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The writing on the wall

Kasey McCall-Smith*

In the opening of *A False Tree of Liberty* Susan Marks offers a brief vignette of Thomas Spence inscribing on a wall a claim to the rights of man against a private landlord. Using this as a jumping off point, Marks crafts a multidimensional tale of how property rights served as an entry point to debates about many of the claims British commoners made on the state during the seventeenth and eighteenth centuries, claims we now describe in the language of human rights. Though not the first examination of the relationship between property rights and human rights, in *A False Tree of Liberty*, Marks weaves an insightful commentary through the words of key thinkers as well as lesser known commentators during the final phases of the enclosure of English commons. As an early phase in the development of capitalism, enclosure and associated land programmes epitomise the persistent tension between individual rights and the good of broader society. Traversing the various tree metaphors and euphemisms invoked by the foremost pens and voices of 17th- and 18th-century England, Marks puts aside familiar questions such as ‘Where do human rights come from?’ and ‘When did human rights begin?’ in order to explore the connections between debates about the rights of man and developments within the history of capitalism. In particular, she explains how private property rights developed, shaped and encouraged industrialization in its infancy as a precursor to contemporary capitalism and its contested relationship with human rights.

*A False Tree of Liberty* is predominantly a work of history, but Marks traces several themes that underpin modern life in Britain—as well as countless other states—which make this work highly relevant to contemporary human rights practice and activism. Here I take up three of these themes.

* Senior Lecturer in Public International Law, University of Edinburgh. All online sources last visited 14 September 2021.
1 S Marks, *A False Tree of Liberty* (Oxford University Press 2019).
First, socioeconomic class is frequently monetised in British politics and society. Economic efficiency, for example, is a basis for debates about the extent to which education is provided to the British masses\(^2\) and discourse on people in poverty has a clear tether to income levels.\(^3\) The result is that the British parliament tends to favour economic elites over the poor. The tensions caused by this reality are reflected in law today just as they were during the period covered by Marks’s project. Second, debates about socioeconomic rights protections, which are often incorrectly viewed as a contemporary version of alms-giving, neglect the benefit brought to the whole of society by ensuring all people’s access to minimum levels of education, healthcare and social security, among other public goods. Despite liberal democracy being characterised by increased human rights protections and provision of public goods for the whole community,\(^4\) the gap between those at the top and bottom of the socioeconomic spectrum is growing in Britain. Those in the middle of the spectrum or lower middle of the spectrum are increasingly falling through the cracks, just as waged workers did in Marks’s examination of dearth in the 18th century.\(^5\) The great social contract promised by a liberal, capitalist economy has been broken due in large part to the missed opportunities of parliament to favour the good of the whole over the good of the propertied few. As Marks reveals, the property question in the 18th century was ‘made pivotal to the meaning of what were then termed the rights of man’ regardless of whether in the context of popular sovereignty or subsistence debates that defined the era.\(^6\) Finally, I turn to consider where we go from here and how activism plays a continuous role in the negotiation of human rights.

**PROPERTY AND POLITICS – A MATTER OF CLASS**

In many ways, the story that unfolds throughout *A False Tree of Liberty* is that the property question is simply an entry point to examining how all basic

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\(^5\) Marks (n 1) ch 6.

\(^6\) ibid 254 et seq.
aspects of living a life in dignity are compromised by the exclusion of the masses from the land and its bounty. Marks’s story reveals that nervousness about the potential loss of the aristocratic elites’ personal source of wealth, land, is what drove much of the mid-17th- and 18th-century friction between commoners and wealthier landowners not simply on the question of access to land but also on essential civil and political rights, namely the right to vote. As a supporter of the Diggers’ and Levellers’ platforms during the Putney Debates in 1647, Colonel Thomas Rainborough argued that property, or lack thereof, should not be the lynchpin determining an individual’s right to vote. Marks recounts that he called for every man, including ‘the poorest he’, to have a voice in determining how he should be governed whether propertied or not. Opponents, including Henry Ireton, along with his father-in-law Oliver Cromwell, feared that giving the vote to non-propertied men might lead them to vote ‘to abolish private ownership of property altogether’ and, thus, Ireton argued that suffrage without the property qualification was a denial of all property. Reflecting Rainborough’s view of exclusionary voting laws, Marks questions the logic of Ireton’s and Cromwell’s position that removing the property-related voting preconditions would be the end of private property rights. The restriction on voting left the common, non-propertied classes who formed the bulk of the British population with no opportunity to exercise their views on how they were governed, despite them being the ones who carried out the daily bidding of the elites as soldiers and labourers. Regardless of the logic of the mid-17th-century political elites chronicled by Marks, the overarching question of a man’s entitlement to vote in Britain remained tethered to property ownership until the passage of the Representation of the People Act in 1918.

Paradoxically, it was not individual ownership of property that Gerrard Winstanley’s Diggers and Levellers sought but a right to share access to the bounty of common land as a means of ensuring basic subsistence. Voting rights were simply a common ground for debate that linked to the private right to own property. The vote alone was unlikely to do much in real terms of subsistence for members of the common weal as they struggled to earn a living wage, maintain their homes, and feed their families. In the face of

7 ibid 75.
8 ibid 75-76.
9 ibid 75-78.
10 Practically all property-related preconditions for voting were removed in 1918 with the Representation of the People Act which expanded the vote to all men over age 21 and women over 30.
11 Marks (n 1) 83.
parliament’s continued legislative reinforcement and expansion of private property rights for its elite electorate to the exclusion of the ‘common weal,’ the latter—the non-propertied, non-voting commoners and destitute masses—was forced to rely on charity. The situation of the poorer classes was exacerbated further by parliament’s refusal to regulate the various developments relating to agricultural and commercial industrialisation, which left wage-earners in a weak bargaining position when their employers were inconsistent in setting wages and working hours. This precarious existence engendered a great deal of unrest that boiled over frequently across the seventeenth and eighteenth centuries.

Pushing through around 5000 Inclosure Acts, parliamentarians in the 18th century excluded prior rights-holders and nullified pre-existing rights and leases to the commons in the full knowledge of the negative implications that their actions would have on rural peasants. Common class uprisings were not infrequent in response to various socioeconomic deprivations, including food shortages, that accompanied enclosure. While initially ‘Parliamentary enclosure met with considerable resistance ... [i]n the last decade of the 18th century, however, defence of the commons at the upper echelons of society largely evaporated’ as the benefits of transitioning to an industrial economy were revealed. Marks traces how ‘improvement’ programmes that accompanied enclosure gave root to agrarian capitalism and the benefits that accrue to large property owners through tax relief and agricultural subsidies still today. The heated controversies over the rights of man and the reinforcement of social disproportion in the form of ‘class power’ coincided with this final push to enclose common lands and the momentous changes associated with early industrialization that grew into capitalism. As the end of the 18th century approached, the important task of parliament seemed to have been to secure land titles in perpetuity for those who could afford a ‘commanding view’ that ‘largely effac[ed] the signs of rural production and the people engaged in it.’

12 ibid 124, 141, 149.  
13 ibid 157-60.  
14 ibid 155-59.  
15 ibid 159.  
17 Marks (n 1) 161-62.  
18 ibid 162.
Marks’s account of pro-enclosure commentators, such as Arthur Young, illustrates the conflict about how to address the growing inequities in society and the firm entrenchment of class-based approaches as chronicled through debates about private property rights. On the one hand, Young opines that equality was a ‘romantic phantom of the imagination’ but lamented the fast-coming ruin of Britain due to the ‘misery of the poor’.19 Continuing the arguments of Edmund Burke, E.P. Thompson, Hannah More, among others, Young maintained that securing private property rights was necessary to guard against ‘the equal and universal ruin of all’.20 Parliament definitively actioned that view.

As a result of enclosure on the back of centuries of entrenching a separation between the peasant class and the upper class in British society, peasants and commoners became increasingly dependent upon the upper class, a situation that Burke characterised as the aristocracy and gentry’s role as ‘protectors and guardians’ of society.21 However, Burke also noted that an individual’s ‘private discretion’ tempered this charitable benevolence ‘in the jurisdiction of mercy’.22 In short, the lower and middle classes, when in peril, were at the mercy of the upper class. While a small middle class emerged following enclosure—those able to generate new wealth through early stages of agrarian industry—the poorest of the poor plunged further into extreme deprivation. Burke and his compatriots reasoned that market forces would ultimately correct the social imbalances resulting from enclosure and early industrialism.23 The deprivation suffered by the poor was simply their lot in life. Unfortunately, that argument has far outlived those who raised it in the wake of enclosure.

Land ownership in modern Britain suggests that William the Conqueror’s system of favour, and the reinforcement of those historic property rights through enclosure, has not changed very much, even if the face of the nation has. Of the roughly 60,000,000 acres of land that make up the United Kingdom as of late 2018, the Crown Estate owns 336,000 while The Crown itself separately owns 532,568 acres.24 Other hereditary titled individuals own vast swaths of Britain with the Duke of Buccleuch coming in second to the Crown as the

19 ibid 164-65.
20 ibid 164.
21 ibid 102.
22 ibid 136.
23 ibid ch 6.
24 Using the most recent figures compiled in Shrubsole (n 16) 306-07.
next largest private property owner with approximately 270,700 acres. Land granted to the elite in return for services to the monarch may have begun with William the Conqueror, but it was legalised and solidified in the British tradition by parliamentary enclosure. The late 18th century further cemented land domination by elites through the fruits of agrarian capitalism, with the newly wealthy tenant farmers ‘proletarianizing’ wage-labourers and making them dependent on the provision of paid labour.25 These class distinctions and accompanying lack of mobility are entrenched still today.

FROM PROPERTY TO SUBSISTENCE AND SOCIOECONOMIC RIGHTS

It seems that not much has changed in British politics across the centuries. Enjoying the tax breaks offered by parliament for doing business in Britain, today’s successful capitalists snap up large swaths of British land for their ‘commanding views’ while the lower classes contend with housing shortages and a sluggish economy.26 Geraldine Van Bueren has frequently argued that ‘[c]lass has played in the demotion of the value of socio-economic rights by successive governments’.27 Though socioeconomic rights benefit everyone, parliament has a habit of sacrificing the entitlements of those with the least for the sake of the elites and their businesses, such as the 2010 austerity measures that resulted in increased hardships for persons with disabilities.28 Enclosure was not the first time, nor the last, that parliament opted to reinforce the landed aristocracy and emerging agrarian capitalists rather than support its working classes.

Admittedly, since enclosure was finalised, there have been many advances designed to secure a social safety net, which aligns with the promises of liberal democracy.29 In the decades since World War Two Britain has legalised a social security and human rights culture that at a minimum offers a base level of

25 Marks (n 1) 159-60.
public goods such as education, healthcare and employment security, as evidenced through such legislation as the Human Rights Act 1998, the Health and Social Care Act 2012 and the Employment Rights Act 1996. However, there has been a gradual diminution of the British welfare state in the wake of increased neoliberal policies of business deregulation by successive British governments beginning with Margaret Thatcher. Today’s tensions between compounding capitalist profit for the few and basic subsistence of the many echo the 17th- and 18th-century debates presented by Marks.

History offers up a multitude of examples where the British government could have restructured its approach to the benefits of capitalism in a way that entrenched support for the multitudes rather than primarily the elites. Such was the eagerness to assuage the propertied gentry of Britain in the decades after enclosure that the government took out loans equating to 40 per cent of the national budget to ‘reimburse’ slave-owners for their loss of ‘property’ caused by the 1833 Slavery Abolition Act. Unsurprisingly, many hardworking members of the British public and descendants of those enslaved were upset to discover that up until 2015, their taxes were paying off the loans that sustained the status quo for former British slave owners, the propertied elite. The playwright Juliet Gilkes Romero was so incensed that she penned The Whip to reveal the mixed truths underlying British abolition and the ways in which the British government gambled the future of the country by shackling approximately 185 years-worth of workers with a debt incurred to appease the wealthy property owners of the day. Parliament had already been gambling with the lives of its common masses in the previous century as it acted to enclose the commons and deprive them of access to basic means of subsistence. By betting that the market would self-correct the ills suffered by the commoners, parliament ensured that the titled, propertied men of England would have a steady source of income even if no one else had the same luxury. The close of the 18th century ended a long process of land reform typified by enclosure and improvement that had steadily invested property in the wealthy while limiting the potential upward economic movement of the poor. Parliament’s willingness to gamble the most basic social protections has continued.

While Thomas Paine and Edmund Burke, men of stature using ink and the air in their lungs, jostled over the appropriateness of voting rights for men without property, Marks traces how men without lofty pedigrees planted the

30 ‘This is What We Know About the Government Loan to Pay Slave Owners Compensation After Slavery was Abolished in 1833’, Full Fact <https://fullfact.org/economy/slavery-abolition-act-loan/>.

seed of a right to subsistence. Subsistence, in its most rudimentary understanding, encompasses what we now recognize as essential to a life lived in dignity. In contemporary human rights terms, this includes the right to food, the right to work and the right to an adequate standard of living, among others. Enclosure, improvement, and associated land programmes deprived the common weal of different forms of subsistence. Whether fuel gathered from tree litter, grazing space for the family cow, or a means of collecting the fruits of nature to develop artisan offerings and supplement otherwise meagre earnings, common rights to the local land offered a resource from which those at the lowest end of the socioeconomic spectrum could contribute to their own subsistence needs. Those who persisted in deriving their subsistence from the land following enclosure were ultimately viewed as being ‘on the borderlands of organised society’. This view of those at the lower end of the socioeconomic spectrum persist today with little consideration of the role that pro-capitalist government decision-making played in solidifying socioeconomic inequality.

Contemporary society is rife with literature offering different accounts of capitalism and the impact of neoliberal policies. For advocates of social justice, the options on whether to celebrate, demonise, or simply accept capitalism are not so simple. As Andrew Fagan has observed, in the post-industrialist, post-materialist society nurtured by capitalism, there is an assumption that everyone is safe, has enough to eat, access to education as never before, and access to basic health care—that there is a satisfaction of basic needs. Yet, at the same time, neoliberalist policies of deregulating business activity and loosening wage protections have increasingly transferred risk and insecurity onto workers. This has resulted in what Guy Standing refers to as the global ‘precariat’. The ‘precariat’ class, those without any form of stability, has evolved from the repeated failures to adjust the extreme economic imbalance between elites and the rest of society.

This precariat is reflected in today’s proliferating gig economy, zero-hours contract workers and a growing swath of society for whom basic needs can only be delivered through state assistance, which is diminishing. Austerity measures adopted following the financial crisis of 2007-08, for example, had a disproportionate impact on individuals who were already dependent on social

32 Marks (n 1) 83.
33 ibid 217.
The poor became poorer, and in the decade since austerity programmes commenced, poverty levels have steadily climbed, particularly for historically marginalised groups. Recent studies of poverty in Britain confirm that over one-fifth of people in Britain live in poverty, including high rates of in-work poverty. The OECD puts inequality in Britain higher than most other advanced economies with the poorest 20 per cent of households earning only 6.7 per cent of the total income. The lack of good or better jobs only grew worse in 2020-21 as a result of the Coronavirus pandemic. The government’s continued claims on the wages of the lower and middle classes, tax breaks for the economic elite, and consistent failure to directly address the downward spiral of such a large percentage of the population into poverty despite having the fifth largest economy in the world all echo the responses of the 18th century, Burke-aligned parliamentarians traced through A False Tree of Liberty. Marks’s work reinforces Van Bueren’s argument that socio-economic rights receive little attention because government and decision makers are not interested in the plight of the working class and marginalized communities, no matter what they say in party manifestos.

Instead of making a social compact to share the gains of capitalism across society, repeated governments have catered to the money-makers at the expense of those who work (hard) for the least. Poverty and deprivation exacerbate people’s difficulty in accessing the socioeconomic rights that permit them to subsist and live their lives with dignity. The United Kingdom committed to ensure basic socioeconomic rights as part of its post-war investment in its people and again when it ratified the International Covenant on Economic, Social and Cultural Rights, yet poverty and social deprivation are rising at an alarming rate. “The bottom line is that much of the glue that has held British society together since the Second World War has been deliberately removed and replaced with a harsh and uncaring ethos.” What does it say about the world’s fifth largest economy that by the end of 2022 it is anticipated that 41

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37 Alston (n 36) 15 et seq.
39 OECD (n 26).
40 G Standing, A Precariat Charter: From Denizens to Citizens (Bloomsbury 2014) 33.
41 Alston (n 36) 1.
per cent of its children will live in poverty, almost double the poverty rate of the population at large, and that pensioner poverty rates are growing rapidly? Should we continue to believe that market forces will correct social imbalances as advocated by early industrialists and many people today? Or, alternatively, do we recognise the ‘false mood of boom and prosperity’ that led to a growing class of precarious workers with little or mixed success in accessing the fruits of capitalism? If the recent pandemic has demonstrated anything it is that ‘if we are to “build back better” for everyone, we need a comprehensive package of policies spanning the labour market, social security and the housing market to support people to get out of poverty once and for all.’

THE UNWRITTEN STORY

While there is nothing inherently wrong about private persons using the fruits of their labour to purchase property, the thread that runs throughout A False Tree of Liberty is that enclosure not only reinforced the practical distinction between those with social status and money and those without but also entrenched a legal distinction. Marks’s deft presentation of the divergent views about what these distinctions meant in terms of rights offers an opportunity to reflect on where Britain went wrong as a government, as a people, as a nation. Paine’s interpretation of the struggle of the common weal is presented as one for civil and political equality reinforced by socioeconomic support in a nation run by social elites. The Diggers and Levellers alternatively argued that it was about the rights to subsistence through work and food that should be delivered by a stronger social contract. To tie together these two branches of thought together, my final observations turn to the role of activism in progressing solutions to the persistent inequality experienced by so many when compared with the excessive wealth of the few.

As presented above, statistics demonstrate that the poor are getting poorer and more people are moving into poverty. At the same time, the rich are getting richer and through tax breaks and tax havens are paying less into the public purse. Addressing poverty and social exclusion requires broad, collective, and enduring responses. These might include radical changes to perks for the elites. Alternatively, we must accept and deal with Fagan’s harsh

42 ibid 16-17.
43 Standing (n 40) 33.
44 Joseph Rowntree Foundation (n 38) 11.
45 ibid; Francis-Devine (n 38).
observation that we may have reached a point in liberal democratic society where the consensus is that those who are unable to pull themselves out of poverty have their own life choices to blame.46 This corollary of meritocracy can fuel resentment and lay the ground for populism to succeed.47 Should we be concerned about capitalism and its negative impacts on the ability of all people to enjoy the benefits of a productive and successful economy and society? Is there a way to rethink the relationship between the elites and the growing precariat? The ‘radical’ activism displayed by the Diggers and the Levellers in their varied approaches to countering enclosure is no less present today. While not always applying the physical forms of resistance chronicled throughout A False Tree of Liberty, today’s ‘Levellers’, such as those involved in movements including Occupy London48 or Extinction Rebellion49 have many more means of resistance at their disposal. The power of the pen, the voice, and collective efforts of people behind a cause is amplified quickly and easily through technology and organisation. Civil society, as a collective of thousands of small and large organisations, presents a reflection of the specialist industry that is modern radical activism. Even if ‘gentrified’, the human rights movement may be able to admit the benefits of capitalism and also find a way forward that repairs the broken British social contract. The everyday activism that surrounds us gives me hope that a new story of a stronger social contract will emerge, despite the misery of the daily headlines.

Published in the same year as A False Tree of Liberty, the land reform activist Guy Shrubsole’s Who Owns England? also reflects on the extinguishment of common rights of the peasantry to feed themselves from the land.50 In many ways, the two volumes are miles apart though they both draw from similar historical data and literature focused on the private property question, from Thomas More to Paine to Burke. Shrubsole reiterates that ‘[w]ho owns land matters. How landowners use their land has implications for almost everything: where we build our homes, how we grow our food, how much space we leave for nature.’51 Land is a consistent connector between people

46 Fagan (n 34) 297.
49 Extinction Rebellion <https://extinctionrebellion.uk/>.
50 Shrubsole (n 16) 49.
51 ibid 2.
and their rights. Both books present a strong activist current focused on land and rights. In 21st century Britain, however, the power of the pen seems only to take us so far. One needs to be able to assert a position in 280 characters or fewer. Struggling members of the precariat may not have time between gigs, zero-hours contracts, and tending to everyday life to explore the rabbit-hole that reading on this subject can present. Literature about socioeconomic deprivation and how to rectify it can shape our arguments as well as our actions, but, ultimately, it is our actions that will bring about the most potential for change. In the end, Paine was entirely correct that ‘We have it in our power to begin the world over again.’ The question is how? In the opening vignette of A False Tree of Liberty, Spence inscribes an idea on a wall, but the rights of mankind is a story that has been recast time and time again. Each time, the story’s focus has been tweaked to the pressing issue of the day. Susan Marks demonstrates that while the seeds of human rights are entwined with the tree of liberty in many different incarnations, the final story of human rights remains ours to write.

52 The most updated character limit on Twitter.

53 Marks (n 1) 249.