *only* food for himself and his wife and two children. This calculation does not include payments for rent, clothing and fuel – all necessities for survival.⁴⁴³ Furthermore, such work “would have been intermittent.”⁴⁴⁴ Similar was true of agricultural labourer: “Waged employment for the cottager or labourer tended to mean a scattering of

⁴³⁹ On the costliness of gaining freehold land, see also: Beckett, J. V., & Turner, M. E. ‘Freehold from copyhold and leasehold. Tenurial transition in England between the 16th and 19th centuries’, in *Landholding and Land Transfer in the North Sea Area (Late Middle Ages - 19th Century)*, eds., Peter Hoppenbrouwers and Bas van Bavel, Turnhout: Brepols Publishers, 2004 pp. 282–292, p. 288.

⁴⁴⁰ Tilly, Charles, *As Sociology Meets History*, New York: Academic Press, 1981.

⁴⁴¹ French and Hoyle, *op cit*, pp. 35-6.

⁴⁴² Wrightson, Keith, *Earthly Necessities: Economic Lives in Early Modern Britain, 1470- 1750*, London: Penguin Books, 2002, p. 148.

⁴⁴³ *Ibid*, p. 54.

⁴⁴⁴ *Ibid*.

casual jobs with a peak of activity at certain seasons.”⁴⁴⁵ By the 1630s labourers would have to find 459 days’ work a year to feed their families – “clearly an impossible task”, Wrightson comments.⁴⁴⁶ In this context it is not clear that any peasants would have made the choice to give up their land to become a wage labourer unless driven to out of necessity.

The second entrepreneurial opportunity French and Hoyle suggest freeholders might have been pursuing by selling their land was releasing equity and becoming tenants so that they could invest in capitalisation. Thirdly, by a similar logic, selling to a landlord to become a tenant might allow a farmer to “tap his landlord’s capital for new buildings”.⁴⁴⁷ However, selling land on these grounds would have been a bizarre entrepreneurial decision. Firstly, it would have put the new tenant at the risk of eviction. Secondly, it would have been widely known that any investment in the land (by tenants or landlords) would increase the rent the tenant would have to pay, as the land would now be more valuable. French and Hoyle themselves recount the story of an Earls Colne tenant, Henry Abbot, having his rent increased after building a house on it.⁴⁴⁸ Fourthly, French and Hoyle suggest that peasants may have wished to “impose on [their new landlord’s] credit in years of poor profitability” by paying reduced rents.⁴⁴⁹ However, French and Hoyle provide no evidence that this actually happened. Furthermore, again, selling land in order to reduce outgoings (e.g. perhaps avoiding land mortgage payments) would be extremely risky as it would leave the peasant vulnerable to eviction. Furthermore, even if there was a chance that a tenant somehow got a landlord to agree to low rents, this would still be a long term loss to the tenant, who would not be moving towards full ownership of his or her land as would be the case by paying off a mortgage. With these points in mind, French and Hoyle’s suggestion of entrepreneurial reasons for peasant land sales make little sense.

In fact, French and Hoyle acknowledge that there is no actual evidence that peasants had any of these so-called entrepreneurial ideas but suggest that “Whether people in the past behaved in such an economically rational way is always a moot point, but this is a phenomenon which deserves investigation if only to deny its existence.”⁴⁵⁰ French and Hoyle also point to one burden which peasants may have wished to avoid – the Land Tax. And by selling, this tax could be transferred to the landlord. This makes sense, but we suggest that peasants would have wished to have held their land and paid the tax if at all possible, rather than becoming tenants

⁴⁴⁵ *Ibid*, p. 35.

⁴⁴⁶ *Ibid*, p. 193.

⁴⁴⁷ French and Hoyle, *op cit*, p. 36

⁴⁴⁸ *Ibid*, p. 131.

⁴⁴⁹ *Ibid*, p. 36.

⁴⁵⁰ *Ibid*.

vulnerable to the whims of a landlord, or landless proletarians, unsure of being able to spare their children the same fate.

Possibly sensing the weakness of their entrepreneurial arguments, French and Hoyle suggest that the peasant land sales during the early modern period may have been due to a change of “mind-sets” in the rural poor between the fifteenth and eighteenth centuries.⁴⁵¹ This change was from “peasant” to “non-peasant”.⁴⁵² They explain that those with a peasant mind-set try to endow their children with land, and cling to even unpromising holdings. Unlike non-peasants, peasants view land-ownership as “a superior form of existence.”⁴⁵³ Non-peasants see land-owning as just one form of farming, and view farming as only one possible livelihood, and “not necessarily the most attractive.”⁴⁵⁴ Non-peasants also wanted more consumer goods and for their children to be educated. There are a number of problems with this argument. Firstly, it does not explain why land prices had risen to a historically high level (implying there was high demand) – and why many of the land sales were to other peasants – if land-ownership was so out of fashion amongst those with the new modern, non-peasant mind-set. Did the new mind-set only impact certain people? If so, why only these people? Was it a specific genetic development amongst only a certain part of the population? Or something else? French and Hoyle do not explain. Secondly, French and Hoyle do not provide evidence that peasants selling their last scraps of land and becoming landless proletarians helped them afford more consumer goods or education for their children. Nor is evidence provided that peasants had these expectations. Without such evidence, we suggest that the “change in mind-set” argument is a weak explanation of the land sales by poor peasants. Furthermore, there is a better explanation for the land sales which does not depend upon a mysterious change in mind-set. That is, the impositions we discussed above. In fact, French and Hoyle themselves go on to almost admit as much.

A few pages after hypothesizing that peasant land sales were due to a combination of entrepreneurship opportunities and a new “non-peasant mind-set” (which apparently exhibited a preference for landlessness), French and Hoyle explain that it was actually economic struggles responsible for the decline of small farming. Responding to Brenner’s Marxist historical claims, French and Hoyle state that the decline of the peasants came about “not because of any weakness in their legal strength but because of the operation of market forces. Small farms,

⁴⁵¹ *Ibid.*

⁴⁵² *Ibid.*

⁴⁵³ *Ibid.*

⁴⁵⁴ *Ibid.*

whatever their tenure, did not pay, and because they did not pay they disappeared.”⁴⁵⁵ Whilst it can be said that land sales occurred when peasants could no longer afford to keep their land, to explain this as a function of “market forces” is misleading. The “market forces” French and Hoyle go on to describe in their book are the struggles of Earls Colne landholders (particularly copyholders) to pay their rents and mortgages under the profit-seeking landlord. That is, the main “market forces” French and Hoyle discuss are neo-feudal impositions. To clarify, according to Lockeanism, the Earls Colne manor did not become justly owned once Harlakenden bought it from the Earl of Oxford. Rather, it remained unjustly held. Therefore the rents he charged for it – let alone the rent increases – were unjust impositions. Similarly, any charges for land purchases on the manor were unjust impositions.

French and Hoyle’s case study also documents that several landowners left one or more of their children without land, and provided them with cash inheritances instead. Or they would divide their holdings into small patches between their children, with one or more children being left without adequate land to live off. However, to see such processes as the cause of landlessness would amount to an overpopulation argument, which would not work for this period, for reasons we have discussed above. Therefore we suggest French and Hoyle’s account of proletarianisation being due to a mixture of market forces and population pressures is extremely weak. Rather, it must be seen as the result of continuing land monopoly and unjust plunder.

Let us now return to Chambers’ article. As we have seen, Chambers viewed proletarianisation in the Middle Ages as a result of overpopulation – something broadly accepted in academia, including Marxist scholarship, but completely wrong. Chambers viewed proletarianisation in the early modern period as largely not worthy of discussion, whilst those who have discussed it have claimed that it was a result of market forces (perhaps fuelled by a new non-peasant mind-set). This argument is also unconvincing – unless we include neo-feudal land cost impositions upon peasants under the umbrella of “market forces”, which we don’t. Let us now look at Chambers’ discussion of the proletarians in the industrial era.

6.5 Industrial era proletarianisation

Chambers acknowledges that small tenants “suffered in numbers heavily from enclosure” before and during the early industrial revolution.⁴⁵⁶ However, he claims that enclosure “was not

⁴⁵⁵ *Ibid*, p. 40.

⁴⁵⁶ Chambers, *op cit*, p. 325.

the signal for the extinction of the small farm as an economic unit everywhere.”⁴⁵⁷ As evidence of this he pointed out that during parliamentary enclosure many small owner farmers kept hold of their land if they could show evidence of title to enclosure commissioners. Chambers added that the enclosure commissioners...

...stand in striking and pleasing contrast to the squires and rich yeomen of the fifteenth and sixteenth centuries who “wiped out” the villages” of the Midlands by the hundred, turning the dispossessed away “tearfully” and “into idleness.” Whatever may be said of the method of enclosure by acts of parliament, it represents a milestone in the recognition of the *legal* rights of humble men.⁴⁵⁸

For Chambers, the “real victims” of enclosure were the landless and near-landless cottage labourers with customary use of the common and small tenant farmers with no rights to land ownership themselves.⁴⁵⁹ For these, Chambers concurs with Hasbach that “Enclosure was the last act in the drama of proletarianisation”.⁴⁶⁰ He adds, “the enclosure acts had the effect of further reducing, but not of destroying, the remaining English peasantry. They came at the end of a long period of attrition by consolidation and purchase and direct eviction which practically eliminated the peasantry from the parishes of old enclosure.”⁴⁶¹ Also: “The appropriation to their own exclusive use of practically the whole of the common waste by the legal owners meant that the curtain which separated the growing army of labourers from utterly proletarianisation was torn down.”⁴⁶² Another claim Chambers makes is as that the proletarians came from the descendants of peasants who had been made landless in previous centuries before parliamentary enclosure. According to Chambers: “[In] view of the great amount of enclosure for pasture in the first half of the eighteenth century a large proportion of the fall in the number of farming units had occurred before the great era of parliamentary enclosures”, and the majority of industrial proletarians came from this “unabsorbed surplus” population, “not from the main body”.⁴⁶³

Two points should be made here. Firstly, the above statements could have been written by Marx or Dobb or subsequent Marxian historians. The only difference between the position of the Marxists and Chambers is that Chambers does not acknowledge how small the remaining English peasantry actually was. J. R. Wordie has explained that by 1790 approximately only 15

⁴⁵⁷ *Ibid.*

⁴⁵⁸ *Ibid*, p. 327.

⁴⁵⁹ *Ibid.*

⁴⁶⁰ Chambers quoting Hasback, p. 327.

⁴⁶¹ Chambers, *op cit*, p. 335.

⁴⁶² *Ibid*, p. 326.

⁴⁶³ *Ibid.*

percent (maybe as low as 10 percent) of cultivated land was farmed by owner-occupiers.⁴⁶⁴ The remainder – aside from cottagers – was managed by tenant farmers who were vulnerable to reductions in holdings, rent increases, eviction, and proletarianisation. Disputing the claim that small farmers flourished during the period, Wordie further explains that by 1815 the majority of so-called small farmers on the estates he investigated held less than one acre of land, and likely engaged in wage labour, and should thus be considered proletarians.⁴⁶⁵

Nevertheless, Chambers argues that because the rural population (mostly near-landless cottagers and rural proletarians) increased in England until the 1830s or 1840s, that urban proletarianisation must have been primarily caused by something other than enclosure.⁴⁶⁶ Chambers argues that the primary explanation for the growth of both the rural population and the urban proletariat was a steep population increase in the mid-eighteenth century engendered by increased agrarian – and later urban-industrial – productivity. This argument is perhaps correct in narrow terms – it is plausible that the agrarian proletarian population grew because of improved productivity. However, whether the claim is true or not, this claim does not explain why population growth consisted primarily of landless proletarians. Yet why population growth took this form *is* explained by the forms of oppression that took place in the feudal era and early modern period. Nor can it simply be claimed by liberals that the massive population growth beginning in the eighteenth century would have led to proletarianisation even if the country at the time had been made up of owner-occupiers. We do not know how far household productivity would have increased without the forms of oppression we have discussed, and how far independent peasant-craftsperson households could have absorbed population increases. Carson has suggested that a modern “homebrew” economy based on multipurpose electronic hand tools, and small-scale or local-based horticulture could have developed.⁴⁶⁷

Nevertheless, Chambers implies that overpopulation from the mid-eighteenth century onwards would have caused landlessness and proletarianisation regardless of past events. He provides two examples that he believes supports his claim. He firstly points to Sir John Sheffield’s estate in Lincolnshire. Chambers summarises Arthur Young’s report on the area as a place where rent

⁴⁶⁴ Wordie, J. R., ‘Social Change on the Leveson-Gower Estates, 1714-1832’, *The Economic History Review*, Vol. 27, No. 4, Nov., 1974, pp. 593-609, p. 594. See footnote 2 on the same page for 10 percent figure.

⁴⁶⁵ *Ibid*, p. 601-2.

⁴⁶⁶ Chambers, *op cit*, p. 338.

⁴⁶⁷ Carson, *Studies*, and Carson, Kevin, *The Homebrew Industrial Revolution*, n.p., Booksurge, 2010, online at: <https://kevinacarson.org/pdf/hir.pdf> (accessed 04 Apr 2019).

was kept low, and all households were given a garden, half an acre land and feeding for two cows or two or three pigs. This contributed to workers in the areas having to pay very low poor rates.⁴⁶⁸ Chambers adds:

But in his enthusiasm for the growing 'cow-ocracy' of Lincolnshire, Author Young unwittingly let a portentous cat out of the bag when he wrote that as a result, the 'population increases so that pigs and children fill every quarter; in the last twenty years the baptisms at Burton have exceeded the burials by 136. The women, however, are very lazy; they do nothing but bring children and eat cake.'⁴⁶⁹

Chambers further notes that this case study was used by Malthus in *Principles of Population* (a book of "inexorable logic" according to Chambers) as evidence that "the labourers' most ardent champions were in the long run their worst enemies."⁴⁷⁰ Malthus had acknowledged that the peasants in Lincolnshire (and Rutlandshire) were "the most comfortable peasantry in the British dominions", but had claimed that in the long run poor people with little land that were dependent upon small potato patches for food would be vulnerable to famines in the future like in Ireland.⁴⁷¹ This may be a fair conclusion, but does not prove Chambers' point that population expansion rather than land monopoly was responsible for proletarianisation in Lincolnshire or elsewhere.

If we look at Arthur Young's book he is clear that the people of Sir John Sheffield's estate lived somewhat decently, despite still paying unjust rents to Sir John Sheffield – although these rents were comparatively low. Whilst the children were increasing in number, they were described as being well-dressed. Young implies nobody in the area was on the poor rates. Whilst poor rates were paid, Young explains this was only due to the militia laws. Meanwhile the men of the area were described as very industrious and sober, implying that they were engaged in farming or some form of additional labour, with no pauperised surplus population.⁴⁷² There is also no evidence of population increase leading to increased proletarianisation. It is just as likely that with the enclosure of the commons the inhabitants lost their access to grazing land and maybe

⁴⁶⁸ Arthur Young himself stated that the poor rates were only paid because of the militia laws (payments to militia men called up by the king for service), that is – he implies nobody required poor rates. For these stats, see Young, Arthur, *General View of the Agriculture of the County of Lincoln*, London: Bulmer and Co., 1799, p.412.

⁴⁶⁹ Chambers, *op cit*, p. 337.

⁴⁷⁰ *Ibid*, p.337.

⁴⁷¹ Malthus, Thomas, *An Essay on the Principle of Population, or a View of its Past and Present Effects on Human Happiness; with an Inquiry into our Prospects respecting the Future Removal or Mitigation of the Evils which it Occasions*, 6th ed., London: John Murray, 1826, online at:

<https://oll.libertyfund.org/titles/1945>, (accessed 24 Nov 2018), see Appendix 1: 1807.

⁴⁷² Young, *op cit*, pp. 412-414.

their own small plots. Chambers seems to imply this, writing that the influence of Malthus's book...

...helped to cement an alliance between vested interests and economic theory which was sufficient to kill the scheme for cow-pastures for labourers, and the opportunity to reverse the verdict on the enclosures was lost: the labourer was now separated in theory as well as in fact from all proprietary interest in the product of the soil which he tilled.⁴⁷³

Even if proletarianisation did occur in this village under the land distribution scheme, it would not be conclusive evidence that over-population rather than land monopoly were to blame. Firstly, it has to be asked why the peasants' holdings were so small at that time to begin with. The wider history of land pre-emption and theft, which we have discussed above, has to be taken into account here, which Chambers does not do. Secondly, unjust rents need to be considered. Although comparatively low, the poor *still* had to pay illegitimate rents to the landlord – artificially reducing their ability to be self-sufficient.

Moving on, the second piece of evidence Chambers points to as supporting his argument that population growth was responsible for proletarianisation was the case of the Isle of Axholme. Chambers claims that this Isle is a “unique” case study of a place where the land was held by peasant-proprietors rather than landlords.⁴⁷⁴ “There was no institutional pressure of enclosure” here, says Chambers.⁴⁷⁵ He described it as a place of mainly small farmers with land from four to fifty acres with a few larger farms of 200 acres. The population was also hardworking according to reports. However, the population rose faster than the numbers of land holders. Between 1800 and 1829 the population increased 33 percent whilst the number of freeholders rose only 9 percent. For Chambers this example shows that “a proletariat was coming into being by the natural increase of population.”⁴⁷⁶ The reason for this population growth, Chambers argues, is that productivity increased on enclosed lands. Chambers further speculates that this is evidence that productivity expansion creates its own labour supply by encouraging early marriage.⁴⁷⁷

The two recurring problems we have discussed above apply to Chambers' analysis here as well. Firstly, Chambers ignores the apparent role of exploitation by unknown previous title-holders and mortgage providers in Axholme. Chambers in a footnote quotes W.B. Stonehouse's *History*

⁴⁷³ Chambers, *op cit.* p. 337.

⁴⁷⁴ *Ibid*, p. 338.

⁴⁷⁵ *Ibid*.

⁴⁷⁶ *Ibid*, p. 339.

⁴⁷⁷ *Ibid*.

and Topography of the Isle of Axholme in which it is explained that dispersed land ownership does not necessarily imply poverty reduction as land mortgages can be crippling:

‘...these small freeholders are generally very badly off (far worse off than the generality of labourers – p.33). Further inheritances have been so encumbered with mortgages that the interest is a very high rent, an inconvenience necessarily attending the descent of land not entailed in the same family from the provision which has to be made, at different times, for the younger children... The worst landlord must give way to the circumstances of his tenant; but a mortgage is a perfect land shark, his heart is as hard as that of a political economist (preface, p. x [actually p.xi]).’... ‘Had the Isle of Axholme continued in the sole property of one lord Paramount such as the Duke of Northumberland, the Earl of Yarborough... what a different state it would now be in’ (p.xiii).⁴⁷⁸

The quotation is somewhat difficult to follow. However, it is clear that the occupiers of land on the Isle of Axholme struggled under the cost of mortgages. It also has to be mentioned that Stonehouse is referring to mortgage payments for the land itself, not additional buildings for the occupants. This is clear from the above passage itself as he clearly refers to land but not buildings, and later in his book Stonehouse explains that land costs from upwards of £80 per acre.⁴⁷⁹ If we look at W.B. Stonehouse’s original text, it is further explained that an additional problem with mortgaged land was that if mortgage payers missed payments their property was foreclosed and their property was taken by the lender. Stonehouse does not explain how common foreclosure was in the Isle of Axholme but it would presumably be somewhat common considering the poverty he describes.

The question arises of why the ostensible owners of the land on the Isle of Axholme were paying expensive mortgages with interest payments which amounted to “a very high rent.” Stonehouse explains in a somewhat unclear manner, writing, “The sale of the monastical part of this property, together with the lands of the Hospitals, Chantries, and Free Chapels – the subdivisions, from the same cause, of the large portions, given in land to his daughters by the Lord Paramount – has given a remarkable feature to the possession of property in the Isle of Axholme in the very large number of small freeholders which it contains”.⁴⁸⁰ It seems extremely unlikely that owner occupiers would have had to have paid for land they inherited from the daughters of the Lord Paramount. The implication is freeholders were paying for land bought

⁴⁷⁸ Chambers, *op cit*, quoting Stonehouse. P. 338, footnote 1. For original see: Stonehouse, W. W., *The history and topography of the Isle of Axholme*, London: Longman, Rees, Orme & Co. – Simpkin Marshall & Co., - and W. Pickering, 1839, p. xi and p. xiii.

⁴⁷⁹ Stonehouse, *op cit*, p. 34.

⁴⁸⁰ *Ibid*, p. x.

from the Lord or his heirs. That is, the ostensible “owner-occupiers” were ultimately paying high interest mortgages to buy land from the gentry. Those that couldn’t afford their payments were expropriated. Thus whilst Chambers attempts to provide a “unique” example of a society with “no question here of the institutional pressure of enclosure”, it seems he actually provides an example where the ostensible owner-occupiers were in a modern feudal-like relationship of payment to the gentry for the use of land, with the ever-present threat of foreclosure.⁴⁸¹ This feudal-like relationship would have artificially reduced the ability of owners of land to increase the productivity of their holdings, and absorb increases in population. Furthermore, Chambers does not ask why the smallest landholders in Axholme only held four acres. Therefore his example cannot be used as evidence that proletarianisation occurred even when land was not illegitimately monopolised.

Considering the above points, we suggest that Chambers’ article – and the broader liberal academic framework for understanding proletarianisation which his article contributed to – completely fails to show that proletarianisation was a free market phenomenon. We suggest that whilst there are significant details Marxist accounts of proletarianisation have overlooked (such as that wage labour under feudalism was not due to overpopulation) the broader argument that wage labour has emerged historically in England due to various forms of oppression, holds. By implication, capitalist wage labour relationships have been exploitative on Lockean grounds and generated illegitimate incomes for capitalist employers.

6.6 Conclusion to chapter

This chapter has argued that proletarianisation has been the result of oppression throughout English history. The argument took the form of a response to liberal historians who have claimed that wage labour has been due to rural over-population and other free-market forces (such as a mysterious change in mind-set). We firstly looked at claims that proletarianisation in the pre-Black Death era was the result of overpopulation – a claim put forward forcefully by Campbell. We argued that this claim overlooks a number of factors. Firstly, it overlooks the way that demesne, forest, and chase land was artificially monopolised by the Crown and the landlords, thus artificially reducing the amount of land peasants could possess. Secondly, it overlooks the unjust feudal rents that peasants were forced to pay by the ruling class. We saw that there have been attempts by liberals to claim that the feudal rents were justified (or even that the lords were being exploited), but these arguments are unsound from a Lockean perspective. We argued that had the peasants not suffered such extensive artificial restrictions on access to land,

⁴⁸¹ Chambers, *op cit*, p. 338.

and had they not been forced to pay unjust rents, proletarianisation may not have occurred – it would certainly have been far less common. It was possible for all households to have more than enough land to remain as independent producers, generating a surplus to invest in improved agricultural productivity or household industry.

We next looked at the argument that proletarianisation during the early modern period was due to free market factors. We particularly focussed on the views of French and Hoyle when it came to discussing this period. French and Hoyle claimed that because peasants often transferred their land to other peasants, the lords could not have been to blame for increasing landlessness. By implication, landlessness was a free market process. However, this overlooks several neo-feudal pressures upon peasants which would have compelled them to give up their land. It firstly overlooks the continued rents which copyhold peasants would have to pay. It also overlooks the unjust mortgage payments which freeholders would be saddled with. Secondly, it overlooks the problem of peasants having artificially small plots of land as a holdover from feudal times. Thirdly, it overlooks the land tax that landholders would have to pay. Fourthly, it overlooks the overall artificial pressure upon peasants to engage in cash-generating commodity production and thus expose themselves to changes in market prices. French and Hoyle's claims that peasants may have seen selling their land as an entrepreneurial opportunity is unsupported and ignores the risks of becoming a landless proletarian at the time, which peasants would have been aware of. Their claim that a new non-peasant mind-set may have explained the change is also entirely unfounded, and refuted by their own case study which shows that landlessness resulted primarily from economic hardship resulting from neo-feudal landlord oppression.

We thirdly discussed Chambers' claim that proletarianisation occurred due to overpopulation in the industrial era, rather than because of the enclosures. He bases this claim on the fact that the rural population grew during this period. We noted that this is beside the point. By the industrial era, the vast majority of the rural population consisted of proletarians and semi-proletarian cottagers with less than an acre. Thus the population increase was largely amongst proletarians. With regards to the remaining small owner-occupiers, Chambers fails to provide evidence that it was not unjust oppression responsible for their eventual proletarianisation. He firstly points to Sir John Sheffield's estate in Lincolnshire, where the small-scale tenant farmer population was growing – but he does not show that this population became proletarianised. Even if it did, the tenant farmers Chambers discussed were oppressed in that they held artificially small plots of land and still had to pay land rents. Chambers secondly points to the Isle of Axholme where there is evidence of a community of owner-occupiers increasing in population and proletarianisation occurring. However, these owner-occupiers were subject to

unjust and extortionate land mortgages which would have artificially reduced their ability to remain as independent producers. We therefore suggest that there is no evidence of any proletarianisation occurring in English history free from the influence of unjust economic oppression.

Chapter 7: Discussion

7.1 Introduction to chapter

In this chapter we discuss our findings and contributions to knowledge. We aim to firstly, show how far we have answered the original research question as laid out in the introduction. That is, how far redistribution is required according to Lockean theory. We also discuss other original contributions to knowledge which our investigation has produced. These include: an understanding of the inconsistencies in Rothbard's innocent homesteader approach to addressing injustice in holdings; a clarification of Marx's implicit argument that wage labour is exploitative on Lockean grounds; an understanding that wage labour and credit relationships are exploitative in the contemporary UK; and an understanding of historical wage labour exploitation in England.

We start part two of the chapter by re-stating our key results on the redistributive requirements that arise from applying the Lockean law of restitution, as laid out in Chapter 4. We suggest that we have plausibly argued that all property in the UK should be redistributed in an egalitarian manner. We then consider three possible objections that could be made to our findings from a Lockean perspective. Firstly, we consider possible criticisms of the theoretical framework we used: the Lockean law of restitution. We point to problems that emerged from attempting to apply the framework, and ask if these problems are enough to make the framework inferior to other possible approaches. We also ask whether consideration of the Lockean law of compensation could undermine our findings. We suggest that whilst the theoretical framework we have used does raise problems and questions, it is not obviously unsound in any way.

A second possible criticism of this dissertation's major finding is that we have applied the Lockean law of restitution in an unsound way. Crucially, it might be argued that we have stretched legal precedents too far when assessing restitutionary claims. We suggest that this is not the case, but even if there are examples where this is the case, this does not necessarily change our overall results. This is because if we only assessed the restitutionary requirements arising from the most unambiguous examples of Lockean injustice (land theft and taxation) we would get the same results. It also might be argued that we have not considered "liability-reducing" factors which are a part of the law of restitution, but we argue that it is legitimate to ignore such considerations. A third possible criticism of our results is that they are based on unsound empirical evidence. However, we suggest that this would be a very weak argument, as the empirical facts we based our assessments on are accepted widely from various ideological perspectives and are not refuted.

In part three of the chapter we look at the political implications of our major finding – i.e. that all property in the UK must be redistributed in an egalitarian manner. We ask what redistributive measures could be taken. We respond to Cohen’s claim that there are two possible forms of egalitarian distribution in a Lockean world: equal division and joint ownership. We argue that Cohen’s discussion is not a useful way of approaching the question of what egalitarian Lockean redistribution should look like. He considers a make-believe world which consists of only persons and land. A better approach is to recall that many people in the actual world are dependent upon common pool resources such as water pipes and roads. We suggest that rather than equal division or joint ownership of these resources, what is required is “equal shares” ownership in which all persons gain shares in all holdings in the country. In this way, property could be managed along the lines that of the common pool resources Elinor Ostrom has studied. We further suggest that the parliamentary system could be a suitable way of exercising ownership rights.

In part four of the chapter we discuss our additional findings from Chapters 5 and 6. These relate to wage labour exploitation and the exploitative nature of credit. We do not consider criticisms of these findings, as we discussed them in the respective chapters. Instead we ask what the significance of these findings are for our core question and what the broader significance might be. We argue that understanding that wage labour and credit relationships in the UK are exploitative in Lockean terms does not change our conclusion that all holdings must be redistributed in an egalitarian manner. However, it could have wider social significance by encouraging persons to favour an economic system without such exploitation.

Part five of the chapter provides a summary of the dissertation’s findings. Our first finding was to show the problems with Rothbard’s innocent homesteader approach to injustice in holdings. We have addressed this problem by pointing to a more coherent theoretical framework. The second contribution we have made is to have shown that according to this Lockean law of restitution, all property in our case study country should be redistributed in an egalitarian manner. We have also shown that this could be done through the parliamentary system. We have also made a number of findings related to exploitation. Firstly, we have clarified Marx’s implicit argument that the wage labour relationships he discussed were exploitative on Lockean grounds. Secondly, we have shown that wage labour and credit relationships are exploitative in the contemporary UK. Thirdly, we have shown that wage labour relationships have historically been exploitative in England.

We end the chapter with suggestions for possible future research in the field. We suggest that those interested in the Lockean law of restitution may be interested in looking into the implications of the law for other countries. Secondly we suggest that those interested in the implications of a broader Lockean law of non-contractual obligations may wish to further consider the broader compensation owed by people in the UK to people overseas. Or they may look into the compensation owed by people in other countries.

7.2 Discussion of main findings

This study set out to investigate the redistributive requirements that emerge if we both hold a Lockean view of justice in holdings, and take into account historical injustice. We argued that to answer this question coherently, we must employ the Lockean law of restitution as a theoretical framework. We have argued that according to this theoretical framework, all property in our case study country – the contemporary UK – is unjustly held and must be redistributed in an egalitarian way. There are three possible criticisms from a Lockean perspective that may be made of our findings. Firstly, it might be argued that the theoretical framework we used is unsound. Secondly, it may be argued that we applied the framework in an unsound manner. Thirdly, it may be argued that the empirical evidence does not support our conclusion. We consider each of these possible criticisms in turn.

Is the Lockean law of restitution a sound theoretical framework?

The findings we have made in this dissertation are based upon investigating the implications of a certain theoretical framework – the Lockean law of restitution. Once we accept this theoretical framework, the conclusions we have made flow quite quickly. It is therefore worth asking if there are any obvious limitations with the framework. We have already compared and contrasted this framework at some length with the other prominent Lockean approaches to injustice in Chapters 2 and 3. We will try to avoid ground already covered. Instead, we will consider problems with the theoretical framework which emerged whilst attempting to apply it to the research question. We will then consider whether these problems change the conclusion we came to in Chapter 3 that the Lockean law of restitution is a suitable framework for addressing the question of injustice in holdings.

In Chapter 3 we explained how we would attempt to apply the Lockean law of restitution. Firstly, we would attempt to use historical information to identify injustices. We would then attempt to consider which restitutionary claims arise from these injustices based upon legal precedent. Which problems emerged in trying to use this method? The first problem occurred when

attempting to identify manufactured items in the UK made from stolen land. It soon became clear that in order to say that any particular manufactured item is made from monopolised resources would require investigation into the resources which that particular manufacture was made from. As we discussed, in Chapter 4, it is not possible to make blanket claims about manufactured items being made from monopolised resources unless first show that *all* natural resources in the world are monopolised. However, we suggest that this problem represents a technical problem for the researcher in trying to investigate the implications of the Lockean law of restitution. It does not represent a problem with the theoretical framework itself. Furthermore, given the history of state formation and colonisation throughout the globe, it may be the case that a thorough examination on the secondary literature on the history of land monopoly *would* show that all land has historically been monopolised (or at least all land which is used to produce export materials). This may be a worthwhile research project for anyone interested in further investigating the implications of the Lockean law of restitution.

The second problem emerged when we discussed unjust monetary gains. When discussing such gains we found that it was impossible to identify the specific *amounts* of income which derived from various forms of injustices. For example, there is no objective way of identifying how much of the income from a house sale comes from selling the land. This is a problem because if it is unclear which income has been gained unjustly and which has been gained justly, then this makes it impossible to assess the arising restitutionary claims. We were eventually able to overcome this problem when discussing our case study country by arguing that if we considered the results of all types of injustice *cumulatively over time*, we could judge all holdings in the UK to be unjustly held. We could then conclude that all property should be divided in an egalitarian manner. Whether this is a fair deduction is up to the reader. However, the problem with our theoretical framework remains. It works to help us understand how far redistribution is required in a country where all property is unjustly held, but it is unclear what should happen in a country where not all property is unjustly held. For example, let us imagine that empirical research fails to provide convincing evidence that all holdings in a particular country, say France, are unjustly held. Restitution could only be applied on a case by case basis in this scenario. Having said this, this may be a moot point, as it is not obvious that empirical research would fail to find convincing evidence that all holdings are unjustly derived. Presumably such a country would have to not have a history of taxation and would not have suffered extensive historical land theft, and it is not immediately obvious which countries might actually meet these criteria.

Compensation

A third problem to consider is that we have not investigated the implications of a Lockean law of compensation, which we have suggested should work alongside the Lockean law of restitution. The question is whether compensatory considerations interfere with our conclusion that all property should be redistributed in an egalitarian manner. We suggest not. As all money in the UK is currently unjustly held, if any compensation were paid from one person to another for Lockean injustices before restitution is enacted, it would simply be the transfer of unjustly held money from one person to another. Furthermore, there is no clear reason why restitution would not still be owed after compensation were paid, so any compensation received would subsequently have to be redistributed in an egalitarian manner. Therefore we suggest that only once all property in the UK has gone through a restitution process and all property in the UK is owned in an egalitarian manner should the question of compensation be addressed.

We suggest that in a post-restitutionary UK, compensation could not be claimed for monetary losses in the *pre*-restitutionary UK. To see this, let us consider a couple of examples of government actions which might otherwise generate compensatory claims were it not for the fact that all holdings are currently unjustly held. The first is an example Carson discusses – government investment in infrastructure which gives certain companies a competitive advantage over others. Carson argues that the general impact of state investment in infrastructure is to lower overheads for larger firms and thus artificially concentrate the market in ever fewer businesses, causing losses for smaller businesses as a side effect.⁴⁸² We can imagine scenarios where a new road is built by the government which directs customers away from a certain local shop, towards a supermarket, with the local shop subsequently going out of business. In this scenario, the illegitimate government action of using stolen wealth to build a road has caused a loss to the local shop owner. Ostensibly, it appears that the shop owner should therefore be owed compensation (we won't go into the difficult question of who should owe it). However, we suggest that this shop owner should not be owed compensation because the only loss he or she has suffered is the loss of unjustly held money. It makes no sense that one should be owed compensation for lost illegitimate income. Similarly, overseas companies which are harmed by EU tariffs which the UK jointly imposes, should not be owed illegitimate compensation money from the UK.

With this said, non-monetary losses that occur in a pre-restitutionary UK, or are caused by pre-restitutionary UK policy should be compensated by post-restitutionary UK-based citizens. For

⁴⁸² Carson, Kevin, *Organization Theory*, n.p. BookSurge, 2008, p. 69.

example, under current laws the police and broader legal profession violently suppress and imprison non-violent offenders such as those found in possession of drugs. Here, on top of material losses, the victim also suffers in other ways (physical harm, trauma, loss of time with loved ones, etc.) that are not (at least obviously) covered by the Lockean law of restitution, as the perpetrators of the violence (those in the legal profession) do not gain (directly, at least) from such violence. We suggest that such oppression should be compensated in a post-restitutionary UK. A question arises of which kind of compensation claims arise? If there is compensation owed, is it just the officials (police officers, judges, prison wardens) that owe compensation? Or does it also include the government officials responsible for drug law legislation? Or does it also include voters that vote for the governments which are responsible for legislation? Is it possible that different people owe different amounts of compensation? We do not attempt to answer these questions, but suggest they are worth consideration for those that agree with Lockeanism. A full investigation of compensation claims would also have to look at non-economic impacts of UK actors overseas. For a start this would include military expeditions such as the invasion of Iraq and military support for violent or oppressive overseas governments.⁴⁸³

Having discussed these points, it appears to this author that the Lockean law of restitution can still be considered a suitable way of addressing historical injustice. There is a problem raised by assessing which historical injustices have actually occurred. There are problems raised by assessing how much restitution is owed for particular injustices. And the Lockean law of restitution cannot address *all* Lockean injustices – thus there is a need for it to be supplemented by a Lockean law of compensation. However, none of this changes the fact that the Lockean law of restitution is a sound theoretical framework for addressing the problem of Lockean injustice in holdings. Nor does discussion of such problems change our main conclusion that in our case study country – the contemporary UK – all holdings should be redistributed in an egalitarian manner.

Did we apply the framework in an unsound manner?

We noted in Chapter 3 that we would attempt to apply the English law of restitution in a Lockean manner. It might be argued that we went beyond this. Notably, we used the case of *Edwards v Lee's Administrators* as precedent to argue that when unjustly held resources are used to generate income, the subsequent income generated is illegitimately held. We argued that

⁴⁸³ For an introduction see: Curtis, Mark, *Web of Deceit: Britain's real role in the world*, London: Vintage Books, 2003.

according to this criteria, essentially any way of generating income is unjust. Here I suggest that even if we *did* stretch the restitutionary requirements arising from *Edwards v Lee's Administrators* too far, it is not clear that this would affect the overall conclusion. This is due to a combination of factors. Firstly, it appears to this author that it is irrefutable that taxes are unjust according to Lockeanism. Secondly, as we discussed at the end of Chapter 4, according to the Lockean law of restitution, unjust monetary holdings *accumulate over time* through economic interactions. If we combine these factors together, it appears that even if we only take into account the accumulation of tax money in the economy over centuries, we could still reasonably presume that all money is held unjustly. Thus whether or not we have exaggerated the restitutionary claims arising from *Edwards v Lee's Administrators* does not impact our overall results.

An important question is whether it is correct to say that all items bought with unjustly held money should themselves be considered unjustly held. If this is not the case, then this means that *only* money and land, and not manufacture items should be redistributed (in lieu of further investigation into injustice in ownership of manufactures). This could potentially make assessing the political implications of the Lockean law of restitution more difficult. Nevertheless, there is no clear reason why items bought with unjustly held money should not be considered to be unjustly held according to Lockeanism, and should not be owed in restitution.

A second possible criticism of our application of Lockean theory is that we have not discussed liability-reducing defences which are a part of the English law of restitution. There are certainly possible liability-reducing defences worth considering. For example, presumably few people would hold that NHS nurses really deserve to be expropriated of all of their wealth. Presumably most people would feel that nursing is a necessary job that needs to be done and must be compensated with a wage. Therefore it is unjust to say that the property of NHS nurses is owed in restitution. The same goes for a number of other government-funded jobs. If such liability defences were introduced and successful it would represent a threat to the argument that all property is unjustly held and should be redistributed in an egalitarian manner. Therefore the above egalitarian redistribution conclusion depends upon not acknowledging any liability-reducing defences. However, we suggest that when taking a strict Lockean approach it is legitimate to ignore liability-reducing defences, so we do so here.

A final way of critiquing our findings is to argue that they are based on unsound empirical claims. However, we suggest that such an argument would be extremely weak. The empirical claims upon which we have based our results are largely uncontested. It is not controversial that the

UK has been subject to feudalist land theft and monopoly historically. Nor is it contested that many incomes derive from taxation (either directly or indirectly) or due to government regulations. The main empirical question is *how much* unjust income derives from any *particular* injustice, but we argued in section 4.8 that this is not an important problem.

7.3 Enacting redistribution

In this section we look into what egalitarian redistribution in line with the Lockean law of restitution might look like, and how it might be enacted. It has previously been suggested by Cohen that there are only two forms of egalitarian society possible with Lockean property laws: equal division (ED) and joint ownership (JO), both of which, we suggest, are unviable forms of distribution. In this section, we look at problems with Cohen's argument before suggesting an alternative approach.

Cohen has thought about the abstract question of what an egalitarian Lockean society would look like. He has explained that there are two broad types of egalitarian distribution of property (with property conceived of as land): ED and JO. Cohen points to two problems with JO, which would not apply to ED. The first is that under JO, nobody would initially have the right to do anything on the land without the permission of all others.⁴⁸⁴ This is different to ED, as ED entails persons having individual control rights over separate pieces of land. The second problem Cohen points to is that whilst under ED, owners of equally divided land can voluntarily pool their land or parts of it if they wish, under JO, as long as one person doesn't want to divide the land, it must remain jointly-owned. He therefore argues that initial ED is preferable to JO.⁴⁸⁵

However, there is a major problem here which derives from Cohen's method in deducing what a Lockean society should look like. He considers a make-believe world made up only of land, and then imagines persons appearing in this world under the conditions of either ED or JO. In the real world, at least in our case study country, the majority of the population now lives in urban areas and are dependent upon state-owned common pool resources such as water pipes and roads in order to survive. Even many rural dwellers are dependent upon such common pool resources. ED of these resources would mean everybody would get ownership of a particular portion (e.g. a particular square meter) of these resources, which would be useless. People would be back in the position of needing permission from all other owners to use these essential means of life. Furthermore, who decides who gets which part of the equally divided property?

⁴⁸⁴ Cohen, *Self-Ownership*, p. 99.

⁴⁸⁵ *Ibid*, pp. 105-6.

We suggest that the best solution would be for ownership of all items to be redistributed amongst all persons in the UK, with all persons gaining equal shares in all items. We can call this an “equal shares” (ES) solution. In this way, all items could be managed via majority rule, as is currently the case with joint stock companies. The question then becomes how ownership of all items could practically be managed by the joint owners. This is a technical question, with a number of possible answers. However, we suggest that one somewhat simple answer is that the existing democratic UK parliamentary system could be used as the process via which all property is managed. The parliamentary system allows for all adults to vote for representatives, who could manage the property in line with what they believe their constituents favour.

If it is accepted that all property could be managed through the parliamentary process, then there are a number of options for the type of management that is enacted. Elinor Ostrom’s research is relevant here. Ostrom examined field studies into both successful and unsuccessful attempts at common pool resource (CPR) management by communities throughout the world, with a particular focus on mountain grazing and forest CPRs in Japan and Switzerland, as well as irrigation systems in the Philippines and Spain. The oldest system had survived over 1,000 years and all had “survived droughts, floods, wars, pestilence, and major economic and political changes.”⁴⁸⁶ She found that successful long-term CPR management had the following principles in common:

1. Clearly defined boundaries. Individuals or households who have rights to withdraw resource units from the CPR must be clearly defined, as must the boundaries of the CPR itself.
2. Congruence between appropriation and provision rules and local conditions. Appropriation rules restricting time, place, technology, and/or quantity of resource units are related to local conditions and to provision rules requiring labor, material, and/or money.
3. Collective-choice arrangements. Most individuals affected by the operational rules can participate in modifying the operational rules.
4. Monitoring. Monitors, who actively audit CPR conditions and appropriator behavior, are accountable to the appropriators or are the appropriators.

⁴⁸⁶ Ostrom, *op cit*, p. 58.

5. Graduated sanctions. Appropriators who violate operational rules are likely to be assessed graduated sanctions (depending on the seriousness and context of the offence) by other appropriators, by officials accountable to these appropriators, or by both.

6. Conflict-resolution mechanisms. Appropriators and their officials have rapid access to low-cost local arenas to resolve conflicts among appropriators or between appropriators and officials.

7. Minimal recognition of rights to organize. The rights of appropriators to devise their own institutions are not challenged by external governmental authorities.

For CPRs that are parts of larger systems:

8. Nested enterprises. Appropriation, provision, monitoring, enforcement, conflict resolution, and governance activities are organized in multiple layers of nested enterprises.⁴⁸⁷

Such principles could be applied to ES resources in a Lockean UK society. This would allow for ES resources to be managed in ways which local communities find practical and fair. Note that applying Ostrom's principles on a society-wide scale could take the form of implementing some type of socialist scheme. For example, it could be decided that all resources in the country will be managed under mutualist laws. Here, mutualism could be considered a form of CPR management, with all of the resources in the UK being considered to be the CPR. Alternatively to mutualism, it could be decided that one of the market socialist models thought up by the likes of Miller or Roemer could be enacted. Or full communism, or Parecon.⁴⁸⁸ It is also possible that it could be agreed for different regions to experiment with different systems at different times. Additionally, it could be pre-agreed that all property would ultimately remain under democratic parliamentary control, so that at any moment the democratic parliamentary process could be used in order to *change* the rules for managing the economy.

It might be noted here that we already have democratic elections, and people technically could already vote to change the way the property is allocated. Thus people are already choosing, via majority vote, which kind of property system they want to have in place. The problem with this argument is that it overlooks that if a government came to power in the contemporary UK which treated all property as a CPR in the above-described way, many people would see that government as acting illegitimately on Lockean grounds, as discussed in the introduction. The

⁴⁸⁷ *Ibid*, p. 90.

⁴⁸⁸ See footnote 36 above for references introducing various forms of socialism that have been advocated.

argument we have put forward here is that such views would be unsustainable. According to Lockeanism, it would be fine for all property titles in the UK to be subject to democratic management.

Discussing the enactment of redistribution raises a problem. Our approach here works for enacting redistribution in a society which requires fully egalitarian redistribution. However, it is unclear how redistribution could be enacted where only partial redistribution of property is required. Considering this theoretical question may be of interest to those that wish to further investigate the implications of the Lockean law of restitution. However, as we have noted above, it may be the case that there are no countries in the world where egalitarian redistribution of all items is not required, so it may be the case that such a theoretical question is superfluous.

As a final point on the subject of redistribution, it should be noted that in recent years there has been increased interest in the history of land theft in the UK and the resulting concentration of land ownership.⁴⁸⁹ In this context, one land scholar, Guy Shrubsole, has made a number of land reform suggestions in order to address the problem.⁴⁹⁰ The suggestions include compulsory purchase orders for land to be used for housing; regulations on land use by large landholders; abolishing the Crown estates; and setting aside London's green belt for allotments and nature reserves. Whilst such proposals are perhaps sensible, from a Lockean perspective, they go no way near far enough. As we have argued, what is needed is an egalitarian form of redistribution which redistributes all holdings in the UK. Such redistribution may take on board more moderate reform ideas, but should go beyond them.

7.4 Exploitation: Findings and implications

We have also made secondary findings with regards to exploitation. We firstly clarified Marx's implicit argument that wage labour is exploitative on Lockean grounds if wage labourers are working at an artificially low wage due to being oppressed. In making this argument we clarified a question in academia and socialist literature – the question of whether there is injustice in Marxist wage labour exploitation. We secondly clarified that contemporary wage labour relationships in the UK can be said to be exploitative, as wage labourers are providing surplus value in a situation of unjust oppression – i.e. being unjustly deprived of an egalitarian share of ownership over the means of subsistence and production in the country. Thus even if a wage labourer saves up and starts his own company, and then propertyless proletarians ask to work

⁴⁸⁹ Cahill, *op cit*; Wightman, *op cit*; Christophers, Brett, *The New Enclosure*, London: Verso, 2018; Shrubsole, Guy, *Who Owns England?* London: William Collins, 2019.

⁴⁹⁰ Shrubsole, *op cit*.

for him, the resulting relationship is exploitative if the employer receives surplus value. We thirdly clarified that the interest creditors receive can be considered to be the proceeds of Lockean exploitation, as debtors borrow money in a situation of artificially steep time preference which increases the rate of interest they are willing to pay. We fourthly showed that wage labour has always been exploitative in English history (insofar as it has produced surplus value), despite the claims of liberal historians.⁴⁹¹

As we have already considered the possible objections to these arguments in previous chapters we do not consider further objections here. Instead, we consider the implications of these arguments. Let us first consider the implications of wage labour and credit relationships being exploited in the contemporary UK. These findings do not change the amount of restitution required, as all property must be redistributed in an egalitarian manner anyway. However, these findings might be significant in another way. They may encourage persons to want to live in a society without exploitation by capitalist employers or lenders. This may make them seek political change. We acknowledge that this is a speculative claim.

The implications of the finding that wage labour has been exploitative throughout English history is less clear. Again, this finding does not change the primary conclusion that all property in the UK is owed in restitution. However, it can be said that understanding this history provides additional evidence of unjust revenues being generated and going into circulation historically, which would have contributed to the overall situation of all money in the contemporary UK being unjustly held. Consideration of this history also perhaps provides additional indirect evidence that if it were the case that persons were not barred from ownership over the means of subsistence and production, contemporary wage labour relationships would not exist on the scale or in the form they do now. Such relationships appear to have only ever come about in England due to violence. An interesting research project may be to see how far the same holds true in other countries.

It can be added that our historical discussion of historical wage labour exploitation also lends some support to the broader thesis of the likes of Polanyi and Graeber, that it is government action, particularly the imposition of taxes, which promotes production for the market.⁴⁹² Market production is not simply an outgrowth of the propensity of persons to engage in barter and exchange, as postulated by Adam Smith. As we saw, during the feudal and early modern era, the imposition of a number of seigniorial charges resulted in peasants having to raise money

⁴⁹¹ By extension, credit relationships must also have been exploitative.

⁴⁹² Polanyi, *op cit*; Graeber, *op cit*.

rents, which meant engaging in commodity production for the market. Had such charges not been imposed, it is not clear that an economy anything like that which did emerge, would have otherwise. Polanyi has noted that anthropological evidence suggests that reciprocity, redistribution, and householding (producing directly for one's family or broader social group) appear to have been the dominant form of economic activity for most human societies, rather than commodity production for the market. Had the violent imposition of feudalism not occurred, perhaps England may not have developed into a society dominated by commodity production.

7.5 Summary of original contributions to knowledge

Before moving to the conclusion chapter we briefly clarify the original contributions we have made in this study. Firstly, we have shown how Rothbard's innocent homesteader approach to injustice in holdings fails in multiple ways. Firstly, it fails on its own criteria of attempting to prevent thieves benefit from their crimes. Secondly, it fails to gain redress for all victims of monopoly. Thirdly, it is unable to address exploitation. We have shown that these problems can be overcome by using the Lockean law of restitution as an alternative theoretical framework for addressing injustice in holdings. Unlike Rothbard's approach, our Lockean law of restitution does not allow criminals to benefit from their crimes, does not overlook some victims of monopoly, and it does not overlook exploitation. Furthermore, unlike the Nozick-Litan approach, which also technically does not suffer from these problems, the Lockean law of restitution aims only to redistribute holdings which can be shown to be unjustly gained. Another advantage the Lockean law of restitution has over both Nozick and Rothbard's approach is that it does not depend upon intergenerational justice, which is a contentious concept.

Our second contribution is to have provisionally outlined the scale of redistribution which is required according to the Lockean law of restitution in our case study country – the contemporary UK. We have also shown how redistributed property could be managed in a practical and just way – through the parliamentary process. It can be noted that our conclusion the Lockean law of restitution requires egalitarian redistribution is similar to the conclusion of Litan in his attempt to apply Nozick's rectification principle. That two different Lockean-based methods of addressing injustice in holdings give rise to the same conclusions on the necessity of egalitarian redistribution is of note.

A third contribution we have made is to have clarified the implicit ethical argument in Marx's argument about surplus value derived from wage labour. Previously, it was unclear as to how far Marxian wage labour exploitation is immoral. However, we have shown that it is immoral in

Lockean terms insofar as the worker is receiving a wage lower than they would were they not suffering violent oppression. A fourth contribution we have made is to show that both wage labour and credit relationships in the contemporary UK are exploitative. This is because persons are artificially deprived of the means of subsistence and production (which they are owed in restitution), and are thus in artificially weak bargaining positions with owners of capital (employers and creditors). A fifth contribution we have made is to show that wage labour relationships throughout English history have been exploitative, despite the claims of liberal historians.

7.6 Further research

There are a number of further research questions which arise from this study. Those interested in the Lockean law of restitution may want to look into the implications of the law for other countries. Those interested in addressing Lockean injustices not addressed by the Lockean law of restitution may wish to look into the implications of a Lockean law of compensation. They may wish to research the implications of this law for the UK or other countries.

7.7 Conclusion to chapter

In this chapter we sought to discuss our findings and their significance. In the first part of the chapter we reasserted our results: according to the Lockean law of restitution, all property in our case study country – the contemporary UK – must be redistributed in an egalitarian way. We then considered three types of criticism which could be made of our results. The first possible criticism is that the Lockean law of restitution is not a suitable theoretical framework for addressing injustice in holdings. In this regard it might be argued that during the course of our study we found that under this theoretical framework it is difficult to assess what has counted as land theft and monopoly historically, that it is impossible to objectively assess the size of restitutionary claims arising from individual injustices, and that many forms of – and victims of – injustice cannot be addressed. To the first charge, we responded that we were able to sidestep the difficulty in assessing whether certain land overseas has been stolen and monopolised by focussing only on land monopoly in the UK, which is more clear-cut.

In response to the second charge, we responded that in our particular case study it turned out not to be significant that it is not objectively possible to assess exactly which restitutionary claims arise from each injustice. This is because we showed that all items were held unjustly, and therefore all property must be divided equally. We acknowledged that there would be difficulties in assessing restitutionary claims in countries where not all holdings are held unjustly,

but that this does not undermine the legitimacy of the theoretical framework. In response to the third charge, we acknowledged that the Lockean law of restitution cannot address a number of injustices. However, we argued that these injustices can be addressed by a Lockean law of compensation, and applying this law would not affect the conclusion that all property in the UK should be redistributed in an egalitarian manner. Restitution and compensation complement each other. Therefore the Lockean law of restitution is still something that should be applied when attempting to address injustice in holdings.

A second possible type of criticism of our conclusion might be that we did not always stick to the spirit of the English law of restitution when assessing restitutionary claims. We argued that this is not obviously the case. Furthermore, even if we did exaggerate certain restitutionary claims, this would not impact our overall conclusion, as under the Lockean law of restitution all money would come to be unjustly held if we *only* took into consideration the largely incontestable injustices of taxation. A third possible type of possible criticism is that our empirical claims upon which we based our conclusions were unsound. However, we suggest that this would be a weak argument as the most significant empirical claims to our conclusion are essentially uncontested (i.e. that UK land was stolen and monopolised under feudalism, and we have a tax system). In the second part of the chapter we discussed the practical political implications of our findings. We argued that a suitable way for enacting egalitarian redistribution would be to use the parliamentary system. We further argued that the parliamentary system could justly be used to enact a range of socialist economic systems.

In the third part of the chapter we discussed our secondary findings related to wage labour exploitation. We showed that according to Marx's implicit argument, wage labour exploitation is exploitative on Lockean terms when landless proletarians work at an artificially low wage due to being unjustly deprived of possession of the means of subsistence and production. We also showed that wage labour and credit relationships in the contemporary UK are exploitative. Furthermore, wage labour relationships have been exploitative throughout English history. None of these findings change the overall conclusion that egalitarian redistribution is required, but they have clarified confusion in the academic literature and may have wider political significance. In the fourth section of the chapter we summarised our original contributions to knowledge. In the fifth section we suggested that future research could focus on the implications of the Lockean law of restitution overseas, and a Lockean law of compensation for the UK or other countries.

Chapter 8: Conclusion

The aim of this investigation was to enquire into what redistribution is required if we hold to a Lockean notion of justice in holdings. The problem is significant as current private property titles are often defended on Lockean grounds. However, many titles have historically emerged in ways which are incompatible with Lockeanism. This problem should be of interest to those that profess to support Lockean ideals. If they wish to be consistent, they should take the project of addressing injustice in holdings seriously. We suggested that this investigation should also be of interest to socialists as it may be the case that Lockeanism requires redistribution in line with socialist goals.

In Chapter 2 we outlined four beliefs that make up Lockean theory – particularly the secular version as advocated by Rothbard. These are: (1) that there is such thing as human nature from which natural rights can be derived; (2) that humans own themselves; (3) that humans own any unowned items they labour on; and (4) that some form of restitution is required in order to address injustice in holdings. We also raised some of the core debates around each of these beliefs. Whilst we found the ideas of natural rights and self-ownership to be somewhat plausible, we argued that the arguments put forward for Lockean world ownership are unsound. We nevertheless resolved to continue investigating Lockeanism’s implications.

In the second section of Chapter 2 we introduced the two major Lockean approaches to addressing injustice in holdings: Nozick’s rectification principle and Rothbard’s anti-criminal system. Nozick’s approach seeks to take into account all of the injustice of history enacted by individuals and governments. Nozick suggested that as we lack sufficient information to know how holdings have been impacted by injustice, redistribution according to some patterned approach may be justified. Litan argued that the correct application of Nozick’s approach is to redistribute all holdings in any given society equally. However, we argued that this approach is incompatible with Lockeanism as it could potentially redistribute justly-held property. An alternative, more popular Lockean approach to addressing injustice in holdings is that of Rothbard. Rothbard’s anti-criminal system is made up of two parts: an innocent homesteader element, and a compensation element. We explained that we were only interested in critiquing the innocent homesteader element as we concur that compensation is compatible with Lockeanism. According to Rothbard’s innocent homesteader approach, property is unjustly held if it is stolen, and it can therefore be considered unowned. The next person to use the item apart from the thief can be considered an innocent homesteader of the item and the legitimate owner. This is in lieu of a better claim by the previous owner from whom the item was originally

stolen. We noted that Rothbard's innocent homesteader approach is advocated by leading Lockean theorists such as Block and Kinsella. However, we suggested that the approach seems to be problematic, so we resolved to engage in a fuller critique of Rothbard's innocent homesteader scheme in Chapter 3.

In Chapter 3, after clarifying Rothbard's innocent homesteader approach we argued that there are a number of problems with it. Firstly, it allows thieves to benefit from their crime. This is because it legitimises the transfer of property from a thief to a person of their choosing. The recipient could be a family member or it could be a customer. In the case of a family member, the item may then be used to the benefit of the thief directly, or the thief may benefit vicariously through their family member. In the case of customers coming to justly own stolen property this benefits thieves because all other things being equal, if customers are able to legally homestead stolen property, this will increase the price thieves can charge for their loot. The second problem with Rothbard's approach is that it cannot address the injustice done to all of the victims of monopoly ownership. We gave the example of a land thief who puts the land up for rent, and before a tenant takes it the land thief unjustly excludes locals from homesteading the land. Once a tenant homesteaded the land the unjustly excluded locals would be barred from justice. The third problem we highlighted is that Rothbard's innocent homesteader approach cannot address the problem of exploitation. This is when one person uses the artificially weak position of a violently oppressed person to gain a benefit. Under Rothbard's scheme exploiters get to keep their wealth.

In response to these problems with Rothbard's innocent homesteader scheme we suggested an alternative approach to addressing injustice in holdings. We suggested a Lockean version of the law of restitution. The law of restitution aims to prevent people gaining from injustice. We argued that not only could this law address the problems with Rothbard's innocent homesteader approach, but the law of restitution is more in line with the natural rights tradition – going back to Aquinas. After outlining the Lockean law of restitution we next outlined our plan for investigating the implications of this law for a case study country – the contemporary UK. We explained that our plan was to conduct a historically grounded thought experiment by attempting to play the role of Lockean investigator and Lockean judge. In our role as Lockean investigator we would use secondary historical and sociological sources to draw attention to evidence of Lockean injustice. In the role of Lockean judge, we would attempt to assess the arising restitutionary claims from the documented injustices.

Chapter 4 outlined the main implications of the Lockean law of restitution for the contemporary UK. That is, we outlined the main ways in which unjust holdings have been gained, and we discussed the arising restitutionary claims. The first part of the chapter was concerned with resource monopoly. In particular we looked at the history of land theft and monopoly in the UK. We argued that according to the Lockean law of restitution *all* land in the contemporary UK is unjustly held, as it has been historically monopolised and has not gone through a Lockean restitution process. We next argued, following Kinsella, that all manufactured items made from UK resources are also unjustly held, as all manufactures made from unjustly held sources are themselves unjustly held. Furthermore, items made from unjustly held overseas natural resources must also be considered unjustly held.

The second part of the chapter was concerned with unjustly gained monetary incomes. There is legal precedent in restitution law that the incomes derived from using unjustly held resources are themselves unjust and must therefore be owed in restitution to the legitimate owner. We argued from this principle that it is reasonable to stipulate that three forms of income in the contemporary UK are unjust. Firstly, the income derived from renting out or selling unjustly held land. Secondly, incomes derived from renting out or selling unjustly held manufactures made from monopolised resources. Thirdly, any income in which unjustly held resources are required in the production process. The second form of monetary income we discussed was taxation. We argued that all income derived from taxation is unjust and is owed in restitution to the taxpayers (and those taxpayers may owe their tax money in restitution if it was unjustly gained). We also noted that in the UK tax income does not only come from the UK government. UK companies also receive procurement money from overseas governments and investment from foreign sovereign wealth funds. We also suggested that secondary income gained by individuals and companies derived due to the receipt of tax money is also unjustly held. For example, when companies use incomes derived from taxes (e.g. subsidies) to invest in new inventions, the resulting revenues should be considered unjustly held. The third form of unjust monetary income we discussed was that which is exploitative because buyers are pressured by regulations into purchasing goods or services which they would not do otherwise or would not pay as much for.

After discussing these broad categories of unjustly gained monetary income we argued that when it is spent, unjustly held money becomes an ever larger percentage of the total money in circulation until all money in a country's economy becomes unjustly held. Furthermore, any items bought with that unjustly held money can be considered to be the proceeds of injustice, and should therefore be considered unjustly held, and owed in restitution. As we do not know

who would own which items were they not bought with unjustly held money, they should all be redistributed in an egalitarian manner.

Chapters 5 and 6 were focused on the exploitation that emerges as a symptom of injustice in holdings. Chapter 5 was firstly concerned with clarifying Marx's implicit argument that where persons are unjustly barred from ownership over the means of subsistence and production, they can be said to enter wage labour relationships from an artificially weak bargaining position. Furthermore, the surplus value they provide to capitalist employers can be said to be due to this artificially weak bargaining position. Marx's implicit argument was that such surplus value could be said to be the result of Lockean exploitation. Drawing on Marx's discussion, we argued that all surplus value gained by capitalist employers in the contemporary UK can be presumed to be the proceeds of exploitation. This is because, as we discussed in Chapter 4, all persons in the country are owed an egalitarian share of all property in the UK, including means of subsistence and production. That all wage labourers do not receive this property, means that they are oppressed and bargain with capitalist employers from an artificially weak position. Capitalist employers can therefore be said to be gaining a benefit from the artificially weak bargaining position of oppressed proletarians.

After laying out this argument, we responded to criticisms that might come from those that reject the labour theory of value. We argued that even if one rejects the labour theory of value, the question remains as to why wage labourers do not get the full value of the goods they produce. Or, to look at the question from another direction: why is it that capitalists systematically receive profits on goods produced by labourers? We suggested that the artificially weak bargaining position of labourers is a reasonable explanation, and is not challenged by alternative theories. We considered alternative explanations of capitalist profits, as proposed by Marshall and the Austrian schools economists, respectively. Marshall's argument was that profits are a reward for capitalists waiting to consume their wealth, and investing instead. However, the question remains how far capitalist employers would be able to benefit from waiting if there wasn't a class of proletarians in an artificially weak bargaining position. We next considered the Austrian school argument that interest on capital is due to wage labourers having a steeper time preference than capitalists. However, we noted, following Carson, that time preference is artificially skewed towards the present for people who are unjustly barred from ownership over the means of subsistence and production. We thirdly considered the Austrian school argument that capitalist profit is a reward for taking entrepreneurial risks. However, we noted that when wage labourers are barred from ownership of the means of subsistence and production, their ability to engage in their own risks is reduced.

Furthermore, they are under unjust pressure to allow capitalists to take entrepreneurial risks and reap the rewards. We therefore concluded that none of these explanations are a challenge to our argument that the profits of capitalist employers are the result of exploitation. Furthermore, the interest that creditors charge can also be presumed to be exploitative on the same grounds. That is, borrowers are borrowing from a situation of artificially steep time preference due to being unjustly barred from owning property they are owed in restitution.

Chapter 6 was concerned with responding to the claims of liberal economic historians about the history of proletarianisation in England. These historians have argued that proletarianisation was not due to unjust oppression, but rather, was due to free market forces – particularly rural overpopulation. We noted that the liberal historical claims do not directly challenge our argument set out in Chapter 5 that wage labour is currently exploitative in the contemporary UK, but such claims were still worth responding to for other reasons. Firstly, a discussion of historical wage labour taking place under circumstances of oppression would provide additional evidence of unjust incomes which have been historically generated in the UK and which continue to circulate in the economy. Secondly, by clarifying that proletarianisation has historically been the result of oppression, this would lend further indirect support to our claim that if property were redistributed in an egalitarian way in the contemporary UK, capitalist wage labour relationships would be avoided. This would strengthen our claim that contemporary capitalist wage labour relationships in the UK are exploitative and are commonly entered into due to unjust oppression. The chapter took the form of responses to multiple liberal historians who have discussed proletarianisation in England since the Middle Ages – particularly J. D. Chambers. The central claim of Chambers and co. is that proletarianisation in England since the Middle Ages has occurred due to rural overpopulation. Lacking enough land to survive and prosper as independent farmers, peasants have sought wage labour employment. We argued that the problem with this so-called liberal argument is that it overlooks or denies the land monopoly which the peasantry suffered under during the Middle Ages onwards. We concluded that there is no evidence of any proletarianisation occurring in English history free from the influence of unjust oppression. By extension, all wage labour relationships throughout English history can be presumed to have been exploitative in lieu of evidence to the contrary.

Chapter 7 was the discussion chapter. In this chapter we discussed our findings and contributions to knowledge. We suggested that we have plausibly argued that all property in the UK should be redistributed in an egalitarian manner. We then considered three possible objections that could be made to our findings from a Lockean perspective: firstly, that the theoretical framework we used – the Lockean law of restitution – is unsound itself; secondly,

that we have applied the framework in a problematic way; and thirdly, that we have based our conclusions upon unsound empirical evidence. We rebutted each of these criticisms. The next part of the chapter looked at the political implications of our major finding – i.e. that all property in the UK must be redistributed in an egalitarian manner. We asked what redistributive measures could be taken. We suggested that it would be suitable to think of all property in the UK as jointly held by all persons in the country. It could perhaps be managed via the parliamentary process.

In part four of Chapter 7 we discussed the significance of our main secondary findings: that all wage labour and credit relationships in the contemporary UK can be considered to be exploitative, and that all wage labour relationships in English history can be presumed to have been exploitative. We argued that whilst these findings do not change our conclusion that all holdings must be redistributed in an egalitarian manner, they could have wider political significance by encouraging people to favour a system in which they are not exploited. Part five of the chapter provided a summary of the dissertation's findings. Our first finding was to show the problems with the Rothbardian approach to injustice in holdings. We addressed this problem by pointing to a more coherent theoretical framework – the Lockean law of restitution. The second contribution we have made is to have shown that according to this Lockean law of restitution, all property in the UK should be redistributed in an egalitarian manner. We have also shown that this could be done through the parliamentary system. We have also made a number of findings related to exploitation. We ended the chapter with suggestions for possible future research in the field. We suggested that those interested in the Lockean law of restitution may be interested in looking into the implications of the law for other countries.

As a final point, it should be noted that whilst our investigation used the UK as a case study, in the back of the author's mind was unjust property concentration in the poorest regions of the world. In several countries, it appears that the historical residue of violent historical property expropriation, and the maintenance of the resulting property rights, is that large numbers of people are barred from the means of decent survival. Walter Rodney argued, for example, that the chronic hunger many people suffer in modern Africa is the result of the imposition of colonial property relations.⁴⁹³ Insofar as these property relations are maintained by appeals to Lockean arguments, it may be useful for those concerned with the resulting poverty to investigate the real implications of Lockean justice in these regions.

⁴⁹³ Rodney, Walter, *How Europe Underdeveloped Africa*, London: Bogle-L'Ouverture Publications, 1973.

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