

Proudhon, Public Policy, and American Political Traditions

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Abstract

In this work we explore the writing of the French political thinker Pierre Joseph Proudhon with the goal of applying his thought to contemporary policy issues in the United States. We do this first by providing a reassessment of Proudhon's 1840 work *What is Property?* We seek to correct common misconceptions concerning his understanding of private property and the operation of economic markets. We establish that Proudhon's thought has commonly been misconstrued as socialist. We show that Proudhon advocates a non-socialist philosophy, but one that provides a sophisticated approach to advancing social justice in the context of a free market. We then apply insights gleaned from Proudhon's writing to questions surrounding intellectual property claims under United States law.

Rather than advocating socialism, Proudhon defends private property but in a way that renders property rights conditional on non-exploitative use of land and capital. Proudhon seeks to create a background environment in which market transactions will take place, one that will incline market actors to dispose of their private property rights in a socially just manner. We then apply this understanding to controversial issues in American patent law. We end the work by arguing that Proudhon's ideas should be appreciated as a system of thought bearing striking similarities to key developments in American political history. As such, Proudhon should be seen not as a foreign and radical thinker, but as one who defends enduring political ideals that have resonated throughout American history.

Proudhon, Public Policy, and American Political Traditions

Socialism failed in the United States. As a political and social movement it never exerted the same level of influence on public affairs as it did, and continues to do, in nations across the world. As historians of American public policy Seymour Martin Lipset and Gary Marks point out, the seeds of socialism in the United States have, in effect, been cast on barren soil. In their work *It Didn't Happen Here*, Lipset and Marks document the depth of American resistance to socialism. Although some movement in the direction of socialism has occurred in American political history, in all, socialism has made remarkably little progress. Indeed, the difficulty of developing socialism in the United States was noted in the earliest days of the worldwide socialist movement, as Engels himself remarked with vexation the resistance in America to socialist agitation and the development of class consciousness.¹ In the following decades, as Lipset and Marks demonstrate, the United States has experienced little essential change in the direction of full scale socialism.²

This failure of socialism still resonates in contemporary political discourse. In fact, the

¹ Seymour Martin Lipset and Gary Marks, *It Didn't Happen Here* (New York: Norton, 2000), 15.

² *Ibid.*, 40. Arguing among other points how the New Deal gave only a "tinge" of socialism that dissipated after the return of prosperity following WWII.

depth of socialism's disrepute has made the label a weapon in political debate. As commentator George Will remarks, since calls for socialism do not readily find appeal in the United States, it is unsurprising that political parties use socialism—as, for example, occurred in the 2008 presidential campaign—as a smear word.³ As the campaign for the White House was faltering for Republicans, Republicans grasped for a charge they felt would strike home: the charge that Obama was a socialist. For example, candidate Sarah Palin made the claim of socialism central to her political message. Knowing that the attribution might prove toxic, the Obama campaign in turn sought to quash the charge—by dismissing the claim as merely ridiculous: *of course*, they said, Obama was not a socialist. When asked by a reporter if Obama was proposing socialist policies, vice presidential candidate Joe Biden remarked, tersely, “is that a joke.”⁴ No sane candidate would do that in the United States, candidate Biden was suggesting.

As Lipset and Marks demonstrate, this rejection of socialism is deeply rooted in American democracy. And since in any democratic polity public policy is shaped by public opinion, the rejection of ideas thought to be socialist can only be seen as itself deeply entrenched in the American political landscape.

However, this aspect of American political culture can be quite unfair and stultifying. One way this can be so is that ideas not in fact socialist can be subjected to the real possibility of being dismissed through the attribution of the socialist label. This is doubly distressing when the ideas so rejected are not only *not* socialist, but provide valuable insights that deserve serious attention in contemporary public debate.

In this paper we apply this reasoning to the writing of the 19th century thinker Pierre Joseph Proudhon. We intend to show that his thought came quickly to be branded as socialist, and that as a result, his ideas fell into relative obscurity. He became in America one not frequently studied as a thinker worthy of serious consideration. However we intend to show, first, that Proudhon's thought is not in fact socialist. Rather, Proudhon is advocating something quite different. Second, we argue that Proudhon's thought has something of real value to add to contemporary public policy, and that appropriation of his thought can advance the cause of social justice in the United States.

This essay, then, aims to construct a more accurate portrayal of Proudhon's thought and

³ George Will, *This Week with George Stephanopoulos*, March 1, 2009. <http://www.abcnews.go.com/ThisWeek>.

⁴ Joseph Biden, interview with Barbara West, WFTV in Orlando, Florida, October 25, 2008. <http://www.reason.com/blog/show/129666.html>.

show that his ideas are relevant and applicable. We shall accomplish this task by first laying out the history of Proudhon's reception and his current status as a topic of serious policy reflection. We then dispel common misperceptions surrounding his criticisms of property, indicating that Proudhon is not in fact a socialist in the most common sense of that term. We then endeavor to show how Proudhon's thought not only transcends the "socialist" label, but also provides ideas that are defensible and valuable and deserve careful study and application to contemporary events, focusing on their relevance for important questions of intellectual property rights.

Lastly, we address the issue of how Proudhon's thought thus vindicated might become more palatable in contemporary public discourse. If Proudhon has interesting, indeed even compelling, things to contribute to contemporary policy making, the question becomes, how can his thought be extricated from the socialist dustbin to which it has unfairly been assigned. Proudhon has been deemed a socialist—and, thus, un-American. Given the depth of suspicion of socialism, in contemporary politics in the United States it seems that the rejection of his thought cannot be reversed by simply setting the record straight concerning his actual ideas. Something more would be necessary to render his thought less threatening, less foreign. We tackle this problem by demonstrating that far from being un-American, Proudhon's thought manifests keen similarities with ideas that are integral to mainstream—in fact, often even conservative—American political ideals. By showing that there are genuine similarities between Proudhon and so much in American political traditions—traditions accepted as ingrained aspects of American history by many who would be most likely to dismiss Proudhon's ideas—we hope to show that contemporary public policy makers not only *should*, but also should feel they *can*, boldly utilize many of his concepts to tackle contemporary problems.

I.

Proudhon as a Socialist, and the Consequences for his Stature in American Public Policy

Proudhon is most famous for his statement, "Property is Theft," from his first major work *What is Property?*, published in 1840 in Paris, where he labored as a printer from 1839 until his death in 1865. For this phrase alone, and also since Proudhon developed a range of ideas that questioned the status quo, he commonly has been considered a socialist by many public policy analysts. As J. Salwyn Schapiro points out, Proudhon's thought did receive a measure of

approbation by a small circle of republican and socialist intellectuals in the 1840's.⁵ Schapiro notes that the intellectual affinity for Proudhon stemmed from his sharp criticisms of the contemporary social order that seemed to reflect some of the same sentiments those groups expressed.⁶ Dorothy Douglas notes that the radical trade unionists of the late 19th century, the so-called syndicalists, adopted Proudhon as a sort of prophet, seeing him as establishing the preliminary theoretical framework for their movement.⁷

Considering some on the political left were quick to associate themselves with Proudhon, criticisms of Proudhon from the right and center have typically branded him a socialist. Conservative economist Walter Block not only describes Proudhon as a socialist, but also refers to him as “an enemy of civilization” for his supposed rejection of property rights.⁸ Mainstream and conservative economists commonly believe strongly in the value of private property not only as a source of economic prosperity but also as a foundation for civic virtue. Since socialism as commonly understood rejects the notion of a society grounded in the institution of private property, mainstream and conservative economists reject socialism as antithetical to a healthy and productive society.⁹ To the extent that Proudhon's famous assertion that property is theft has branded him as a socialist, Proudhon and his philosophy have been rejected by many in American society.

II.

Re-Interpreting Proudhon: Defying the Socialist Label

Proudhon however is not actually a socialist, at least not in the most conventional uses of that term. To take just the most pedestrian definition, The Random House Unabridged Dictionary defines socialism as “a theory or system of social organization that advocates the vesting of the ownership and control of the means of production and distribution of capital and land in the community as a whole.” This common understanding of socialism is how we shall

⁵ J. Schapiro, “Pierre Joseph Proudhon, Harbinger of Fascism,” *The American Historical Review* 50, (1945): 714-15.

⁶ *Ibid.*, 717.

⁷ Dorothy Douglas, “P.J. Proudhon: A Prophet of 1848. Part I: Life and Works,” *The American Journal of Sociology* 34 (1929): 798-99.

⁸ Walter Block, “Landsburg on Crime,” *Walter Block: Archives*, <http://www.lewrockwell.com/block/block57.html>.

⁹ Hans-Hermann Hoppe, “A Theory of Socialism and Capitalism: Economics, Politics, and Ethics,” *The Ludwig von Mises Institute's Studies in Austrian Economics*, The Ludwig von Mises Institute (Norwell, MA: Kluwer Academic Publishers, 1989), 97, 137-42.

use the term. Proudhon never identified himself as a socialist. Moreover, as we shall see, the label of socialist does injustice to Proudhon's thought.¹⁰

a) What is Property?: *An Attack Only on Aristocracy and the Manufacturing Elite*

The key to unlocking Proudhon's understanding of social, political, and economic arrangements lies in his assertion that the possession of property constitutes theft.¹¹ But does this actually mean that he advocated the abolition of landed property, and so embraced socialism? No. Proudhon's condemnation of property was directed towards the aristocracy, rather than the institution of property itself. In fact, as is evident in *What is Property?*, Proudhon supports the individual's right to possess property, as long as it is used to sustain himself and the community.¹²

In *What is Property*, Proudhon notes "in my first two Memoirs, in a frontal attack on the established order, I said, among other things: 'Property is theft.' My aim was to make a protest and, so to speak, to highlight the utter hollowness of our institutions."¹³ Proudhon's intention, then, was to strike out against the status quo. Proudhon meant to critique the economic privileges of the aristocratic landowners and the rising power of the owners of manufacturing facilities, both of whom wielded great power in the France of his day. Proudhon intended not to inhibit individual property ownership as such; rather, he meant to voice a challenge to the excessive power held by the owners of large estates and large manufacturing concerns, both of whom, Proudhon thought, acted to inhibit the economic progress and social growth of the lower classes. Within the European landscape of the time, the owners of large landed estates and the owners of the growing manufacturing facilities acted as an exclusionary force limiting the ability of others to better their socio-economic condition through the possession and cultivation of their own private property.

Proudhon's concept of 'occupancy' of land captures the essence of his critique of the landed estates. By 'occupancy' Proudhon means a qualified ownership of land. The concept of occupancy qualifies legitimate claims to property, making ownership conditional on one's ability

¹⁰ Stewart Edwards, introduction to *Selected Writings of P.-J. Proudhon*, ed. S. Edwards, 13-36 (New York: Anchor Books, 1969), 20.

¹¹ P.J. Proudhon, *What is Property?*, ed. D. Kelley (Cambridge, England: Cambridge University Press, 2002), 13.

¹² *Ibid.*, 44, 65-66.

¹³ P.J. Proudhon, *Selected Writings of P.-J. Proudhon*, ed. S. Edwards, trans. E. Faser (New York: Anchor Books, 1969), 125.

to utilize one's property to better oneself and the community.¹⁴ One's legitimate claim to property is revoked when one uses one's property to deter others' capacity to better themselves. This action constitutes Proudhon's definition of exploitation: the use of one's capital, land, and political clout to obstruct another's ability to achieve economic progress. According to the idea of occupancy, if one is not using one's ownership of the land to exploit others, then one's use of that land is absolute: one can do with it what one wishes.

In addition to land, another facet of property is also addressed by Proudhon, that of capital in the form of the ownership of manufacturing facilities, and its relationship to contractual issues pertaining to wage labor. In terms of capital in the form of manufacturing capacity, Proudhon deploys the same concept of 'occupancy.' One 'occupies' capital, Proudhon holds, in the sense that one has the right to use it as one sees fit, but only on condition that one's use is not exploitative. In this sense, Proudhon has harsh criticisms of bourgeois industrialists for creating a business structure that manipulates workers through unsustainable wages and silences their voices in the operations of the businesses.¹⁵ These practices seem only to benefit the business owner at the cost of his employees.

But while Proudhon gave to the term "capitalist" an almost exclusively negative connotation, this should not be seen as a condemnation of the entire market system, but rather as a criticism of individual actions within the marketplace.¹⁶ Occupancy of capital allows for a non-exploitative market in goods and services. Indeed, on many occasions Proudhon adamantly supports the concept of a free market grounded in fair businesses practices and mutually beneficial transactions. Proudhon notes that there are two conditions for fair commerce to obtain: 1) that the parties to the transaction have equal knowledge of the matter under negotiation and that they have an equal opportunity to forgo the transaction; 2) that parties must expressly consent to each term of the transaction.¹⁷ Proudhon's mutualism—the name often given to his philosophy—envisages the operation of a market where capital is used in fair, that is non-exploitative, business practices.

In both these understandings of property—occupancy of land and occupancy of manufacturing capital—Proudhon seeks to establish a definition of property rights that facilitates

¹⁵ P.J. Proudhon, *What is Property?*, 92-93.

¹⁶ *Ibid.*, 91.

¹⁷ *Ibid.*, 103.

individual freedom within the workplace and community and avoids exploitation in the sense of hindering another's capacity to pursue his own self-benefit.¹⁸ Self-benefit in the sense Proudhon advocates consists in enjoying a way of living that ensures one's ability to establish artistic, intellectual, and social meaning in one's life.¹⁹ Property rights are contingent on the fulfillment of this principle. That the status quo understanding of property inhibited this progress is the essence of Proudhon's critique of the aristocracy and the industrialists of his time.

To Proudhon, the aristocracy and the capitalists represent a form of tyranny. He sees them as a class of individuals who through political manipulation have secured a lavish lifestyle at the expense of fair wages and opportunities for their employees. Proudhon views the aristocracy as a manipulator of the government, which achieves its position in society through securing exclusive property rights for their estates. By establishing laws that declare the elite's absolute right to the possession of property, governments secure the favor of the aristocracy, the class which possesses the most political clout. From this perspective the aristocracy is seen as a special interest group seeking privileges from the government, at the expense of lower classes that do not possess the same level of political influence. Ultimately these exclusive property rights restrict market growth, and so the opportunity for individuals to compete. This is so since absolute property rights allow hoarding of capital. Land owned by aristocrats but not productively utilized is, Proudhon holds, excess land that could be used for additional agricultural activities by others putting the land to productive use. Individuals denied access to hoarded capital are exploited, and society as a whole is made less prosperous. Making land ownership conditional on its use not detracting from another's capacity to live an authentically human life, tends to place limits on the size of property holdings, and forces the proprietor to constantly develop new and innovative ways to develop his property, and increases the likelihood of land holders facing competition from others seeking to advance their own well being. Manufactures also often seek arrangements that limit competition, in ways similar to how aristocrats seek to do so through their absolute right to land holding.

In response to the culture of political manipulation, Proudhon accepted two assertions: that the then current understanding of property rights was utilized by the aristocracy and industrialists to exploit others; and that governments that support the actions of these classes

¹⁸ Ibid., 63, 68

¹⁹ Ibid., 51, 91-92.

must be rejected. As such, Proudhon's criticism of property as theft was a rhetorical statement directed at limiting the influence of France's hierarchy, rather than condemning the entire institution of property. Proudhon believed that private property in land or manufacturing capital should exist for those who use it in a manner that does not exploit others.

b) Rather than a Call for Socialism per se, a Call for Creating a Community that Facilitates the Just Disposition of Property Rights

Throughout Proudhon's works, there is an underlying desire to better society to its furthest extent. When all the misconceptions have been peeled away, what is left is the desire to create a society in which property rights exist but in which economic transactions take place in a non-exploitative manner. A condition in which property rights exist yet are non-exploitatively utilized would engender a free market, but such a market would be based on transactions that are informed by trust, partnership, cooperation, and honesty by market participants, in the sense that each would have confidence that exploitation of weaker parties is not being attempted.

The key to creating such a market arrangement would be the creation of the proper kind of background environment in which market transactions would take place, an environment that would inform the spirit in which transactions are undertaken. If the market could be nestled within the proper supporting and shaping environment, social arrangements would become more just, and there would be real improvement in the social and spiritual quality of life. Moreover, the market itself would perform even better than the status quo in terms of sheer economic productivity, as wasted land holdings and capital accumulations would be put to productive use.

Such a background environment would develop, Proudhon thought, through the creation and the sustaining of vibrant localities defined by cultural familiarity and decentralized political power. Proudhon's thought concerning the creation of an environment that would facilitate non-exploitative market transactions centers on the existence of communities of individuals with common demographic characteristics and similar ideologies operating according to localized organs of political power. Emerging from such environments, Proudhon believed, would be an understanding that everyone is connected together in commerce and must treat each other fairly and come to each others aid when necessary. The essential claim is that homogenous local communities, because of the repeated interactions among individuals sharing important facets of their life in common, tend to engender traits of reciprocity and mutual concern, and facilitate

equitable self-government.²⁰

Proudhon argued that the traits of trust and reciprocity exhibited within these communities would over time become second nature to their participants, and thus the disposition to act with a concern for reciprocity would tend to be extended to transactions undertaken with individuals outside the local community, which would, he holds, ultimately be reciprocated, eventually establishing an entire society grounded on the same principles of trust, partnership, and reciprocal interaction and mutual cooperation.

III.

The Relevance of Proudhon's Thought for Contemporary Public Policy

Proudhon's thought we argue holds relevance for contemporary public affairs. Proudhon's philosophy, we quickly concede, must be an ideal. But the importance of his thought is precisely that it can provoke us. We certainly hold that the ideal of a free market nestled within an environment that inclines participants to act non-exploitatively in the disposition of their property rights cannot be completely realized. But as Proudhon himself maintained, the goal of his writing is to "protest" and "highlight the hollowness" of our accepted ways of doing things. The key relevance of Proudhon for contemporary public policy lies in his capacity to inspire movement in the direction of the kind of society he outlines—a society where rights are utilized in a non-exploitative manner.

But what precisely would movement in Proudhon's direction look like? To answer this question we shall show the relevance of Proudhon's ideas to a vexing issue in contemporary law and politics. We shall focus on the important topic of intellectual property claims in the case of internet based software rights—a key set of questions as the software sector in the United States is a significant part of the national economy and one of the primary engines of job growth, with salaries and job satisfaction in the field also higher than the national average.²¹

In general, intellectual property proves to be a contentious issue, especially with regard to

²⁰ This homogeneity of communities is validated within a context that affirms and supports the right of individuals to move among communities. Moreover, Proudhon's entire approach to social life is based on economically empowering individuals, hence affording them not merely a formal right but an actual ability to choose their community. No hegemony of a universalizing homogeneity is entertained by Proudhon.

²¹ A March 31, 2009 report from TechAmerica notes that the software sector is outperforming the rest of the economy in job growth. <http://www.techamerica.org/cyberstates-2009-united-states>. See also the United States Department of Commerce Annual Report on the Digital Economy indicating strong job growth and job satisfaction throughout the last decade. http://www.nap.edu/catalog.php?record_id=5024.

patents, copyright laws, and academic authorship. Intellectual property rights grant the owner exclusive proprietorship of a particular idea or concept in order to provide protection while the idea is being developed. Usually this type of property right is used in an industrial context, where a particular firm is permitted to have a temporary monopoly in order to provide an incentive to develop and innovate a new assembly method or construction concept.

Many economists note that intellectual property has been vital to economic progress since it increases the incentive to invest in research and development.²² Elhanan Helpman also argues that intellectual property rights allow for greater innovation and product distribution in the short run.²³ These assertions maintain that innovation gained through intellectual property rights produces a short-term net benefit to society.

However, there are some inherent difficulties in determining the protection parameters of intellectual property. The noted economist Friedrich Hayek argues that many innovators may be weary of pursuing endeavors that might lead to an increase in knowledge without some protection from their ideas being seized by others, especially when discoveries take place in the context of institutions, since in any organization there will likely be different groups with varying, and frequently competing, interests, yet increases in knowledge are often made possible by endeavors undertaken by many individuals at many different levels, thus leading to uncertainty over the ownership of new ideas. Hence, Hayek holds that an organization is more likely to develop innovations when intellectual property lines are sharply and clearly drawn, and so ambiguity reduced.²⁴ However, Tim Wu argues that governments should be cautious when assigning intellectual property rights since it may restrict the ability of individuals to collaborate on projects, which possibly limits the quality of the products.²⁵ Both Hayek and Wu suggest that there is some optimal range for assigning property rights, but that it is very difficult to determine how precisely to assign them.

Furthermore, intellectual property rights create several negative economic consequences. Steven Shavell and Tanguy Van Ypersele consider the exclusive monopoly granted through patent rights as an overall detriment to society. They note that the monopoly on the use of products conferred by a patent creates no incentive for patent holders to produce at a competitive

²² WIPO-UNU. *Impact of the Intellectual Property System on Economic Growth: Fact-Finding Surveys and Analysis in the Asian Region*. http://www.wipo.int/portal/en/news/2007/article_0032.html

²³ Elhanan Helpman, "Innovation, Imitation, and Intellectual Property Rights," *Econometrica* 61 (1993): 1264.

²⁴ F.A. Hayek, "The Use of Knowledge in Society," *The American Economic Review* 35 (1945): 519-20.

²⁵ Tim Wu, "Intellectual Property, Innovation, and Decentralized Decisions," *Virginia Law Review* 92 (2006): 126.

level, so they tend to produce at a level that is not socially optimal.²⁶ That is, costs are increased without an aggregate benefit to society. They assert also that patent rights promote underinvestment, as the patent-monopolist is shielded from the need to invest in product enhancement necessitated by market pressures.²⁷ In all, since a monopolist will invest at a level that is less than what is socially optimal (the equilibrium quantity), that disparity causes a cost to society that cannot be regained.

In the context of Internet based software property rights, notions of intellectual property have also had their difficulties. Phillip Weiser notes that there has been considerable debate between software developers who follow a “commons model” (common open-source ownership) and those who support “proprietary control.”²⁸ According to Weiser, the “commons” group understands software to be a “common good” developed for the benefit of society as a whole, and should be left uninhibited by property right restrictions to allow for free flow of ideas, which they hold will promote innovation.²⁹ Common examples include open-source projects such as Linux and Unix, which involve collaboration among individuals and free access to users.³⁰ On the other hand, Weiser notes that individuals who argue for “proprietary” rights on software view the technology market as a constant battle where firms constantly replace each other as dominant players, as each new wave of technology arrives.³¹ He notes that these individuals feel that intellectual property rights are necessary as a temporary monopoly granted to firms to allow them to obtain economic, financial, and technological gains and apply it to developing new technology, and is especially important in attracting venture capital.³² These individuals would argue that without these exclusive rights there would be no incentive to innovate since their

²⁶ The competitive level of output occurs when price=marginal cost=marginal revenue=demand. In other words, firms produce and price their goods at market cost, which is determined by the market demand. Competitive pricing has the least negative effects on social welfare. In this scenario firms are “price takers,” i.e. they assign to their good only the price the market will take, and are unable to mark up their prices beyond this point. The result is that there is no disparity between what the firm charges and what the market demands, and consumers obtain their products at no additional cost. Hence, competitive pricing produces for consumers the lowest possible sustainable price for goods. It should be noted though, that the idea of a fully competitive market is highly idealized, and most firms include some price mark up beyond this point due to the nature of competition within the industry. In other words, there is likely always to be some mark up cost to the consumer when doing business, but keeping those costs to a minimum is socially optimal.

²⁷ Steven Shavell, and Tanguy Van Ypersele, “Rewards versus Intellectual Property Rights,” *Journal of Law and Economics* 44 (2001): 533-34.

²⁸ Phillip Weiser, “The Internet, Innovation, and Intellectual Property,” *Columbia Law Review* 103 (2003): 568.

²⁹ *Ibid.*, 569, 572.

³⁰ *Ibid.*, 569-70.

³¹ *Ibid.*, 576-77.

³² *Ibid.*, 577.

technology would be open for others to freely utilize and alter the product for their own economic gain. In the contemporary environment Microsoft is possibly the best example of a proponent of “proprietary control.”

Although both camps possess reasonable claims, Weiser argues that both have their shortcomings. He notes that the “commons” model is largely indicative of the early era of software development, where non-proprietary technology was supported by government grants; he argues that this era is long passed as the number and interests of software developers have diversified.³³ Similarly, he notes that proponents of technological “proprietary” rights, such as Microsoft, are too large to efficiently implement innovations in a timely manner, and argues that smaller firms are actually much quicker and productive when it comes to developing innovation.³⁴

In all, intellectual property is an issue concerning both property right assignments and economic welfare calculation. Since Proudhon understood property under the context of both individual rights and economic welfare, it would be beneficial to obtain an appreciation for Proudhon’s relevance in this context.

In several ways, Proudhon’s “Theory of Property” can relate directly to concerns over intellectual property and specifically Internet-based software rights, and furthermore it might supply a definitive answer to those problems. Proudhon finds some affinity with both intellectual property rights supporters and detractors. Proudhon’s thought can best be seen in this context as a synthesis of the valuable elements of both sides.

As we discussed earlier, Proudhon qualifies property rights by placing a requirement on property that it contribute to the overall quality of life for individuals and the community.³⁵ By this, he means that the ownership of property should not interfere with another’s ability to live an authentically human life, preserving one’s intellectual and social sensibilities that are essential to being “human”. We also noted that “contingent” property ownership, i.e. rightfully possessing as much land as does not threaten another’s authenticity of life, tends to limit the size of one’s property to that which can easily be cultivated and forces the proprietor to constantly develop and innovate new ways to develop his property. These two implications have a particularly interesting application to our discussion of software rights.

³³ Ibid., 573.

³⁴ Ibid., 579-80.

³⁵ P.J. Proudhon, *What is Property?*, 44, 65-66.

In the context of Internet software, Proudhon would not object to the creation of intellectual property rights, but there are two requirements that a firm would have to adhere to in order to procure those benefits. The first is that it must not threaten or hinder another's capacity for intellectual activity. The second is that it must be utilized for continued product innovation. To clarify, intellectual activity is "hindered" when an exclusive intellectual property right is held, but not utilized, and therefore does not contribute to social welfare. To the extent that an individual is prohibited from improving particular software, because of those exclusive rights, his intellectual capacities are "hindered". In this case, the qualification of not deterring intellectual activity is really a product of the second qualification, continued innovation, as it is only violated after one neglects to improve upon his software and yet still desires to maintain its monopoly.

Proudhon's theory of property applied to software development would work in the following way. Intellectual property rights would be granted to a firm based on its ability to continually innovate and improve its product. This product must also provide some social good as well, thus bringing benefit to society as a whole.³⁶ Since property rights would be granted to a firm only as long as its product is continually innovated, these property rights would potentially last only short periods of time. If it is clearly apparent that software innovation has ceased, the exclusive right to intellectual property would be revoked and the source code made available for others to improve upon. In this way, Proudhon could be seen as a synthesis of the "commons" and the "proprietors" in that "proprietorship" would be granted only as long as it is a benefit to society, determined through continued innovation, but when it ceases to be a benefit, the rights to that property would be dissolved and open to other arrangements to improve upon it.

Proudhon was ultimately concerned with the continued progress of society.³⁷ The reason why Proudhon would be willing to grant these rights in the first place would be to increase the incentives to be efficient, thus limiting the overall deadweight loss to society. But if those exclusive rights become a burden to society, increasing deadweight loss, those rights can be revoked or reallocated. Proudhon would not necessarily be opposed to large firms, such as Microsoft, as long as they continually improve their products. If that criterion is met, it is

³⁶ This might narrow property rights to only a select number of products, which might include operating systems, internet software, network software, and office suites, as those products seem to be the basic software requirements for using a computer.

³⁷ P.J. Proudhon, *What is Property?*, 84.

assumed that the product is still a benefit to society. However, if the larger firm neglects to improve its product and stagnates, then it is assumed that it is no longer a benefit to society. This logic applies to smaller firms as well. It is neither the size of the firm nor its influence over industry that is of concern; it is rather the individual practices of each software developer.

Through this application of Proudhon to a “real-world” contemporary scenario, we have moved him beyond the theoretical into the practical. In as much as we have demonstrated one possible practical application, it might then be the case that his logic has other applications as well. But suffice it to say for present purposes that Proudhon *does* seem to have some real application and should not be dismissed tout court as so often has been the case in the history of American public policy.

However our discussion of Proudhon’s applicability to contemporary events would remain fairly thin if it only supplied a *theory* of intellectual property rights. To show a more robust applicability to contemporary issues we need to show that a Proudhonian theory of intellectual property could be operationalized, and that Proudhon’s own understanding of how to implement his thought has some relevance to the task of making concretely applicable this understanding of property. Once again, Proudhon believed that his understanding of rights—namely that property ownership is conditional on the non-exploitative use of rights—could be applied to society by the cultivation of a background culture that inclined individuals to act with concern for reciprocity and trust, and which he felt was best supplied by the development of local community-based institutions in the context of demographic homogeneity.

We argue that in this respect once again there is something of real value to be gleaned from Proudhon’s thought. The understanding of intellectual property rights derived from Proudhon would alter the current law of intellectual property rights as found in the law of patents. And such a change could be put to concrete effect by arranging institutions in such a way as to cultivate local attachments and bonds of reciprocal trust. The law of intellectual property could be changed to make patents conditional. And such a system could be self-sustaining by the development of an environment that encourages reciprocal trust. Deepening such bonds of reciprocal consideration and trust could occur, we argue, if the institutions charged with enforcing intellectual property rights were based more on localized means of enforcement, specifically through establishing a greater role for specialized juries in this area.

The current law surrounding intellectual property could be changed. The law of patent

rights does not have this feature of conditionality. Instead, patent law is much more absolutist. A patent will be issued by the federal patent office upon a determination that an invention represents some degree of newness, usefulness, and is a non obvious design or concept in light of public knowledge. The application must also be publicly disclosed. While in one's application to the patent office one must show that one is undertaking some positive action to ready the innovation for a useful application, once the patent is issued, the property right is absolute. As long as all patent fees are paid, the patent will confer an absolute monopoly, in most cases for seventeen years, but in a few specific cases only for fourteen years.³⁸ Hence, once the patent is in effect, the possessor of the patent is shielded from any other person using the invention, yet the possessor can dispose of the patent however he wants, including liquidating or trading the patent, or simply not using the patented product at all; no restrictions exist on the owners disposition of the proprietary right conveyed by the patent.³⁹ Hence substantive law is opposed to Proudhon, for there is no condition placed on the patent protection to the effect that that once issued, a patent must secure some productive gain for society. Mere hoarding of patented products is fully permissible. Indeed, evidence suggests that new developments are often hoarded with the intent only of causing economic hardship on competitors.⁴⁰

Moreover the way the current law is enforced is non-Proudhonian as well. A Proudhonian viewpoint would change the law *and* its mode of operation and enforcement. According to the United States law, disputes over patents are justiciable only in the federal court system. Claims to the effect that one's patent has been violated by another are first heard in a federal district court. Since the Federal Courts Improvement Act of 1982, appeals from district courts are heard only in a specialized appeals courts known as the Federal Circuit, located in Washington, D.C.

A patent holder trying to defend his monopoly from a party he believes is infringing his patent, that is, is using his invention without authorization, will present his case to the federal court. A frequent means of defending one's patent against unauthorized use is by claiming that a party is developing an invention that is substantively equivalent to the patented invention, even though in the alleged infringer's application for a patent the new product might have been

³⁸ Design innovations that are purely ornamental or aesthetic are patentable for only 14 years.

³⁹ Sarah Fashena and David Jackson, "Patentability in the United States," *Nature Reviews: Drug Discovery* 3 (2004), 381.

⁴⁰ James E. Bessen and Robert M. Hunt, "An Empirical Look at Software Patents" (March 2004). FRB of Philadelphia Working Paper No. 37. <http://ssrn.com/abstract=461701>.

described in different words or in a different manner than the existing product. This is known as the doctrine of equivalents, and it is a central concept in the legal defense of one's patent from infringement. A Proudhonian approach would add to the doctrine of equivalents a proviso holding that a finding of equivalence does not infringe a patent if the patented product is not being put to productive use.

Although technically whether two inventions are so similar as to be identical is a factual matter to be decided at trial by a jury, in current law the judge is authorized to "construe" the meaning of the patent in such a way as to effectively render a jury determination of equivalence superfluous. As the American Bar Association's Panel on Patent Law notes, in current federal law, the judge has the de facto authority to determine if two inventions are indeed equivalent and so whether a violation of a patent has transpired.⁴¹

A Proudhonian perspective would have juries decide the question of equivalence, not judges, and would further empower juries to decide if an equivalent product is permissible because the patented product is not being put to constructive use. Moreover a Proudhonian approach would empanel specialized juries made up of local leaders in the intellectual property field to decide these questions.

This arrangement could lead to positive changes in the behavior of litigants in infringement cases, the behavior of the trier of fact in such cases, and in the overall development of the software field. First, litigants would feel less removed from the trier of fact, as the trier of fact would be composed of individuals similar to, and indeed from the same community as, the litigants—the community of software experts. As the litigants would be of the same community as the trier of fact, the process of adjudication could become less detached and perhaps more enlivened by the need for genuine mutual concern and reciprocal fairness for the parties. Bonds of trust could more likely emerge and could change the dynamics of litigation, leading litigants to view the trial as less a matter of simply getting a claim past an impersonal and removed "goalkeeper"—the distant federal judge—by whatever means one can, possibly enhancing the efficiency and fairness of litigation. Second, the trier of fact would be an assemblage of individuals all drawn from the same community, whose repeated interactions previous to trial could possibly ensure a heightened quality to the internal deliberations and collective assessment

⁴¹ Edward O'Connor, *Intellectual Property Litigation*. Washington, D.C.: American Bar Association Press, 2004): 145. The signal case dramatically increasing the authority of judges to decide the central issue of equivalence in patent litigation is the 1986 case of *Markman v. Westview Instruments, Inc.* 517 U.S. 370 (1996).

of evidence undertaken by the trier of fact. These features could arguably lead to better adjudicatory outcomes. Third, professionals working in the overall software field could deepen their sense of mutual concern, as the legal environment would now be defined by a community-based enforcement mechanism. This in itself might lead to less frequent, and less contentious, litigation, which has been a significant drain on the growth of software technology.⁴²

In all, Proudhon's thought does seem to have real relevance to contemporary law. Moreover, its applicability to the law of intellectual property may be especially important, as technological innovation has been and remains a vital part of the American economy and a mainstay of growth in employment and overall domestic production. Indeed, the American economy appears only to have become increasingly dependent on innovation rather than simple manufacturing for its prosperity; hence the revitalization of Proudhon's thought could be of real benefit to American society.

IV.

Rehabilitating Proudhon: Similarities with Widely Accepted American Political Traditions

Noting the interesting possible application of Proudhon's ideas to contemporary legal questions is not, however, in itself enough to ensure that his thought receives a fair hearing: the bias against socialism is such that the consistent labeling of him as a socialist requires that more work be done to guarantee an open minded assessment. To do this we intend to show that Proudhon's ideas are similar to much that is revered in contemporary mainstream, and often conservative, political ideals and rhetoric. Specifically, we set out to establish the similarities between Proudhon's thought and each of the following: a Lockean understanding of property rights; the writings of advocates for free market economics; the view of human nature expressed in Christian political movements; and Anti-Federalist ideas on the formative and nutritive aspects of localism. Doing so will enable us to gain a better appreciation for the plausibility of his views in the American political context.

a. Legitimate Property: Proudhon's Similarity to A Lockean View

The mutualist understanding of property follows almost succinctly along the Lockean

⁴² A February 2008 report of the cnet service indicates that over \$11 billion has been wasted in the last decade on patent litigation in the software sector over the last decade. http://news.cnet.com/8301-13505_3-9882152-16.html

lines of property acquisition. In a true Lockean sense, Proudhon states that landed property, in the form of occupancy, originates from the labor involved in its cultivation.⁴³ Appropriation through labor constitutes an extension of one's ownership over those resources which then are assumed into the individual's property. It is only through the initial process of blending labor and resources that an individual earns a right to "occupy" that property. Similar to Locke, in Proudhon's thought land originally lies dormant and un-acquired and is held in common by the entire population until individuals cultivate it and possess this property outright.⁴⁴ Additionally, both seem to note that a fundamental element of prosperity is the ability of individuals to acquire property and render it productive. Proudhon notes, with echoes of Locke's statement that human labor adds a great deal of value to land, that "the soil has not only an integral and actual value, it has also a potential value for the future, which depends on our ability to make it valuable."⁴⁵

While much of the basic understanding of property held by both is similar, there are several instances where Locke and Proudhon diverge. Locke notes that, at least in the earliest stages of human development, man can only maintain possession of any perishable item as long as the object is not thereby made to spoil and as long as there is "as much and as good" left for others, which essentially limits the amount of property that one can possess. But Locke notes land which is purchased by money can be enclosed so that no one else can labor on it; and land that is worked not by oneself but by monetarily remunerated laborers becomes enclosable property of the payor.⁴⁶

But as John Tully and other political theorists have emphasized, property rights are not absolute for Locke, even after the introduction of money. There is a claim against property rights in Locke's understanding if one's ownership jeopardizes another's life. Locke places a rule on property that individuals who are unable to be productive still retain the right to receive what is necessary to survive. This is so both because of natural law and the demands of charity. As to the demands of natural law, Locke holds that a rational creator made the world and all humans, and did so for a reason. Such a God would not have created humans only for them to perish before they reach old age, which would display a lack of coherent design or purpose. Hence, our reason tells us that we must comport our behavior so as to be in line with the intentions of our

⁴³ P.J. Proudhon, *What is Property?*, 81-82; J. Locke, *Two Treatises of Government*, ed. P. Laslett. (Cambridge, England: Cambridge University Press, 2004), 287-88.

⁴⁴ P.J. Proudhon, *What is Property?*, 82

⁴⁵ *Ibid.*, 84.

⁴⁶ J. Locke, *Two Treatises of Government*, 290-91.

creator.⁴⁷ As to the demands of charity, Locke states that “as justice gives every Man a Title to the product of his honest Industry...so Charity gives every Man a Title to so much out of another's Plenty, as will keep him from extream want, where he has no means to subsist otherwise.”⁴⁸ John Tully, along with D. A. Lloyd Thomas and others note that this duty of charity to preserve another’s life is in effect a countervailing right against every individual's property.⁴⁹

However Locke's qualifying condition of preserving life would seem to be not that difficult to achieve. Individuals without property of their own may be provided adequate food, shelter, and clothing to sustain their life, but that would be where a property owner’s obligation to others would seem to cease. So long as the populace is not starving, large landowners might seem to retain their property and not fear losing their legitimate claim to it. It is not difficult to see that the most initially efficient members of society would eventually acquire all the property to prevent competition for scarce resources, which becomes a barrier of entry to future possible cultivators, whose methods may actually be more efficient, but who do not possess the necessary land to actualize their potential.

Whereas Locke’s contingent claim to ownership of land—that it not be held if doing so would cause others to be without means for survival—seems to ensure merely that individuals’ physical survival not be imperiled, Proudhon believed that property was the basis for providing meaning to one's life. To Proudhon, property is established to ensure our human, and not just animalistic, survival, preserving the artistic, spiritual, intellectual, and social sensibilities that distinguish our species from all other creatures. Therefore there seems to be for Proudhon a heavier burden, or more substantial conditionality, placed on the institution of property, since it must promote an authentically human lifestyle among the populace. Property rights for Proudhon would cease to be absolute if the rights were deployed in such a way as to permit another not only to die physically but also to die humanistically, that is, as a full human being. When property negates the humanity of another, it ceases to be absolute.

However on closer examination such a view is actually not that far removed from Locke’s seemingly more limited conditionality on property rights. The so-called property proviso in the state of nature—that for ownership of land to be legitimate there must be “as much

⁴⁷ Ibid., 270-71.

⁴⁸ Ibid., 170.

⁴⁹ D. Thomas, *Locke on Government* (New York: Routledge, 1995), 102.

and as good left over for others”—is no longer directly applicable after the introduction of money according to Locke, since after the widespread use of money all the land would soon be purchased. Yet this proviso still retains a regulating force after the development of money and the introduction of civil society. Since in civil society the idea cannot hold that property is conditional on there being “enough and as good for others” in terms of actual land, the proviso must now mean that there is “as much and as good” of something else. As Tully argues, the proviso in a world in which all the land has been purchased must mean that property rights are conditional on there being as much and as good available to all in terms of what it is that land was able to afford one in the state of nature. The “as much and as good” that must be left for others is not land per se, but what land *got one* in the state of nature. And this Tully notes, means not only physical sustenance, but also the enjoyment of a freely chosen type of work, and an ability to exercise one’s creativity.⁵⁰ In the state of nature when land was plentiful one had the opportunity fully to choose one’s means of sustenance. So the continued justification of private property after money is introduced, Tully maintains, is based on the system of landed property being able to ensure for everyone the capacity to exercise choice and to act with creative freedom. If the system of private property denies this to some, then the system is not meeting the requirements of the proviso that land ownership not deny “as much and as good for others.” That is, private property is conditional on the non-degradation as a creative being of fellow men. Locke of course does think that a system of strong private property rights will create an economy where all are uplifted in terms of their ability merely to physically survive. Yet he also seems to believe that the system of private property uplifts all in a more humanistic sense. For he says that even the “day-laborer in England” lives a life with vastly greater “conveniences” than the “king of a large and fruitful territory” in the state of nature, who has “not 1/100th part of the conveniences” enjoyed by all outside the state of nature.⁵¹ The vastness of this gulf between the wealthiest in the state of nature and the lowest in the world outside the state of nature—with the latter having 100 times more conveniences than the former—seems to indicate that for Locke the benefit to the modern day laborer is not merely material but is also less tangible, in the sense of an improved capacity for freedom and the exercise of creative energies.

⁵⁰ James Tully, *A Discourse on Property: John Locke and His Adversaries* (Cambridge: Cambridge University Press, 1980). In Paul E. Sigmund, ed. *The Selected Political Writings of John Locke* (New York: Norton, 2005), 329.

⁵¹ John Locke, *The Second Treatise of Government*, Chpt. 5, Sect. 41. In David Wootton, ed. *John Locke: Political Writings* (Indianapolis: Hackett, 2003), 281.

By being able to see Proudhon as an extension of Locke, we can see how deeply similar Proudhon is to key aspects of much in American political history, a history which Louis Hartz once called “thoroughly Lockean.” Louis Hartz described the integration of Locke into the American Way of Life as “a nationalist articulation of Locke which usually does not know Locke himself is involved.”⁵² The extent to which the United States has adhered to Lockean principles has often been through unconscious affirmation, but yet as Hartz argues, the Lockean mindset has been an integral component of most American political traditions. One does not have to look very far to see the prevalence of Lockean sentiments in the documents of the American Revolution. Indeed, as Allen Guttman recounts, “Jefferson, Hamilton, Jackson, Clay, Hoover, and Roosevelt...even John Taylor of Caroline and John Randolph of Roanoke blend into the great American consensus, since they were all apostles to some degree of Locke.”⁵³ Even the New Deal, which in many ways deviated from a Lockean course of action, was unique, according to Hartz, in that the spirit of American Lockeanism triumphed over the socialist tendencies of some policy makers.⁵⁴ And on the eve of America's involvement in World War II, policy makers embraced Lockeanism as they berated Germany for “violating the fundamental principle of contract.”⁵⁵ And Locke remained highly influential after the war. Therefore, in as much as the American experience has been thoroughly Lockean, it can also be characterized as possessing an element of mutualism.

b. Compassion in the Market: Proudhon's Similarities to Contemporary Free Market Advocates

As we have seen, a frequent criticism of Proudhon is that he advances socialism, given his seeming rejection of property and his condemnation of capitalists. Yet as we have also seen, such a criticism is unfounded, since these rejections were more rhetorical statements expressing Proudhon's disdain for the lack of mobility observed in society and attributable to aristocratic influence than an embrace of full blown socialism. Indeed, Proudhon's profound faith in the power of markets as a means of commerce distinguishes him clearly from socialists.

Many critics of mutualism argue that man has an innate self-interest that would undermine Proudhon's idea of widespread economic betterment and market transactions based

⁵² Louis Hartz, *The Liberal Tradition in America* (New York: Harcourt Brace & Company, 1991), 11.

⁵³ Allen Guttman, *The Conservative Tradition in America* (New York: Oxford University Press, 1967): 41.

⁵⁴ L. Hartz, *The Liberal Tradition in America*, 260-61.

⁵⁵ *Ibid.*, 294-95.

on reciprocity and mutual concern; and many would go further and say that a vibrant free market depends on selfishness and mutual suspicion.⁵⁶ However, contemporary economic theorist Deirdre McCloskey has cogently advanced a theory of a-moral markets that provides a contemporary window on how Proudhon's market could arise and sustain itself. In her important work *Bourgeois Virtues: Ethics for an Age of Commerce*, McCloskey argues that markets naturally arise from necessity and are independent of any preconceptions of human nature or morality. She establishes a theoretical model of an isolated town where individuals eat and live in common, and notes that even within this town, the desire to specialize in certain tasks, either out of efficiency or personal satisfaction, occurs almost spontaneously and that through specialization, trade will occur, noting that even ascetic Amish communities will develop markets to organize trade and allocate resources.⁵⁷ If this is true, and even purely ascetic communities, which may lack rigid understandings of property and do not espouse an aggressive sense of self-interest, create markets, this logic undermines the idea that markets presuppose vice, and thus underscores Proudhon's promise of markets free of deceit, trickery, and attempted exploitation.

Critics of mutualism also argue that Proudhon's belief in local control is inconsistent with the operation of markets, as market participants must consolidate and be driven by a narrow focus on profit simply to compete. However this view neglects the extent to which participation in a free market actually can generate traits of compassion, mutual concern, respect for equality, and lateral collaboration. Markets need not only engender hierarchy and a ruthless and competitive search for narrow profit. In "Capitalism and the Origins of the Humanitarian Sensibility", Thomas Haskell asserts that the existence of wide-scale compassion in societies where market economies flourish often arose from the market's own capacity to expand conscientiousness toward others through interaction and inspire enthusiasm to intervene when necessary.⁵⁸ He notes that through the contractual nature of the market individuals are required to regulate their behavior and act predictably so that each party may fulfill its portion of the

⁵⁶ A classic example of this logic can be found in Bernard Mandeville's *Fable of the Bees: or, Private Vices, Publick Benefits*.

⁵⁷ Deirdre McCloskey, *Bourgeois Virtues: Ethics for an Age of Commerce* (Chicago: University of Chicago Press, 2004), 464.

⁵⁸ T. Haskell, "Capitalism and the Origins of the Humanitarian Sensibility, Part 2," *The American Historical Review* 90 (1985): 556.

contract. He refers to this as promise keeping. Through this act of promise keeping, the obligatory contract enables each partner to be knowingly dependent on the other's promise to keep the contract. This engineers a "magnification of personal power, a way of doing collaboratively what no individual could do alone."⁵⁹ This duty to others within a contractual framework empowers individuals to reach out beyond their egoism, and incorporate a wide spectrum of individuals into their daily activities. Furthermore, Haskell states that the sense of duty inherent in contract making inculcates a lifelong commitment to the principle of keeping promises and treating others fairly, such that it becomes an ethically informed lifestyle, which over time helps to create a society that utilizes fairness as its code of conduct. Hence for Haskell the market has the potential actually to increase virtue.⁶⁰

Proudhon notes similarly that "life is a struggle, but this struggle is not between man and man, it is between man and nature and everyone must be part of it. If in the struggle the strong come to the aid of the weak, their kindness deserves praise and love; but their aid should be accepted as a free gift, not imposed by force or offered at sale. Everyone has the same course to run, which is neither too long nor too difficult: whoever finishes it finds his reward at the end, and it is not necessary to get their first."⁶¹ In this passage, Proudhon espouses a society centered on the ethics described by Haskell. In the same way that Haskell notes that the market brings an enlightened awareness of and concern for others, Proudhon believes that individuals possess a duty to aid others in need without the want of reward.

For Proudhon, the market that arises in mutualism establishes compassion as a natural discourse for market activity. Moreover, as compassion becomes a catalyst guiding market activity, the market further deepens the transformation of individuals, helping them to move beyond their immediate self-interest to discover the intrinsic value of participating in a society whose compassion and care promotes and elevates the dignity of every individual. It is through this process that Proudhon's market is rather a transcendent force, where a spiritual transformation occurs in the hearts and minds of all those involved, one that breaks down socio-economic boundaries and inspires individuals to hold trust and compassion in high regard.

Haskell's insights constitute powerful evidence for Proudhon's idea that markets and virtue can exist simultaneously. Moreover, such a view is deeply entrenched in American

⁵⁹ Ibid., 559.

⁶⁰ Ibid., 560.

⁶¹ P.J. Proudhon, *What is Property?*, 98.

political traditions. The idea of advanced market economies being compatible with widespread moral and civic virtue was expressed by Hamilton, and amplified extensively by the Whig Party in the 1840s and its successor, the Republican Party. As the great historian of the Whig Party Daniel Walker Howe notes in his work *The Political Culture of the American Whigs*, the Whigs viewed the “spirit of enterprise” as consistent with and supportive of “humanity” and “helping to elevate the intellectual and moral level of society.”⁶² “The Whigs,” Howe argues, “resolved...that commerce could nourish virtue,” hence justifying “capitalism on the grounds of moral benefit to society.”⁶³ In this understanding, markets could develop that would supply economic benefit *and* make individuals more considerate of others, more prone to think in terms of reciprocity of interest and without a desire to exploit a weaker party, and given less to “excessive competition” coldly indifferent to others.⁶⁴ As great Whig leaders such as Henry Carey argued, moreover, developing a market based system of capitalism would “enable all to find demand for their physical and mental prowess,” thus leading to the realization in all participants of their human creativity and “the higher enjoyments of life.”⁶⁵

The specific way that the markets served to cultivate these traits was described in rich detail by the famous Whig economist and leader Henry Carey—perhaps the most widely known and admired writer in America in the 1830’s and 1840’s.⁶⁶ He described the benefit of market based commerce as issuing from the way markets engender “associationalism”: the development of mutually beneficial interaction among market participants in a particular community, which then becomes second nature for the participants, and slowly grows into the establishment of non-exploitative, mutually beneficial interaction among all communities,⁶⁷ an idea very similar to Proudhonian mutualism.

Such Whig ideas were reinforced by the later Republican Party, and remain mainstays of many contemporary defenders of market capitalism. Many in the current Republican Party’s electoral coalition, who are both defenders of the government’s role in maintaining moral virtue and also supporters of market capitalism, do not support the later because, as a popular movie

⁶² Daniel Walker Howe, *The Political Culture of American Whigs* (Chicago: University of Chicago Press, 1979), 99, 101.

⁶³ *Ibid.*, 101.

⁶⁴ *Ibid.*, 105.

⁶⁵ *Ibid.*, 111, 112.

⁶⁶ *Ibid.*, 108-09.

⁶⁷ *Ibid.*, 118.

has it, “Greed is Good.” No, they believe, in the tradition of the Whigs, in the moral character of markets. Such staples of contemporary conservatism as local Chambers of Commerce and local Rotary Clubs are dedicated to the proposition that markets support and even encourage morality, and that local business interactions are especially morally salubrious as they deepen bonds of trust, reciprocity, and mutual concern. Proudhon then can be seen as consistent with a great deal of what can be called traditional in American political thought.

c. The Nature of Man: Proudhon's Similarity to the View of Human Nature Advanced in American Social Gospel Movements

As we have discussed, Proudhon sought to promote a society grounded on a sense of social justice and reciprocity. His ultimate desire was to enable individuals to live peacefully with one another by providing them with the right social outlook. Both Proudhon’s aim and many of the particulars of his view are reflected in the history of religious movements in America.

Unlike Rousseau, who argued that man was inherently good and that society was the corrupting force, in *What is Property?* Proudhon indicates that man is not inherently and instinctively good. “Instead of seeking the cause of the evil in his mind and heart, man blames his masters, his rivals, his neighbors, and himself; nations arm themselves, and slay and exterminate each other, until equilibrium is restored by great depopulation, and peace rises again from the ashes of the combatants.”⁶⁸

This statement by Proudhon indicates that although society may succumb to successive injustices, its shortcomings are outward expressions of the internal conflict within the mind and soul of individuals. This however is an inner conflict that can be resolved. Man is not destined to act out in aggression. Man, or rather man’s understanding, can be greatly improved. Proudhon notes that within individuals there is a potential for performing evil acts that arises from man’s ignorance concerning moral and ethical obligations.⁶⁹ Yet this ignorance is not beyond repair, and can be resolved by human industriousness and reason. By understanding one’s moral and ethical duty to one another one can adequately resolve the issues facing society. In this sense, the evil that men do can be overcome by a heightened sense of understanding that causes them to

⁶⁸ P.J. Proudhon, *What is Property?*, 19.

⁶⁹ *Ibid.*, 22.

look beyond the ego towards the individual's relationship to others around him. Through this process, individuals can transform their thinking and acting into a lifestyle grounded on cooperation, honesty, and collaboration. While evil tendencies may linger during society's transition to the acceptance of moral duty, the key is that man possesses the mechanism to progressively combat evils through understanding and education, incrementally working towards societal improvement.

Similar interpretations of human nature came out of deeply ingrained American religious movements of the late 19th and early 20th centuries, with antecedents in the earlier development of evangelical piety as a political force in the 1830's and 1840's. Theologically, as Robert Handy notes, Social Gospel ministers of the late 19th and early 20th centuries advocated implementing the teachings of Jesus as a framework for "correcting the evils stimulated by capitalistic economy and individualistic philosophy."⁷⁰ Standing in direct contrast to a strictly Calvinistic understanding of human depravity, John Eighmy notes that Social Gospel movement icon Walter Rauschenbusch redefined sin, seeing it not arising from man's preternatural fall, but rather in terms of human "maladjustments", and believing that salvation is a process of "social reform and individual enlightenment."⁷¹ Within the American South, the movement flourished and was essential in the abolition of child labor, the reform of the prison system, and in instilling a sense of social responsibility towards those in need.⁷² Most notably, the movement advocated the idea that men on this earth, through reforming existing social structures and interactions, could create the Kingdom of God. In *Christianity and the Social Crisis*, Rauschenbusch criticizes the materialistic egoism of his contemporaries, noting that the teachings of Christianity are a spiritual force that compels men to focus on the welfare of their neighbors.⁷³ Ethically, Christianity "bases all human relations on love," and "sets defiant pride and selfishness against the gentleness and unselfishness urged by the spirit of Jesus."⁷⁴ By living in Christ's spirit, the spirit of love, one places the needs of the community above one's own, which leads the individual to a path of greatness that invites him to "live his life for the kingdom of God."⁷⁵ From the perspective of the Social Gospel movement, the duty of the Christian is to create the

⁷⁰ R. Handy, "The Influence of Mazzini on the American Social Gospel," *The Journal of Religion* 29 (1949): 115.

⁷¹ J. Eighmy, "Religious Liberalism in the South During the Progressive Era," *Church History* 38 (1969): 359.

⁷² *Ibid.*, 361-62.

⁷³ W. Rauschenbusch, *Christianity and the Social Crisis* (Louisville, KY: Westminster/John Knox Press, 1991), 369-71.

⁷⁴ *Ibid.*, 309.

⁷⁵ *Ibid.*

Kingdom of God by always living compassionately towards others. In this manner, the spirit of Christ gives a divine significance and purpose to the ordinary interactions of individuals.

Although Proudhon and the Social Gospel ministers existed on entirely different continents at different moments in time, both movements saw humanity through similar lenses and attempted to move society towards the same goal. Proudhon's notion of man's ignorance (i.e. lack of concern due to an over emphasized ego) leading to social evils is very similar to Rauschenbusch's concept of evil being the product of maladjustments (i.e. selfishness at the expense of others). In both instances the source of evil is not innate in man himself, but rather comes from a perception that man should be entirely consumed with his own self worth. Evil and sin are products of acting within society and are not inherently a part of man's being. This enhances the belief that through social adjustments, education, and modeling, these behaviors have the potential to be controlled in order for men to act for the common good. Even more overtly, both camps sought to reverse the depravity that capitalism had instilled in society. Much as Proudhon's criticism of capitalism was rather a condemnation of the selfish "capitalist", Social Gospel ministers found the same selfish egoism at the heart of their capitalist experience. Both movements attempted to discover a world outside the individuals, to invoke individuals to look at themselves in the much broader context of society and the common good. By realizing one's place in society in relation to others, both Proudhon and the Social Gospel ministers sought to empower individuals with an outward looking zeal to live a life of justice and compassion for others. At the core, Proudhon stands abreast a central Christian movement in America, believing with optimism in the human spirit and its potential to craft real societal transformation.

Although the Social Gospel movement may be seen by some as radical, William Hutchinson argues that the movement is deeply ingrained in American political thought.⁷⁶ Its spirit finds expression in the theological movements of the early 19th century, including developments in the so-called Second Great Awakening and the rise of New School Calvinism, among other trends in religious thought. Charles Finney, a leader of the Second Great Awakening, taught human freedom and a natural ability to be perfect in the sense of "perfect, disinterested, impartial benevolence."⁷⁷ This perfectionist doctrine then became centered at

⁷⁶ W. Hutchinson, "The Americanness of the Social Gospel: an Inquiry in Comparative History." *Church History* 44, (1975): 378.

⁷⁷ E. Brooks Holifield, *Theology in America: Christian Thought from the Age of the Puritans to the Civil War* (New Haven: Yale University Press, 2003), 367.

Oberlin College where he taught, and made Oberlin a hotbed of reformist movements addressing a wide variety of social problems.⁷⁸ At the same time Yale Divinity School leader Nathaniel William Taylor, leader of New School Calvinism, emphasized freedom and social outreach. In all, in the early 19th century, the evangelical movement supplied the nation “with a conception of progress that was the collective form of redemption: like the individual, society as a whole was capable of securing its own redemption.” And so evangelicals “demanded the moral regeneration of society,” while teaching people to have faith in themselves.⁷⁹ Moreover by the mid 19th century the Abolitionists came also to prefigure the Social Gospel movement. Sydney Ahlstrom calls abolitionism a “prelude to the Social Gospel.”⁸⁰ In his major work, *The Rise of the Social Gospel in American Protestantism*, Charles Howard Hopkins argues that that the “hope and fervor” of the Abolitionists was the predecessor to the energetic social missionizing of the Social Gospel ministers.⁸¹ And as Willard Smith shows, the Social Gospel movement continued after the Civil War and may have hit its peak in the late 19th century; by that time the Social Gospel was integral to American politics and remained a persistent component in the policies of William Jennings Bryan, among others, who applied Christian teachings and ethics to the realm of social reform.⁸² Despite its decline following WWII, as J. Guth notes, in recent years the application of Social Gospel-style teachings concerning societal betterment has enjoyed a comfortable resurgence in the form, to take one example, of religious environmentalism.⁸³ Hence Proudhon’s thought echoes once more much that is deeply entrenched in American political thought.

d. *Nurturing a Community of Cooperation: Proudhon's Similarities to the Anti-Federalist Tradition*

One of the defining attributes of mutualism is the extent to which Proudhon emphasizes localism as a means of promoting social progress. With more individuals within close proximity there will be more regular interaction among the populous. Continuous interaction promotes

⁷⁸ Ibid.

⁷⁹ Daniel Walker Howe, *The Political Culture of American Whigs*, 153, 180.

⁸⁰ Sydney E. Ahlstrom, *A Religious History of the American People* (New Haven: Yale University Press, 1972), 787.

⁸¹ Charles Howard Hopkins, *The Rise of the Social Gospel in American Protestantism* (New Haven: Yale University Press, 1940), 14.

⁸² W. Smith, “William Jennings Bryan and the Social Gospel,” *The Journal of American History* 53 (1966): 45-46.

⁸³ J. Guth, “Faith and the Environment: Religious Beliefs and Attitudes on Environmental Policy,” *American Journal of Political Science* 39 (1995): 364-82.

collaboration in order to get things done, and from that point a community-ethos can be formed. Proudhon believed that a community grounded in cooperation would be more trustful of each other and would negate the necessity for a strong central government; Proudhon's society is one where power resides primarily in the hands of members of the local community and not in a distant and centralized regime.

Proudhon's veneration of localism should be understood, once again, as a mechanism for curbing the power and influence of the aristocracy and the expanding manufacturing elite. By depleting power from a central authority, an aristocratic class could no longer rely on the government for protection and would cease to be an integral facet of society. Localism was Proudhon's final blow in the attempt to dismantle aristocratic designs, which he saw as a challenge to the liberty of all individuals and a hindrance to society's progress.

This same set of concerns is deeply entrenched in American political history, and was expressed in the thought of the Anti-Federalists during the constitutional debates of 1787-1788. In the same manner that Proudhon feared a government by the privileged, Anti-Federalist writers believed a strong sense of localism and decentralized political power were the most effective tools in curbing the tide of aristocratic influences within government. Under the pseudonym Centinel, Samuel Bryan, for example, argued that a centralized government under the Constitution benefited only the interests of an elite few. In his letter to the Freemen of Pennsylvania, Bryan articulated his disdain for the aristocracy, "the wealthy and ambitious, who in every community think they have a right to lord it over their fellow creatures." A populace that gives in to them "has been prepared to accede to any extreme of government and long meditated schemes of power and aggrandizement."⁸⁴ According to Bryan, the aristocracy attains its influence through rhetoric to lure the public into a false sense of security. Once individuals are willing to relinquish their liberty, the government can bend the public to its will.⁸⁵

Another similarity between Proudhon and the Anti-Federalists was their distrust of a polity that was geographically and politically distant from the people it governs. In principle, a government that is geographically removed from its populous is less accountable to its citizens' desires as it is physically less accessible to them. In addition, a government that is politically removed from its populous, in other words, one that is not directly and regularly elected by its

⁸⁴ Centinel, "Number I (Oct. 5, 1787)," in *The Anti-Federalist Papers and the Constitutional Convention Debates*, ed. R. Ketcham, 227-37 (New York: Signet Classic, 2003), 22-230.

⁸⁵ *Ibid.*, 231.

citizens, is prone to create and reserve extraordinary powers for itself, as it no longer maintains regular ties with its constituents. As Samuel Bryan stated: “do we not already see, that the inhabitants in a number of larger states, who are remote from the seat of government, are loudly complaining of the inconveniences they are subjected to on this account.”⁸⁶ In many ways, Centinel articulated Proudhon’s concern over the centralization of power.

The converse of political centralization is localism, which holds that power must be vested in the hands of local institutions that reflect the values and interests of citizens. Through abandoning a centralized state for its perceived aristocratic tendencies and its lack of concern for citizens, both Proudhon and the Anti-Federalists seek to replace this power structure with one that more closely ties the fates of citizens and the source of governance together. Mutualism and Anti-Federalist thought admire a society centered on local partnerships and familiarity. It can be said that both philosophies seek to create a society grounded on the principles of non-coercion and cooperation, and both see localism as essential to securing these values.

Both the Anti-Federalists and Proudhon hold similar ideas on how to achieve this commitment to localism. As the great historian of the Anti-Federalists Herbert Storing notes, the Federal Farmer, for one, argued that an ideal division of land would assume an equal standing of property ownership amongst the populous.⁸⁷ This shows similarity to Proudhon’s belief in a relatively wide distribution of property. According to both the Anti-Federalists and Proudhon, the size of each plot would remain relatively small which would increase interactions among neighbors. Additionally, both argue that people with deep commonalities should cluster together. Both see homogeneity as a foundation for a vibrant community, as members can recognize the commonalities among each other and place their trust in people who seem very similar to themselves.⁸⁸

In this regard we should note also the persistent support given by the Anti-Federalists to the institution of a trial by a jury of one’s peers. The Anti-Federalists saw the local jury as an especially salutary instance of a local institution decentralizing power. And since it was compromised of peers, the jury would reiterate the importance of community self-enforcement of

⁸⁶ Ibid., 235.

⁸⁷ H. Storing, *What the Anti-Federalists Were For*, (Chicago: University of Chicago Press, 1981), 19.

⁸⁸ Ibid., 19-20. It is once again critical to note that this homogeneity of communities is validated within a context that affirms and supports the right of individuals to choose their communities. Moreover, Proudhon’s entire approach to social life is based on empowering individuals economically, thereby affording them not merely a formal right but an actual ability to choose their community.

rules. As Storing comments, for the Anti-Federalists “the jury trial was [a] means of effective and lawful popular control,” ensuring a strong role for the local community in upholding community values.⁸⁹

In all, Proudhon bears many striking similarities to the Ant-Federalists. Anti-Federalist thought too is an integral part of America’s political traditions, a point ably made by Herbert Storing in his classic work *What the Anti-Federalists Were For*. Storing argues that Anti-Federalist thought consists of principles that have emerged and reemerged in American political thought: The desire to leave power at the local level; to be both “a great American republic and a small community”; to have both economic prosperity and civic mindedness. For this reason, Storing asserts that the Anti-Federalists and the ideas they espoused are “inherent in the principles and traditions of American political life.”⁹⁰

V.

Conclusion: Proudhon for a Contemporary Generation

As we have seen, Proudhon is an individual full of nuance and insight. While his thought may have been dismissed as socialist in the past, we have demonstrated that what he offers cannot be clearly labeled as left or right and in fact has much in common with central aspects of the American political experience.

Proudhon's contributions to political thought should not be left in obscurity, but rather should be appreciated for their viability, soundness, and persuasive appeal. In many ways, Proudhon can speak to the condition of individuals within the United States, not as a foreigner, but as a participant in a dialogue long undertaken in American political history. In the contemporary world, where uncertainty and injustice are commonplace, Proudhon's aim to create meaning in the actions of individuals and to move them to accept the duty to act compassionately towards one another, is a noble endeavor that should be explored and discussed, rather than dismissed and ignored.

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⁸⁹ Ibid.

⁹⁰ Ibid., 6.

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