

Chapter 6

Mill on Property

Private property, in every defence made of it, is supposed to mean, the guarantee to individuals of the fruits of their own labour and abstinence.

—J.S. Mill, *Principles*, p. 208

As we proceed in this chapter, it is important to keep in mind, first, that *all* forms of property were under attack in the mid-nineteenth century. Second, particular property arrangements that are almost unimaginable today—legally sanctioned slavery and exclusions of married women owning property—were under sustained and severe attack at the time, as was the widespread practice of absentee landholding in Ireland. While some commentators used these property arrangements as reasons to attack the existence of property altogether, Mill took the position that abolition was warranted in the case of slavery and vast reforms were warranted in the cases of married women and land holdings, while legitimately earned property remained useful and productive. Of course, as we have noted more than once in the foregoing, sorting out the details was complicated.

Knowing that the laws of production and distribution are interrelated, property arrangements might feed back to the productive capacity of society. Mill was certainly aware of the interrelationship and yet that realization did not prevent him from making sweeping recommendations for the redistribution of existing property arrangements. For the most part, e.g., that of the abolition of slavery, such reform proposals rested on the grounds of utility and fairness; in other words, justice. In cases when something that should never have been designated as “property” (human chattel) is made illegal, Mill’s judgment was that the former owner whose right to property was curtailed by reform warranted

compensation. In other instances, given that the state collects taxes and no one has a right to the property of others (including the property of our parents), the state might redistribute property using taxes on inheritance.

Before we turn to those recommendations, we will consider how Mill justified the existence of private property in the first instance, along with his view on what is (and is not) properly owned privately. Following this, we turn to the role of the State, including compensation, with respect to reform of property arrangements. We conclude by returning to Mill's defense of a system in which property persists.

Property justified

Mill's chapters on property in the *Principles of Political Economy* begin with his observations on property arrangements in mid-nineteenth century Britain. As he saw it, private property—and here, for the most part, he had in mind property in land—was not justified by natural law or utilitarian principles but rather had emerged over the course of time as a means to minimize conflict. Mill thus attributed the distribution of landed property (i.e., property that earns an income for its owner) to a long, historical process by which legal and quasi-legal decisions mitigated violence over ownership: “tribunals (which always precede laws) were originally established, not to determine rights, but to repress violence and terminate quarrels. With this object chiefly in view, they naturally enough gave legal effect to first occupancy, by treating as the aggressor the person who first commenced violence, by turning, or attempting to turn, another out of possession” (*Principles of Political Economy*, p. 201).

In the course of social development over time, rules had emerged that “incidentally” assigned rights in property to people already on the land and already extracting rents from it. Property rights preserved the peace but, as a by-product, they also confirmed that people obtained property in things that were not the fruits of their own labour. Mill concluded that the resulting distribution of landed property gave legal standing to a status quo and all too frequently rewarded the strong and powerful over the productive. This led him to question who *should* own what. Mill saw no reason to justify the status quo on utilitarian or other ethical grounds. As we will see, he in fact accepted that the state might sometimes intervene to facilitate a redistribution of property.

By contrast, ownership (property) in the fruits of one's labour was another matter. Following William Nassau Senior, Mill included abstinence in this category as well.²⁰ The fruits of one's labour and abstinence from consumption, he insisted, were matters of freedom and, as such, unassailable for Mill (and, before Mill, for Adam Smith). Not surprisingly, given what we have learned about Mill on liberty as well his utilitarian presumption that all count equally, Mill insisted on this as the only viable justification of property: "private property, in every defence made of it, is supposed to mean, the guarantee to individuals of the fruits of their own labour and abstinence" (*Principles of Political Economy*, p. 208). The "foundation of the whole" system of property, in his view, was the "right of producers to what they themselves have produced" (*Principles of Political Economy*, p. 215). Mill would contrast this unassailable right with situations where people obtain property by some other means, e.g., by inheritance, marriage, or force.

The right to the fruits of one's labour includes the right to use it to obtain other goods or services, to exchange what one has produced or received as gift (including gifts of inheritance), or "by fair agreement, without force or fraud" (*Principles of Political Economy*, p. 218): "The right of property includes then, the freedom of acquiring by contract. The right of each to what he has produced, implies a right to what has been produced by others, if obtained by their free consent; since the producers must either have given it from good will, or exchanged it for what they esteemed an equivalent, and to prevent them from doing so would be to infringe their right of property in the product of their own industry" (p. 220).

Property not justified—Human chattel, land, inherited wealth

Mill was, however, less preoccupied with establishing what is justifiably property—in his view that was relatively settled dogma—and turned instead to what is not rightly owned privately. Anything beyond what one has produced (or

²⁰ Recall the argument, noted in Chapter 5, that people prefer present to future gain. This position, which implies that one must be compensated to abstain from consuming today, led to the abstinence theory of interest and the argument that capitalists' profits were a return from their abstention. Karl Marx attacked this position and tried to show, by contrast, that capitalists were using labour (and only labour) to obtain profit.

freely contracted to obtain using the fruits of one's labour), falls into a category of convenience or historical accident and, as such, is subject to interference on the grounds of social utility. As noted above, Mill acknowledged that "the institution as it now exists" allowed for property rights "over things which [people] have not produced." What sorts of things did Mill have in mind?

At the head of the list of unacceptable property for Mill is people:

Besides property in the produce of labour, and property in land, there are other things which are or have been subjects of property, in which no proprietary rights ought to exist at all. But as the civilized world has in general made up its mind on most of these, there is no necessity for dwelling on them in this place. At the head of them, is property in human beings. It is almost superfluous to observe, that this institution can have no place in any society even pretending to be founded on justice, or on fellowship between human creatures. (*Principles of Political Economy*, pp. 232-33)

Other abuses of property comprised monopoly privileges, sometimes inherited or obtained through government approval: "properties in public trusts," "judicial offices," "commission in the army," "ecclesiastic benefice," "monopoly," and other "exclusive privilege" (p. 233). All these have in common that they are unearned.

As will be evident from the discussion above, Mill considered property in land as quite different from the fruits of one's labour. Here, he followed in a tradition of economists from David Ricardo through his father, James Mill. Since "no man made the land" and its distribution is the result of inheritance and, perhaps, conquest, property in land is by no means sacred: "When the 'sacredness of property' is talked of, it should always be remembered, that any such sacredness does not belong in the same degree to landed property. No man made the land. It is the original inheritance of the whole species" (*Principles of Political Economy*, p. 230). Thus, landowners have no unassailable right to property, although, consistent with his view on the rights to one's labour, Mill insisted that landowners who improve the land, by fencing it or other means, have a right to the value of that improvement.

Second, and just as controversial, inherited property including but not limited to land was also quite different from the fruits of one's labour. Mill insisted that while people have a right to give their property away, no one has a right to inherit property. In a section of the chapter entitled "The institution of property implies the power of bequest, but not the right of inheritance. Question of inheritance examined" (see *Principles of Political Economy*, pp. 218–23), Mill remarked that the guarantee to the fruits of our labour and exchange did not extend to a right to receive the fruits of another's labour via inheritance. In this context Mill allowed that inheritance practices might actually conflict with the ends of private property. Unsurprisingly, Mill singled out parents who, he wrote, are not obliged (and should not be obliged) to leave property, acquired either through inheritance or their productive efforts, to their children, "to leave them rich, without the necessity of any exertion" (*Principles of Political Economy*, p. 224). In line with his views on liberty (see Chapter 1), Mill argued that such a practice—passing on wealth to those who have not worked to produce it—is in fact morally corrupting to those who receive it.

What role for the State?

For the most part, Mill sees as minimal the role of the State as it relates to property—a role generally limited to appropriately enforcing contracts entered into freely by competent individuals. But Mill allowed for two exceptions. First, as noted in Chapter 1, he insisted that contracts, even those voluntarily agreed upon, to sell one's self into slavery should be null and void. He did so, notwithstanding his generally anti-paternalistic position, on the grounds that it makes no sense to have the freedom (and have that freedom enforced) to give up one's freedom. Mill's position here follows from his view of freedom, that it is *the* key component of happiness whose value is incommensurate with other components. Whatever one might gain by selling one's self into slavery will never compensate for the loss of freedom. Thus, any such contract must have been coerced or made without full understanding (e.g., by a child) and the State should render it void.

Mill also inserted a reciprocity notion into the idea of free contracts—only contracts that are reciprocally acceptable should be allowed by law and enforced by the state. This condition of reciprocity rules out

taking (stealing) and ensures that contracts are accepted without coercion by all parties.²¹

Second, agreements that bind one person to another and involve no third party should not, Mill argued, be enforced for life. In this context, of course, Mill focused on marriage. As we have seen in Chapter 4, even in the event that third parties—children—were involved, Mill allowed that the marriage contract might be void. (His prediction in such circumstances was that the presence of third parties would substantially reduce the number of voided marriage contracts.) The problem with marriage contracts in the absence of improved property arrangements, was that, coupled with a lack of education and other opportunities, they held one group dependent on another. Mill saw marriage arrangements of his day as an outgrowth of this dependence, of women being taught “to think marriage is the one thing needful, [which makes] it intelligible that many a woman should prefer being one of several wives, to not being a wife at all” (*On Liberty*, p. 290). A better policy than enforced lifetime contracts was to reduce the dependence of women on men by allowing them to own property outside of the marriage and offering them educational and labour market opportunities.

Mill also made the case for massive property reforms to be enacted through the democratic process (of which, recall, he was a part, arguing the case in Parliament). These would alter property arrangements when property was in his view unjustly owned or transferred. Not surprisingly, his examples relate to the three distortions of justice enumerated above: slavery, landed property (especially in Ireland), and inheritance. We turn now to the issue of compensation.

Compensating former slave owners

In instances where property rights had been unjustly granted and enforced by the State, Mill urged that the injustice be corrected. However, he insisted that compensation be offered to the current owners of such property in order to effect the reform. Even in the most “iniquitous” of all instances, slavery, because the State had “expressly legalized it,” it was obliged to compensate

²¹ For an examination of how reciprocity infuses Adam Smith’s economics, see Smith and Wilson (2019). Their demonstrations pertain to Mill as much as Smith.

slaveholders in order to right this arrangement.²² Such was the outcome of the Act of Emancipation, the “most virtuous act” that abolished slavery:

It is almost superfluous to observe, that this institution [property in human beings] can have no place in any society even pretending to be founded on justice, or on fellowship between human creatures. But, iniquitous as it is, yet when the state has expressly legalized it, and human beings, for generations, have been bought, sold, and inherited under sanction of law, it is another *wrong, in abolishing the property, not to make full compensation*. This wrong was avoided by the great measure of justice in 1833, *one of the most virtuous acts*, as well as the most practically beneficent, ever done collectively by a nation. (*Principles of Political Economy*, p. 233)

Although landowners have no natural right to their property, they, too, have a claim to compensation if their property is taken on utilitarian grounds:

The claim of the landowners to the land is altogether subordinate to the general policy of the state. The principle of property gives them no right to the land, but only a right to compensation for whatever portion of their interest in the land it may be the policy of the state to deprive them of. To that, their claim is indefeasible. It is due to landowners, and to owners of any property whatever. (*Principles of Political Economy*, p. 230)

Irish land reform

As noted, Mill targeted landed property that assigned rights to absent landowners and left the labouring poor in wretched conditions of poverty in Ireland. He published the first edition of his *Principles of Political Economy* just as

²² The Emancipation Act abolished slavery with a three-way compensation: slaves were freed, former slave-owners were offered tariff protection on sugar production, and British taxpayers, who supported emancipation, paid for the tariff in the form of higher sugar prices. In Mill's view, the abolition was “most virtuous,” while compensation was also just since society had formerly sanctioned human chattel.

hundreds of thousands of Irish peasants starved, succumbed to disease, or fled their homes in the wake of the Irish potato blights and famine. Mill recommended that Irish cottiers (peasant farmers living in a cottage on the land) be converted to peasant proprietors through what would have amounted to a massive land redistribution, with compensation: “The land of Ireland, the land of every country, belongs to the people of that country. The individuals called landowners have no right, in morality and justice, to anything but the rent, or compensation for its saleable value. With regard to the land itself, the paramount consideration is, by what mode of appropriation and of cultivation it can be made most useful to the collective body of its inhabitants” (*Principles of Political Economy*, p. 326).

It is important to keep in mind just how radical Mill’s position on Ireland, and the Irish peasants, was. Many commentators suggested that Irish were poor because they were naturally lazy, impulsive, and unreasonable. Mill was actively engaged in the debate about whether Irish would forever remain poor. In his view, the problems in Ireland were a result of property arrangements and poor incentives. As we saw in Chapter 5, those who opposed Mill, such as the political economist W.R. Greg, who wrote extensively on Ireland, held that the Irish were indolent and inferior. In the passage quoted in Chapter 5 where Greg suggests that the Irishman is “not an average human being” he argued, contra Mill, that because of the natural indolence of the Irish, land reform would fail in Ireland:

“Make them peasant-proprietors,” says Mr. Mill. But Mr. Mill forgets that, till you change the character of the Irish cottier, peasant-proprietorship would work no miracle. He would fall behind in the instalments of his purchase-money, and would be called upon to surrender his farm. He would often neglect it in idleness, ignorance, jollity and drink, get into debt, and have to sell his property to the nearest owner of a great estate... In two generations Ireland would again be England’s difficulty, come back upon her in aggravated form. (Greg *Realities*, 1869, p. 78)

Agitation in Ireland focused on obtaining better conditions for Irish peasant. Mill entered the debate by insisting that the British government, having sanctioned inappropriate arrangements, compensate landowners (along with whatever improvements to the land they were responsible for):

There is no necessity for depriving the landlords of one farthing of the pecuniary value of their legal rights; but justice requires that the actual cultivators should be enabled to become in Ireland what they will become in America—proprietors of the soil which they cultivate. (*Principles of Political Economy*, p. 326)

Inheritance

As noted above, Mill also favoured limitations on the right to inheritance: “Each person should have power to dispose of his or her whole property; but not to lavish it in enriching some one individual, beyond a certain maximum, which should be fixed sufficiently high to afford the means of comfortable independence” (*Principles of Political Economy*, p. 225). Parliament might limit amounts of such bequests: “I see nothing objectionable in fixing a limit to what any one may acquire by the mere favour of others, without any exercise of his faculties, and in requiring that if he desires any further accession of fortune, he shall work for it” (p. 228). Such laws would serve the dual purpose of raising revenues for the state while at the same time helping to prevent the moral decay associated with receiving unearned wealth. Mill pointed to the contrast between practice in England and America, where

A large portion also of the accumulations of successful industry would probably be devoted to public uses, either by direct bequests to the State, or by the endowment of institutions, as is already done very largely in the United States, where the ideas and practice in the matter of inheritance seem to be unusually rational and beneficial. (*Principles of Political Economy*, p. 226)

Interestingly, Mill's position on inheritance is rather similar to that of Nobel laureate economist James Buchanan.²³

Conclusion

Notwithstanding his ideas for reforming property arrangements, Mill strongly defended the overall private property system in the face of mid-nineteenth century attacks. Mill argued that the system of had never “had a fair trial” (*Principles of Political Economy*, p. 207). As he put it, existing arrangements allowed for property in things that should never have been property in the first place and frequently stripped people of the rights to their produce. He acknowledged, further, that property arrangements in a hyper-competitive world seemed destined to create inequity where earnings were allocated

almost in an inverse ratio to the labour—the largest portions to those who have never worked at all, the next largest to those whose work is almost nominal, and so in a descending scale, the remuneration dwindling as the work grows harder and more disagreeable, until the most fatiguing and exhausting bodily labour cannot count with certainty on being able to earn even the necessaries of life. (*Principles of Political Economy*, p. 207)

Yet, while Mill had ideas about how best to deal with the situation described above, he was not ready to jettison private property. In the face of calls for new and different distributional arrangements (to which we will turn next in Chapter 7), Mill urged reform of the system of private property, including education for the labouring classes and the end to other forms of dependence. Only then would a system of private property obtain a fair trial on which to judge its relative merits compared to Communism.

To judge of the final destination of the institution of property, we must suppose everything rectified, which causes the institution to

²³ Like Mill, Buchanan held that since there is no ethical principle in favour of inherited property and inheritance may have a corrupting influence on the inheriting generation, the state may appropriately tax inherited property.

work in a manner opposed to that equitable principle, of proportion between remuneration and exertion, on which in every vindication of it that will bear the light, it is assumed to be grounded. We must also suppose two conditions realized, without which neither Communism nor any other laws or institutions could make the condition of the mass of mankind other than degraded and miserable. One of these conditions is, universal education; the other, a due limitation of the numbers of the community. (*Principles of Political Economy*, p. 208)

In Chapter 7, we will consider Mill's calls for "a due limitation" of population and "universal education" as well as his investigations into economic arrangements such as worker cooperatives and Socialism. As noted throughout this work, Mill's overriding concern was the amount of poverty that he believed was due to overpopulation as well as the amount of liberty and flourishing that he believed would prevail under each system. On both those counts, he came to favour a (modified) system of private property.